

## **FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES 2009**

### ARRANGEMENT OF RULES

#### ORDER 1

##### REVOCATION, CITATION, SAVINGS, ETC.

- 1 Revocation of Civil Procedure Rules 2000.
- 2 Citation and commencement.
- 3 Savings: part-heard matters, etc.
- 4 Fundamental objective.
- 5 Interpretation.
- 6 Meaning of other words.

#### ORDER 2

##### PLACE OF INSTITUTING AND TRIAL OF SUITS

1. (1) Place for trial of suits.
- (2) Suits relating to taxation, etc.
- (3) Suits for penalties.
- (4) Suits upon contract.
- (5) Suits relating to Customs, Excise, Tariff etc.
- (6) Suits relating to foreign trade.
- (7) Suits relating to passport, immigration, etc.
- (8) Suits relating to copyright.
- (9) Other suits.

- 1 Judicial Division of Court in which suit may commence.
- 2 Suits commenced in wrong Judicial Division.
- 3 Transfer of proceedings.

#### ORDER 3

## FORMAND COMMENCEMENT OF ACTION

1. Form of commencement of action.
2. Proceedings which must be begun by writ.
3. Mode of beginning civil proceedings commenced by writ of summons.
4. Form of writ.
5. Form of writ for service out of Nigeria.
6. Proceedings which may be begun by originating summons.
7. Where right depends on construction of enactment.
8. Discretion of the Judge.
9. Forms of originating summons.
10. Originating process to be tested by its date.
11. Preparing originating process.
12. Sealing of originating process.
13. What is to be done after sealing.
14. Copies to be served.
15. Duration of and renewal.
16. Validity and renewal of originating summons.
17. Indorsement of renewal.
18. Loss of originating process.
19. Concurrent originating process.
20. Concurrent originating process for service within and out of jurisdiction.

## ORDER 4

### INDORSEMENT OF CLAIM AND OF ADDRESSES

- 1 Indorsement.
- 2 Indorsement as to representative capacity.
- 3 What is endorsed where claim is liquidated.
- 4 Ordinary account.
- 5 Indorsement of address by plaintiff or by legal practitioner.

6 Originating process with no address.

#### ORDER 5

PETITION:

##### GENERAL PROVISIONS

- 1 Application.
- 2 Contents of petition.
- 3 Presentation of petition.
- 4 Fixing time for hearing, etc. of petition.
- 5 Certain applications not to be made by petition.

#### ORDER 6

##### SERVICE OF PROCESS

###### A — SERVICE WITHIN JURISDICTION

1. By whom service is to be effected.
2. Service of process: how effected.
3. When process need not be served.
4. Special bailiff.
5. Substituted service.
6. Service on employee of Government.
7. Service on partners.
8. Service on corporation or company.
9. Service on board ship.
10. Service on prisoners and lunatics.
11. Service on infants.
12. Service on local agent of principal who is out of jurisdiction.

###### B — SERVICE OUT OF JURISDICTION

13. Service of writ out of jurisdiction.

14. Application to be supported by affidavit.
15. Order to fix time for appearance.
16. Service of notice.
17. Service of originating summons, etc.
18. Service abroad by letter of request.
19. Service out of the jurisdiction under the Civil Aviation Act.
20. Service of documents abroad.
21. Saving for other modes of service.
22. Airmail.
23. Service for foreign tribunals.
24. Substituted service.
25. Order thereon.

#### C—GENERAL PROVISIONS

26. Where violence threatened.
27. Affidavit of service.
28. Expenses of service.
29. Service on Sunday or public holiday.
30. Recording of service.
31. Interpretation.

#### [ORDER 7](#)

##### APPEARANCE

- 1 Mode of entry of appearance.
- 2 Defendant appearing in person or represented by legal practitioner.
- 3 Memorandum of appearance with no address for service.
- 4 Defendants appearing through same legal practitioner.
- 5 Person under legal disability appearing.

## ORDER 8

### DEFAULT OF APPEARANCE

- 1 Default of appearance generally.
- 2 Liquidated demand.
- 3 Liquidated demand: several defendants.
- 4 Several defendants.
- 5 Default of appearance by person under legal disability.
- 6 Judgement in default of appearance.
- 7 Detention of goods, damages and liquidated demands.
- 8 Judgement for costs: upon payment, satisfaction etc.
- 9 Setting aside judgement.
- 10 Default of appearance in actions not otherwise specifically provided for.

## ORDER 9

### PARTIES

#### A—GENERAL

- 1 Persons claiming jointly or severally.
  - 2 Action in the name of a wrong plaintiff.
  - 3 Misjoinder and Counter-claim.
  - 4 (1) Class action.
- (3) Opting in and opting out.
5. Any person may be joined as defendant.
  6. Action in the name of a wrong defendant.
  7. Defendant needs not be interested in all the reliefs sought.
  8. Joinder of persons severally or jointly and severally liable.
  9. Plaintiff in doubt as to person from whom he seeks redress.
  10. Persons under legal disability.
  11. Next friend.

12. Numerous persons.
13. Where there is no personal representative.
14. Proceedings not defeated by misjoinder or non-joinder.
15. Application to add or strike out.
16. Where defendant is added.
17. 1. Third party notice. How leave obtained.
18. Form and issuance of notice.
19. Effect of notice.
20. Appearance.
21. Default by third party.
22. Procedure after default.
23. Third party directions.
24. Leave to defend.
25. At trial or after.

#### B —ACTIONS AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN

26. Actions by and against firms.
27. Disclosure of partners' names.
28. Appearance of partners.
29. Application of rules to actions between co-partners.
30. Persons trading as firms.

#### C— ALTERATION OF PARTIES

31. Where change of interest. Court may make order enabling suit to proceed.
32. Application to discharge order by person under disability having a guardian.
33. Application to discharge order by persons under disability having no guardian.

## D—LEGAL PRACTITIONERS OR AGENTS

34. Acts may be done by legal practitioner.
35. Party may change legal representative.
36. Where legal representative ceases to act.
37. Address of party.

## [ORDER 10](#)

### JOINDER OF CAUSES OF ACTION

- 1 All causes of action may be joined.
- 2 Claims by joint plaintiffs.
- 3 Counter-claim against plaintiff.
- 4 Court may order separate trials,

## [ORDER 11](#)

### CONSOLIDATION

1. Consolidation.

## [ORDER 12](#)

### THE UNDEFENDED LIST

I. Undefended list: affidavit. 2 Copies of affidavit to be served.

- 1 Notice of intention to defend.
- 2 Judgement in undefended suit.
- 3 Oral evidence.

## [ORDER 13](#)

### PLEADINGS

#### A-GENERAL

- 1 Service of statement of claim.
- 2 Service of statement of defence.
- 3 Service of reply and defence to counter-claim.

4(1) Pleading to state material facts and not evidence (2) How facts are to be stated.

5 Particulars to be given where necessary.

6 Matters which must be specifically pleaded .

7 (1) Further and better statement or particulars

(2) Letter for particulars.

(3) Particulars before defence.

1 Order for particulars not a stay.

2 Specific denial. 10.. Denial by joinder of issue.

11. Pleadings to be consistent.

B116

12. (1) Grounds of claim founded on separate facts to be separately stated. (2) The relief claimed to be stated.

13. Allegations shall not be made generally but specifically.

14. Denial of fact must answer point of substance.

15. Admissions.

16. Set-off or counter-claim to be pleaded.

17. Evidence in denial of allegation or in support of defence not set up in pleadings.

18. Further pleadings.

19. Costs in certain cases.

20. Striking out pleadings.

21. Denial of contract.

22. Effect of documents to be stated.

23. Malice, knowledge, or other condition of mind.

24. Notice.

25. Implied contract or relation.

26. Presumption of law.

27. Technical objection.

28. Stated or settled account.



29. Defence of tender.
30. Defence of set-off.
31. Judgement for balance.
32. Close of pleadings.

#### B—STATEMENT OF CLAIM

33. Statement of claim.
34. Claim beyond indorsement.

#### C—STATEMENT OF DEFENCE AND COUNTER-CLAIM

- 35.(1) Statement of defence.
- (2) Evasive denial.
- (3) Denials generally.
- (4) Persons in representative capacity.
- (5) Pleading to damages.
- (6) Set-off and counter-claim.
- (7) Title of counter-claim.
- (8) Claim against persons not parties.
- (9) Appearance by added parties.
- (10) Reply to counter-claim.
- (11) Judgement for balance.
- (12) Grounds of defence after action brought.
- (13) Further defence or reply.
- (14) Concession to defence.
- (15) Defence in originating summons.

B 117

#### D — REPLY

36. (1) Filing of reply
- (2) Reply to counter-claim

[ORDER 14](#)

## DEFAULT OF PLEADINGS

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

## [ORDER 15](#)

### ADMISSIONS

- 1 Notice of admission of facts.
- 2 Notice to admit document.
- 3 Notice to admit facts.
- 4 Judgement or order upon admission of facts.
- 5 Costs, where documents unnecessary.

## [ORDER 16](#)

### PROCEEDINGSINLIEUOFDEMURRER

- 1 Demurrer abolished.
- 2 Points of law may be raised by pleadings.
- 3 Dismissal of action.
- 4 Striking out pleading where no reasonable cause of action is disclosed.
- 5 Declaratory judgement.

## [ORDER 17](#)

### AMENDMENT

- 1 Amendment of originating process and pleadings.
- 2 Application.
- 3 Amendment of originating process: additional witnesses.
- 4 Failure to amend after order.
- 5 Filing and service of amended process.
- 6 Date of order and amendment to be displayed

## [ORDER 18](#)

### SETTLEMENT OUT OF COURT AND SETTLEMENT OF ISSUES

- 1 Period for settlement.
- 2 Formulation of issues for determination.
- 3 Party may apply for issue to be tried.
- 4 Formulation of issues by Court.

## [ORDER 19](#)

### PROCEEDINGS AT TRIAL

1. Non-appearance of both parties.
2. Default of appearance by defendant at trial.
3. Default of appearance by plaintiff.
4. Judgement by default may be set-aside on terms.
5. Adjournment of trial.
6. Time of commencement and termination of trial.
7. Order of proceedings.
8. Burden of proof by party to begin.
9. Documentary evidence.
10. Additional witness.
11. Close of case of parties.

12. Exhibits during trial.
13. Custody of exhibit after trial.
14. Office copy of list of exhibits.
15. Indolent prosecution.

## ORDER 20

### EVIDENCE GENERALLY

1. Facts ; how proved.
2. Particular of facts.
3. Limitation on use of documentary evidence.
4. Revocation and variation.
5. Certified true copies admissible in evidence.
6. Examination of witnesses abroad.
7. Form of order for examination of witnesses abroad.
8. Order for attendance of person to produce document.
9. Disobedience to order for attendance.
10. Expenses of persons ordered to attend.
11. Contempt of court by witness.
12. Examination of witnesses.
13. Depositions not to be given in evidence without consent or by leave of a Judge.
14. Oaths.
15. Attendance of witness under subpoena for examination or to produce document.
16. Practice as to taking of evidence at any stage of cause or matter.

### B119

17. Special directions as to taking of evidence.
18. Evidence in proceedings subsequent to trial.
19. Form of praecipe of a subpoena.
20. Form of subpoena.

21. Subpoena for attendance of witness in Chambers.
22. Correction of error in subpoena.
23. Personal service of subpoena.
24. Duration of subpoena.
25. Action to perpetuate testimony.
26. Examination of witness to perpetuate testimony.
27. Such action not to be set down for trial.
28. Notice to produce to other party.
29. Notice to produce in pleadings or in separate
30. notice.
31. Sufficient particulars.
32. Fees.
33. Failure to produce document.
34. Court may order inspection, etc.
35. Costs.
36. Expression relating to banker's book.

#### [ORDER 21](#)

#### NON-SUIT

1. Power of Court to non-suit. i

#### [ORDER 22](#)

#### FILING OF WRITTEN ADDRESS

- 1 Power to order for written address.
- 2 Court to order written addresses.
- 3 Written address by the other party.
- 4 Written address by party beginning.
- 5 Right of reply.
- 6 Content of written address.
- 7 Summary of address.
- 8 Oral argument

- 9 Address to be deemed adopted where party absent.
- 10 Copies of written address.

### ORDER 23

#### JUDGEMENT, ENTRY OF JUDGEMENT

of 1. Delivery of judgement.

ge 2. Judge unable to deliver judgement..

1. Date of judgement pronounced in Court.
2. Date of judgement directed to be entered.

B120

5. Judge may direct time for payment or performance and interest.
6. Payment by instalment.
7. Time to be stated for doing any act.
8. Judgement by consent where defendant appears by a legal practitioner.
9. Judgement by consent where defendant has no legal practitioner.
10. Notice when judgement reserved.
  
11. When parties deemed to have had notice.

### ORDER 24

#### DRAWING UP OF ORDERS

- 1 Signing, of orders.
- 2 Date of order when drawn.
- 3 What orders need not be drawn up.
- 4 Form of order.

### ORDER 25

#### COSTS

1. Security for costs by plaintiff or defendant.
2. Principle to be observed in fixing costs.

3. Security for costs.
4. Security for costs by plaintiff temporarily within jurisdiction.
5. Action founded on judgement or bill Of exchange.
6. Bond as security for costs.
7. Costs at discretion of Court.
8. Costs out of fund or property.
9. Stay of proceedings until costs paid.
10. Stage of proceeding at which costs to be dealt with.
11. When costs to follow the event.
12. Matters to be taken into account in exercising discretion.
13. Costs arising from misconduct or neglect.
14. Personal liability of legal practitioner for costs.

## ORDER 26

### INTERLOCUTORY APPLICATION

#### A — MOTIONS GENERALLY

- 1 Time to apply.
- 2 (1) Application by motion. (2) Motion list.
- 3 Affidavit and written address.
- 4 Affidavit to be served with motion and written address.
- 5 Counter affidavit to motion.
- 6 Hearing of motions.
- 7 Motion to be on notice except in emergency.

#### B121

#### B — EX PARTE MOTIONS

8. (1) Affidavit in support of ex parte motion.
- (2) Where anton piller order is applied for.
9. Arguments on motion.

10. Orders on ex parte motions.
11. Court may vary or discharge order.
12. Duration of ex parte order.

#### C — ORDER TO SHOW CAUSE

13. Return day to be specified.
14. Counter evidence.
15. Further service in certain cases.
16. Appearance or proof of service.
17. General powers as to orders.

#### D — NOTICE OF MOTION

18. Notice of motion.
19. Service of notice.
20. Service on solicitor.
21. Copy of affidavit to be served with notice.
22. Order of service.

#### E — EVIDENCE IN INTERLOCUTORY PROCEEDINGS

23. Oral evidence.
24. Evidence in addition to or lieu of affidavits.
25. Notice to parties and interested parties.
26. Evidence how taken.
27. Affidavit not filed with motion paper.

### [ORDER 27](#)

#### AFFIDAVITS

- 1 Evidence on motions, etc.
- 2 Title of affidavit.
- 3 Use of defective affidavit.
- 4 Special time for filing affidavits.
- 5 Affidavits in support of ex parte application.



- 6 Notice of intention to use affidavit.
- 7 Alterations in accounts to be initialled.
- 8 Exhibits.
- 9 Certificate of exhibit.
- 10 Affidavit taken in Commonwealth country admissible without proof of seal, etc.

B122

#### [ORDER 28](#)

##### INTERLOCUTORY INJUNCTION AND INTERIM PRESERVATION OF PROPERTY

- 1 Application for injunction.
- 2 Detention, preservation, etc. of subject matter of action.
- 3 Power to order samples to be taken. . .
- 4 Sale of perishable property, etc.
- .5 Order for early trial
- 6.. Recovery of personal property subject to lien, etc.
1. Directions.
2. Allowance of income of property pendente lite.

#### [ORDER 29](#)

##### DISPUTING THE COURT'S JURISDICTION

- 1 Disputing the Court's jurisdiction.
- 2 Defendant disputing must file memorandum of appearance.
- 3 Defendant not to lose right to dispute jurisdiction.
- 4 Time and mode of application.
5. Failure to apply within time.

#### [ORDER 30](#)

##### INTERIM INTERIM ATTACHMENT OF PROPERTY

- 1 Interim attachment of property; where ordered. ,
- 2 Application for attachment.

- 3 Form of order.
- 4 Where defendant fails to show cause or give security.
- 5 Rights of third parties not to be affected.
- 6 Removal of attachment.
7. In which Court proceedings may be taken.

#### ORDER 31

##### NEEDLESS DETENTION OF CHATTELS AND REPARATION FOR IT

- I. Damages for needless detention, etc.

#### ORDER 32

##### STAY OF PROCEEDINGS OR EXECUTION PENDING APPEAL

- 1 Stay of proceedings or execution pending appeal.
- 2 Court may grant or refuse order for stay.
- 3 Compilation of records.
- 4 Application for stay to be treated as urgent.
- 5 Formal order to be drawn up.

#### ORDER 33

##### INTERPLEADER

- 1 Entitlement to relief by way of interpleader.
- 2 Claim to goods, etc., taken in execution.
- 3 Mode of application.
- 4 Matters to be proved.
- 5 When application to be made by defendant. Stay of action. Order upon summons. Failure of claimant to appear; or neglect to obey summons. Costs, etc.

#### ORDER 34

##### APPLICATION FOR JUDICIAL REVIEW

Cases appropriate for application for judicial review.

Joinder of claims for relief. Grant of leave to apply for judicial review. Time within which to bring application.

Mode of applying for judicial review. Statement and affidavits. Claim for damages. Interlocutory application. Hearing of application for judicial review. Person acting in obedience to an order of mandamus. Consolidation of applications.

### [ORDER 35](#)

#### COMMITTAL FOR CONTEMPT OF COURT

Committal for contempt of court. Application to Court. Saving for power to commit without application for the purpose. Provisions as to hearing. ,,,

Contempt in face of Court: saving for. Power to suspend execution of committal order. Discharge of person committed.

Saving for other powers. Return.

### [ORDER 36](#)

#### WRIT OF EXECUTION

Definition. When leave to issue any writ of execution is necessary.

B124

- 1 Leave required for issuance of writ in aid of other writ.
- 2 Application for leave to issue writ.
- 3 Application for leave to issue writ of sequestration.
- 4 Issuance of writ of execution.
- 5 Duration of and renewal of writ of execution.
- 6 Return of writ of execution.

### [ORDER 37](#)

#### GARNISHEE PROCEEDINGS

- 1 Attachment of debt due to judgement debtor.
- 2 Application for order.
- 3 Service and effect of order to show cause.
- 4 Non appearance or dispute of liability by garnishee.
- 5 Dispute of liability by garnishee.

- 6 Claims of third persons.
- 7 Discharge of garnishee.

#### ORDER 38

##### PROCEEDINGS IN FORMA PAUPERIS

- 1 Duration of provisions.
- 2 Who may sue or defend in forma pauperis.
- 3 Conditions to be fulfilled.
- 4 Fees and costs.
- 5 Assignment of legal practitioner.
- 6 Procedure to be followed.
- 7 Revocation of order: discontinuance, etc.
- 8 Payment to legal practitioner.
- 9 Duty of legal practitioners
- 10 Leave to appeal.

#### ORDER 39

##### ASSESSOR

- 1 Assessor sitting in Court.
- 2 Assessor not to write judgement.
- 3 Assessor to give advice only on his subject.
- 4 Judge not bound to accept assessor's advice.
- 5 Assessor shall take oath of secrecy.

#### ORDER 40

##### RECEIVER

- 1 Application for appointment of Receiver and injunction.
- 2 Giving of security by Receiver.
- 3 Remuneration of Receiver.

Receiver's account. B125 Payment of balance, etc. by Receiver Default by Receiver.

#### [ORDER 41](#)

##### REFERENCE TO REFEREE

Instructions to Referee. Interim inquiries or account. General powers of the Referee. Evidence.

Referee's authority in the inquiry. Limitation in certain particulars.

(1) Reports made in pursuance of reference.

(2) Referee may report questions of facts specially.

#### [ORDER 42](#)

##### PAYMENT INTO AND OUT OF COURT

Payment into and out of Court. Plaintiff may take out money. Money remaining in Court.

Several defendants.

Counter-claim. Persons under legal disability. Payment into and withdrawal of money from Court.

#### [ORDER 43](#)

##### DISCOVERY AND INSPECTION

Discovery by interrogatories. Form of interrogatories. Interrogatories to corporation or company. Objection to interrogatories by answer. Affidavit in answer, filing of. form of affidavit in answer. Order to answer, or answer further. Application for discovery of documents. Process filed after close of pleadings. Verification of business books. Committal of party after service on legal practitioner. Committal of legal practitioner. Using answers to interrogatories at trial. Discovery of documents in marine insurance policies. Affidavit of documents. Power to order list of documents in lieu of affidavit.

B126

17. Production of documents.

18. Inspection of documents referred to in pleadings or affidavit.

19. Notice to produce.

20. (1) Time for inspection when notice given under Rule 19.

(2) Form of notice.

21. (l) Order for inspection.

(3) Affidavit in support of application : when required.

22. (l) Verified copies.
- (4) Power to order discovery of particular document or class of documents.
23. Premature discovery.
24. Non-compliance with order for discovery.
25. Service on legal practitioner of order for discovery.
26. Liability of legal practitioner.
27. Using answer to interrogatories at trial.
28. Discovery against sheriff.
29. Order to apply to infants.
30. Power to revoke order made.

#### [ORDER 44](#)

##### ACCOUNTS AND INQUIRIES

- 1 Summary order for accounts.
- 2 Court may direct taking of accounts, etc.
- 3 Directions as to manner of taking account.
- 4 Account to be made, verified, etc.
- 5 Erroneous account.
- 6 Delay in prosecution of account, etc.
- 7 Distribution of fund before all persons entitled are ascertained.

#### [ORDER 45](#)

##### ARREST OF ABSCONDING DEFENDANT

- 1 Defendant leaving jurisdiction or removing property.
- 2 Warrant to arrest.
- 3 Bail for appearance or satisfaction.
- 4 Deposit in lieu of bail.
- 5 Committal in default of security.
- 6 Cost of subsistence of person arrested.

## [ORDER 46](#)

### COURT SITTING AND VACATION

- 1 Days of sitting.
- 2 Public or private sittings of Court.
- 3 Office hours.
- 4 Days of sitting : long vacation

Vacation Courts B127

Vacation not reckoned in computing time for pleadings, etc.

Chambers.

## [ORDER 47](#)

### CAUSE LISTS

Weekly cause lists. Posting of weekly cause lists. Where any Thursday is a public holiday. Notice boards. Weekly cause list.

## [ORDER 48](#)

### COMPUTATION OF TIME

Computation of time. Holiday. Time of service.

Court may extend time. No enlargement of time by consent of parties.

## [ORDER 49](#)

### TRANSFER

Transfer of cause or matter. Re-assignment of cause or matter. Action by the Chief Judge on transfer. Evidence of part-heard cause or matter. Transfer of proceedings from the Court to a High Court. Transmission of order and copies of entries to the appropriate High Court.

## [ORDER 50](#)

### WITHDRAWAL AND DISCONTINUANCE

Withdrawal of appearance. Discontinuance of action without leave. Discontinuance of action, etc, with leave. Effect of discontinuance.

Stay of subsequent action until costs paid. Withdrawal of summons.

## [ORDER 51](#)

### EFFECT OF NON-COMPLIANCE

Effect of non-compliance.

Application to set aside for irregularity.

[ORDER 52](#)

ARBITRATION

A— REFERENCE TO ARBITRATOR

Nomination of Arbitrators and appointment.

Court may appoint Arbitrators.

Form or order of reference.

Umpire where necessary.

Attendance of witnesses.

Extension of time for making award.

Power of Court in case of death, incapacity, or refusal to act.

Finding.

Special case for opinion of the Court.

Court may modify or correct award.

Power as to costs.

Power of Court to remit award for reconsideration.

Setting aside award.

Filing award; effect of.

B — ARBITRAL PROCEEDINGS

Application under Arbitration and Conciliation Act.

C—ENFORCEMENT OF ARBITRAL AWARD Mode of enforcing awards.

D — REGISTRATION OF FOREIGN ARBITRAL AWARD

Awards made in proceedings in foreign territory

[ORDER 53](#)

APPEALS AND APPLICATIONS UNDER THE TRADE MARKS ACT AND PATENTS AND DESIGNS ACT

A—GENERAL

(1) Application of general procedure rules.



(4) Appeal from Registrar. Notice of motion, etc. Time within which appeal may be heard. Amendment of notice of motion. Power of the Court on appeal. Reference by Registrar.

#### B—TRADEMARKS

Procedure for action on infringement of registered trade mark.

#### C — PATENTS AND DESIGNS B129

Procedure for nullification of patents or designs. Restriction on evidence. Procedure for action on infringement of patent or design. Appointment of expert. Interpretation under this order.

#### [ORDER 54](#)

#### APPEAL TO THE COURT FROM PROFESSIONAL BODIES

Application. Method of appeal. Evidence. Service. Content of notice and date of hearing. Reasons for appeal to be filed. Copies of affidavits to be served on the parties.

#### [ORDER 55](#)

#### FEEES AND ALLOWANCES

Fees. Exemption. Allowances. Regulations.

#### [ORDER 56](#)

#### MISCELLANEOUS PROVISIONS

Orders to be made. Other procedure rules in Appendix 1. Recovery of penalties and costs. Notices. Filing. Fees, Appendix 3. Days of opening Registry to the public. Where no rules exist. Forms of writ of summons, etc.

#### [ORDER 57](#)

#### POWERS OF THE CHIEF JUDGE TO AMEND RULES AND ISSUE PRACTICE DIRECTIONS .

Powers of Chief Judge over new Rules. Publication of new Rules. Chief Judge's Powers to issue practice directions, etc. Practice directions etc, to be published.

B130

#### [ORDER 58](#)

#### ESTABLISHMENT OF COMMUNICATIONS AND SERVICE CENTRE FOR E-FILING

- 1 Powers of the Chief Judge.
- 2 Further Rules thereof.
- 3 Time for establishment.

FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES 2009

In exercise of the powers conferred on me by section 254 of the Constitution of the Federal Republic of Nigeria 1999, and of all other powers enabling me in that behalf, I, Abdullahi Mustapha, OFR, Chief Judge, Federal High Court, hereby make the following Rules :

## ORDER 1

### REVOCATION, CITATION, SAVINGS, ETC.

1. The Federal High Court (Civil Procedure) Rules 2000 is hereby revoked.
2. These Rules may be cited as the Federal High Court (Civil Procedure) Rules 2009 and shall come into force on the 30th day of April, 2009.
- 3.—(1) These Rules shall not apply to any cause or matter part-heard on the date when these Rules come into operation.  
  
(2) Where an action is filed and no further step is taken other than the filing, other subsequent procedure shall be under this rule.  
  
(3) In all other cases where causes or matters are pending the Court shall give such directions as may be necessary or expedient to ensure conformity with requirements of these Rules.  
  
(4) The Chief Judge may give practice directions, generally or in respect of a particular case, for carrying out any of the rules in these Rules.  
  
(5) Except where the context otherwise requires, any reference in these Rules to any enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment.

1. The fundamental objective of these Rules is, just and expeditious disposition of cases.
2. In these Rules, unless the context otherwise requires : "Act" means the Federal High Court Act; "Attorney-General" means the Attorney-General of the Federation ; "Chief Judge" means the Chief Judge of the Federal-High Court ; "Concurrent Writ" has the same meaning as provided in Order 3 Rules 19 and 20 of these Rules ; "Court" means the Federal High Court ; "Court Process" or "Process" includes writ of summons, originating summons, originating motions, originating process, notices, petitions, pleadings, orders, motions, summons, warrants and all documents or written communication of which service is required ; "Defendant" includes a defendant to a counter claim ; "Judge" means Judge of the Federal High Court;

"Legal Practitioner" means a Law Officer, a State Counsel or a legal Practitioner entitled to practice before the Court;

"Originating Process" means any Court process by which a Suit is initiated.;

"Plaintiff" includes a Claimant in a counter-claim ;

"Pleading" does not include a petition, summons or preliminary act;

"Process Server" includes Sheriff, Deputy Sheriff, Bailiff, Special Marshal and all other persons appointed to serve Court processes ;

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

"Registry" means the Registry of the Federal High Court in Lagos or other Divisions;

"Return Date" means the day endorsed on a court process for the appearance of the parties before the Court or any other day the court may appoint or direct and in the case of order 12 of these Rules where a writ is mark/d "Undefended List" means the day fixed for hearing:

6. Words other than those defined in order 1 rule 5 of these Rules shall have the same meanings as in the Act.

## ORDER 2

### PLACE OF INSTITUTING AND TRIAL OF SUITS

1.— (1) Subject to the provisions of any law with respect to transfer of suits or to specific subject matters, the place for the trial of any suit or matter shall be as provided in this order.

(2) All suits or actions relating to taxation of Companies and of other bodies established or carrying on business in Nigeria and of all other persons subject to Federal taxation shall be commenced and determined in the Judicial Division of the Court in which the headquarters or the principal office of the company or body is situate and in the case of a person subject to Federal taxation, where the person resides or carries on substantial part of his business.

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

(4) All suits for specific performance, or upon the breach of any contract shall be commenced and determined in the Judicial Division of the Court in which the contract is supposed to have been performed or in which the defendant resides or carries on substantial part of his business.

(5) All suits and actions relating to the Customs, Excise, Tariff, etc. shall be commenced and determined in the jurisdiction of the Judicial Division in which the breach of the law, or contract took place or the port or border where the breach took place.

(6) All suits and actions in respect of diplomatic, consular or foreign trade representation shall be commenced and determined in the Judicial Division in which the diplomatic, consular or foreign trade is carried out.

(7) All suits and actions in respect of citizenship, naturalization and aliens, repatriation of persons who are not citizens of Nigeria, passports and visas shall be commenced and determined in the Judicial Division in which the persons reside.

(8) All suits and actions relating to copyright, patents, designs, trademarks and merchandise marks shall be commenced and determined in the Judicial Division in which the defendant resides or where the alleged passing off or infringement takes place.

(9) All other suits shall be commenced and determined in the Judicial Division in which the defendant resides or carries on substantial part of his business or in which the cause of action arose.

1. If there are more defendants than one resident in different Judicial Divisions, the suit may be commenced in any one of those Judicial Divisions, subject, however, to any order which the Court may, upon the application of any of the parties, or on its own motion, think fit to make with a view to the most convenient arrangement for the trial of the suit.

2. Where a suit is commenced in any other Judicial Division of the Court than that in which it ought to have been commenced, it may, notwithstanding, be tried in the Judicial Division in which it has been commenced, unless the Court otherwise directs or the defendant pleads specially in objection to the jurisdiction before or at the time when he is required to state his answer or to plead in the cause.

3. No proceeding which has been taken before the plea in objection shall be in any way affected thereby, but the Judge may order that the cause be transferred to the Judicial Division to which it is proved to his satisfaction, to belong or, failing such proof, order that it be retained and proceeded with within the Court in which it had been commenced.

#### FORMANDCOMMENCEMENTOFACTION

1. Subject to the provisions of any enactment, civil, proceedings may be begun by writ, originating summons, originating motion or petition or by any other method required by other rules of Court governing a particular subject matter.

2. Subject to the provisions of these Rules or any applicable law requiring any proceeding to be begun otherwise than by writ, a writ of summons shall be the form of commencing all proceedings :

(a) where a plaintiff claims :

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

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

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

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

(c) where an interested person claims a declaration. .

3.—(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, and

(e) written statements on oath of witnesses ; provided that;

(i) the statements on oath of witnesses requiring subpoena from the Court need not be filed at the commencement of the suit,

(ii) the witnesses who require subpoena or summons shall at the instance of the party calling them be served with Civil Form 1 (a) before the filing of the statements of such witnesses.

(2) Where a plaintiff fails to comply with sub-rule 1 of this rule, and rules 3 and 9 of this order 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.

1. Except in cases in which different forms are provided for in these Rules, the Writ of summons shall be in Form 1 with such modifications or variations as circumstances may require.

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

3. 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.

4. Any person claiming any legal or equitable right in a case where the determination of the question whether such a person 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.

5. A Judge shall not be bound to determine any such question of construction if in the Judge's opinion it ought not to be determined on originating summons but may make such orders as the Judge deems fit.

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

(2) An originating summons shall be accompanied by:

(a) an affidavit setting out the facts relied upon, and

(b) copies of all the exhibits to be relied upon.

10.—(1) The Registrar shall indicate the date and time of presentation for filing on every originating process presented for filing and shall arrange for service thereof to be effected.

(2) An originating process shall not be altered after it is sealed except upon application to a Judge in Chambers.

11.—(1) Originating process shall be prepared by a Plaintiff or the plaintiff's legal practitioner, and shall be clearly printed in black ink on white opaque A4 paper of high quality.

(2) The person filing the originating summons shall leave at the Registry sufficient number of copies thereof together with the documents in sub-rule 2 of rule 9 of this rule for service on the respondent or respondents.

. 12.—(1) The Registrar shall seal every originating process whereupon it shall be deemed to be issued.

(2) A Plaintiff or the Plaintiffs 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 and one copy for endorsement of service on each defendant.

(3) Each copy shall be signed by the legal practitioner or by a plaintiff where the plaintiff sues in person and shall be certified after verification by the Registrar as being a true copy of the original process filed.

1. The Registrar shall after sealing an originating process, file it and note on it the date of filing and the number of copies supplied by a plaintiff or the plaintiff's legal practitioner for service on the defendants. The Registrar shall then make an entry of the filing in the cause book and identify the action with a suit number that may comprise abbreviation of the Judicial Division, a chronological number and the year of filing.

2. The Registrar shall promptly arrange for personal service on each defendant of a copy of the originating process and accompanying documents duly certified as provided by in this order.

15.—(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for twelve months beginning with the date of its issue, and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period not exceeding six months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.

(3) Before a writ, the validity of which has been extended under this rule, is served, it shall be marked with an official stamp showing the period for which the validity of the writ has been so extended.

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

16. For the purpose of service, an originating summons (other than a concurrent one) shall be valid in the first instance for twelve months beginning with the date of its issue and a concurrent originating summons shall be valid in the first instance for the period of validity of the original summons which is unexpired at the date of issue of the concurrent summons.

17. A Judge may order two renewals in each case strictly for good cause . and upon prompt application, provided that no originating process shall be in force for longer than a total of two years. The Registrar shall state the fact, date and duration of renewal on every renewed originating process.

1. 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.
2. A Plaintiff may at the issuance of an originating process or at anytime 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.
3. 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 4

##### INDORSEMENT OF CLAIMAND OF ADDRESSES

1. Every originating process shall contain the claim, the relief or remedy sought and the full name and address of the plaintiff.
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. Where the claim is for debt or liquidated demand only, the originating process shall state the amount claimed for in respect of such demand with costs and shall further state that the defendant may pay the amount with costs to the plaintiffs legal practitioner within the time allowed for appearance and that upon such payment the proceedings shall terminate.
4. In all cases where a plaintiff in the first instance desires to have an account taken, the originating process shall so state.
- 5.—(1) Where a plaintiff is suing in person the originating process shall have stated on it:
  - (a) the plaintiff's residential or business address as the plaintiffs address for service,
  - (b) his mobile telephone number and e-mail address where available,
  - (c) if the plaintiff lives and carries on business outside the Judicial Division of the Court the process shall have stated on it by him 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 :
  - (a) the legal practitioner's chambers address as the address for service,
  - (b) his mobile telephone number and e-mail address where available,

(c) if the legal practitioner is based outside the Judicial Division of the Court the legal practitioner shall state a chambers address within the jurisdiction as the legal practitioner's address for service.

6. If the originating process does not state an address for service, it shall not be accepted.

#### ORDER 5

##### PETITION: GENERAL PROVISIONS

1. This order shall apply to petitions by which civil proceedings in (he Court are begun, subject, in the case of petitions of any particular class, to special provisions relating to petitions of that class made by or under any decree or other enactment.

2.—(1) Every petition shall include a concise statement of the nature of the claim made or relief or remedy required in the proceedings begun thereby.

(2) Every petition shall include at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served a statement to that effect.

(3) Where a person brings a petition in person, the petition shall be endorsed with—

(a) the address of the person's place of residence and if such person's place of residence is not within jurisdiction or if such person has no place of residence, the address of a place within the, jurisdiction at or to which documents for such person may be delivered or sent;

(b) the person's occupation ;and

(c) an address for service, mobile telephone number and e-mail address where available.

3. A petition shall be presented in the Court Registry.

4.—(1) A day and time for the hearing of a petition shall be fixed by the Judge.

(2) Unless the Court otherwise directs, a petition which is required to be served on any person shall be served on him not less than seven days before the day fixed for the hearing of the petition.

5. No application in any pending cause or matter may be made by petition.

#### ORDER 6

##### SERVICE OF PROCESS

###### A — SERVICE WITHIN JURISDICTION

1. Service of writs of summons, notices, petitions, pleading, orders, summonses, warrants and all other proceedings, documents or written communication of which service is required, shall be made by—

(a) the sheriff or a deputy sheriff, bailiff, officer of the court; or

(b) a person appointed thereof (either especially or generally) by the Court or by a Judge in Chambers, unless another mode of service is prescribed by these Rules; or



(c) a solicitor filing the document who must give a written undertaking at the time of filing the document to the registrar receiving the document that his Chambers shall serve the document on the other party or his solicitor and that he would file with the registrar a proof of the service signed by the other party or his solicitor ; or

(d) the Court or a Judge in Chambers by such other method of service as the Court or Judge in Chambers may otherwise direct.

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

2. No service of a writ of summons or other process on the defendant shall be necessary when the defendant by his legal practitioner undertakes in writing to accept service.

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

(2) The expenses of the special bailiff shall be defrayed by the party on whose application he is appointed unless the Court in any case sees any reason to vary this rule.

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 either—

(a) by delivery of the document to an adult person at the usual or last known place of abode or business of the person to be served ; or

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

(c) by advertisement in the Federal Government Official Gazette, or in some newspaper circulating within the jurisdiction ; or

(d) by notice put up at the principal Court-House of, or some other place of public resort in the Judicial Division wherein the proceeding in respect of which the service is made is instituted, or at the usual or last known place of abode, or of business, of the person to be served ; or

(e) by service where a party is represented by a legal practitioner, of notices, pleadings, petitions, orders, summonses, warrants and all other proceedings, documents or written communications on the legal practitioner or his clerk.

1. When a party to be served is in the service of any Ministry or non-Ministerial Department of Government or of a Local Government, the Court may transmit the document to be served and a copy thereof to the most senior officer of the Department of Government in the Judicial Division or place where the party to be served works or resides or to the Local Government in whose service the party to

be served is, and such officer, or Local Government shall cause the same to be served on the proper party, accordingly.

2. Where partners are sued in the name of the partnership, the writ or other document shall be served 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 in that place having at the time of the service the control or management of the business and such service shall be deemed good service upon the partnership.

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

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

5. Where the person on whom service is to be effected is a prisoner in a prison or a lunatic in any asylum, it shall be sufficient service to deliver the writ or other document at the prison or asylum to the superintendent or person appearing to be the head officer in charge of the prison or asylum.

1. Where an infant is a party to an action, service on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, shall, unless the Court or a Judge in Chambers otherwise orders, be deemed good personal service on the infant but the Court or Judge may order that service made or to be made on an infant personally shall be deemed good service.

2. Where service is to be made upon a person residing out of, but carrying on business within the jurisdiction in his own name or under the name of a firm through an authorised agent, and the proceeding is limited to a cause of action which arose within the jurisdiction, the Writ or other document may be served by giving it to the agent, and the service shall be equivalent to personal service.

#### B— SERVICE OUT OF JURISDICTION

13. Service out of jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge in Chambers whenever—

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

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

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

(d) the action is one 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 breach of a contract—

(i) made within the jurisdiction, or

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

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

(e) the action is founded on tort or other civil wrong committed within the jurisdiction; or

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

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

(h) the action is by a mortgagee or mortgagor in relation to a mortgage of property situate within the jurisdiction and seeks relief of the nature or kind of the following that is to say, 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 (d) of this rule) any personal judgement or order for payment of any money due under the mortgage ; or

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

14.—(1) Every application for leave to serve a writ or notice on a defendant out of the jurisdiction shall be supported by affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action and showing in what place or country the defendant is or probably may be found, and the grounds upon which application is made.

(2) No such leave shall be granted unless it is made sufficiently to appear to the Court or a Judge in Chambers that the cause is a proper one for service out of jurisdiction under these Rules.

1. Any order giving leave to effect service or give notice shall limit a time after such service or notice within which the defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given, and on whether the air mail is available to the defendant.

2. Where leave is given under the foregoing provisions to serve notice of the writ of summons out of jurisdiction, the notice shall be served in the manner in which writs of summons are served.

17.—(1) Service out of the jurisdiction may be allowed by the Court or a Judge in Chambers of the following processes or of notices thereof, that is to say—

(a) an originating summons, where the proceedings begun by an originating summons might have been begun by a writ of summons under these Rules ;

(b) any originating summons, petition, notice of motion or other originating proceedings—

(i) in relation to an infant or lunatic or person of unsound mind, or  
(ii) under any law or enactment under which proceedings can be commenced otherwise than by writ of summons, or

(iii) under any rule of Court whereunder proceedings can be commenced otherwise than by writ of summons ;

(c) Without prejudice to the generality of paragraph (b) of this sub-rule, any summons, order or notice in any interpleader proceedings or for the appointment of an Arbitrator or umpire or to remit, set aside, or enforce an award in an arbitration held or to be held within the jurisdiction ;

(d) any summons, order or notice in any proceeding duly instituted whether by writ of summons or other such originating process as aforesaid.

(2) The provisions of rules 14, 15 and 16 of this order shall apply mutatis mutandis to service under this rule.

18.—(1) Where leave is given to serve a writ of summons or a notice of writ of summons in any foreign country other than a country with which a Convention in that behalf has been made, the following procedure may be adopted—

(a) the document to be served shall be sealed with the seal of the Court for use out of the jurisdiction, and shall be transmitted to the Permanent Secretary to the Ministry of Justice by the Chief Registrar on the direction of the Chief Judge, together with a copy thereof translated into the language of the country in which service is to be effected and with a request for transmission to the Minister responsible for foreign affairs for the further transmission of the same to the Government of the country in which leave to serve the document has been given and the request shall be as in Form 7 in Appendix 6 to these Rules with such variations as circumstances may require ;

(b) the party requesting a copy of a document for service under this section shall, at the time of requesting the same, file a praecipe as in Form 8 in Appendix 6 to these Rules ;

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

(d) where an official certificate or declaration transmitted to the Court in the manner provided in paragraph (c) of this sub-rule certifies or declares that efforts to serve a document have been without effect, the Court or a Judge may, upon the ex parte application of the plaintiff, order substituted service of the document, and the document and a copy of it and the order shall be sealed and transmitted to the Permanent Secretary to the Ministry of Justice in manner aforesaid together with a request in Form 9 of Appendix 6 to these Rules, with such variations as circumstances may require.

(2) Nothing herein contained shall in any way prejudice or affect any practice or power of the Court under which when lands, funds, choses in action, rights or property within the jurisdiction are sought

to be dealt with or affected, the Court may, without affecting the exercise of jurisdiction over any person out of the jurisdiction, cause such person to be informed of the nature or existence of the proceedings with a view to such person having an opportunity of claiming, opposing or otherwise intervening

19.—(1) Where, for the purpose of an action under the Civil Aviation Act and the Convention therein set out, leave is given to serve a notice of writ of summons upon a high contracting party to the Convention other than Nigeria, the provisions of this order shall apply.

(2) The notice shall specify the time for entering an appearance as limited in pursuance of rule 15 of this order.

(3) The notice shall be sealed with the seal of the Court for service out of jurisdiction, and shall be transmitted to the Ministry of Justice, together with a copy thereof transmitted into the language of the country of the defendant, and with a request for transmission to the Minister responsible for matters relating to foreign affairs for further transmission of the same to the Government of that country.

(4) The request shall be in Form 10 in appendix 6 to these Rules, with such variations as circumstances may require.

(5) The party bespeaking a copy of a document for service under this rule shall at that time of bespeaking the document file a praecipe in Form 9 in Appendix 6 to these Rules.

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

(7) After entry of appearance by the defendant, or, if no appearance is entered after expiry of the time limited for appearance, the action may proceed to judgement in all respects as if the defendant had for the purposes of the action waived all privileges and submitted to the jurisdiction of the Court.

(8) Where it is desired to serve or deliver a summons, order or notice in the proceedings on the defendant out of the jurisdiction, the provisions of this rule shall apply with such variation as circumstances may require.

20. Where leave is given in a civil cause or matter or where leave is not required, and it is desired to serve any writ of summons, originating summons, notice, or other document in any foreign country with which a Convention in that behalf has been or shall be made, the following procedure shall, subject to any special provisions contained in the Convention, be adopted—

(a) the party bespeaking the service shall file in the registry a request in Form 8 or Form 37 in Appendix 6 to these Rules which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used and the request shall state the medium through which it is desired that the service shall be effected, that is, whether—

(i) directly through the diplomatic channels, or

(ii) through the foreign judicial authority, and shall be accompanied by the original documents and a translation thereof in the language of the country in which service is to be effected, certified by or on behalf of the person making the request and a copy of each for every person to be served and any convention may require (unless the service is required to be made on a Nigerian citizen directly through the diplomatic channels in which case the translation and copies thereof need not accompany the request unless the Convention expressly requires that they should do so) ;

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

(c) an official certificate, transmitted through the diplomatic channel by the foreign judicial authority or by a Nigerian diplomatic agent to the Court, establishing the fact and the date of the service of the document, shall be deemed to be sufficient proof of such service, and shall be filed as record of, and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf.

1. Rule 20 shall not apply to or render invalid or insufficient any mode of service in any foreign country with which a Convention has been or shall be made which is otherwise valid or sufficient according to the procedure of the Court and which is not expressly excluded by the Convention made with that foreign country.

2. The Court or Judge, in giving leave to serve a document out of the jurisdiction under these Rules, may in an appropriate case direct that the air mail service shall be used by the party effecting service.

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

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

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

(c) the Chief Judge shall transmit to the consular or other authority making the request, a certificate establishing the fact and the date of the service in person, or indicating the reason for which it has not been possible to effect it, and at the same time shall notify to the said consular or other authority the amount of the charges certified under paragraph (b) of this rule.

1. Upon the application of the Attorney-General, of the Federation, the Court or a Judge in Chambers may make all such orders for substituted service or otherwise as may be necessary to give effect to rules 13 to 22 of this order.

2. Any order giving leave to effect service out of the jurisdiction shall prescribe the mode of service, and shall limit a time after the service within which the defendant is to enter an appearance, such time

to depend on the place or country where or within which the writ is to be served, and the Court may receive an affidavit or statutory declaration of such service having been effected as prima facie evidence thereof.

#### C—GENERAL PROVISIONS

1. Where the officer of Court or person charged with the service of any writ or document on any person is prevented by the violence or threats of such person, or any other person in concert with him, from personally serving the writ or documents, it shall be sufficient to inform the person to be served of the nature of the writ or document as near that person as practicable.
2. In all cases where service of any writ or document has been effected by a bailiff or other officer of Court, an affidavit of service sworn to by the bailiff or other officer shall, on production, without proof of signature, be prima facie evidence of service.
3. The costs of and incidental to the execution of any process in a suit shall be paid in the first place by the party requiring the execution, and the sheriff shall not (except by order of the Court) be bound to serve or execute any process unless the fees and reasonable expenses thereof shall have been previously paid or tendered to him.
4. Service shall not be made on a Sunday or public holiday, unless the Court directs otherwise by order endorsed on the document to be served.
5. A book shall be kept at every Court for recording service or process, in such form as the Chief Judge may direct, in which shall be entered by the officer serving the process, or by the registrar, the names of the plaintiff or complainant and the defendant, the particular Court issuing the process, the method, whether personal or otherwise, of the service, and the manner in which the person serving ascertained that he served the process on the right person, and where any process is not duly served, then the cause of failure shall be stated and every entry in the book or an office copy of any entry shall be prima facie evidence of the several matters therein stated.

31. In this order "Out of Jurisdiction" means out of the Federal Republic of Nigeria.

#### ORDER 7

##### APPEARANCE

1.—(1) A defendant served with an originating process shall within thirty days file in the Registry, along with the processes mentioned in order 13 rule 2(1), the original and copy of a duly completed and signed memorandum of appearance as in Form 11 with such modifications or variations as circumstances may require.

(2) On receipt of the memorandum of appearance, the Registrar shall make entry thereof and stamp the copy with the seal showing the date he received it and return the sealed copy to the person making the appearance.

(3) If a defendant files an appearance after the time prescribed in the originating process, he shall pay to the Court an additional fee of N200.00 (Two Hundred Naira) for each day of default. 2.—(1) A defendant appearing in person shall state in the memorandum of appearance an address for service

which shall be within the Judicial Division of the Court including mobile telephone number and E-mail address where available.

(2) Where a defendant appears by a legal practitioner, the legal practitioner shall state in the memorandum of appearance his place of business and an address for service which shall be within the Judicial Division of the Court including mobile telephone number and E-mail address where available 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.

1. The Registrar shall not accept any memorandum of appearance which does not contain an address for service.
2. 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.
3. A person under legal disability shall enter appearance by his guardian.

#### ORDER 8

##### DEFAULT OF APPEARANCE

1. Where any defendant fails to appear, a plaintiff may proceed upon default of appearance under the appropriate provision of these Rules upon proof of service of the originating process.
2. 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 judgement for the claim on the originating process or such lesser sum and interest as the Judge may order.
3. 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 judgement against those who have not appeared and may execute the judgement without prejudice to his right to proceed with the action against those who have appeared.
4. Where the claim in the originating process is as in rule 6 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 judgement against the defendant(s) failing to appear. The value of the goods and 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 judgement in respect of that part of the claim.
5. 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.
6. Where the claim in the originating process is for pecuniary damages, or for detention of goods with or without a claim of pecuniary damages, and the defendant or all of several defendants fail to appear, a plaintiff may apply to a Judge for judgement. The value of the goods and 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 judgement in respect of that part of the claim.



7. Where the claim in the originating process is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any of the defendants fail to appear, a plaintiff may apply to a Judge for judgement. The value of the goods and damages or the damages 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 judgement in respect of that part of the claim.

8. In any case to which rules 2, 3,4, 6 & 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 judgement for costs : Provided that such application shall be filed and served in the manner in which service of the originating process was effected or in such manner as a Judge shall direct.

9. Where judgement is entered pursuant to any of the preceding rules of this order a Judge may set aside or vary such judgement on just terms upon an application on notice by the defendant. The application shall be made within 14 days and it shall be accompanied with treasury receipt showing payment of penalty for the period of default and show a good defence to the claim and a just cause for the default.

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.

## ORDER 9

### PARTIES

#### A—GENERAL

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 judgement may be given for such plaintiffs 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 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 counter-claim or set-off, such defendant may establish his set-off or counter claim as against the parties other than the plaintiff so included, notwithstanding the inclusion of such plaintiff or any proceeding based thereon.
- 4.—(1) Where in any class action concerning—
  - (a) Trademarks,
  - (b) Copyright or
  - (c) Patents and Designs,

a Judge is satisfied that—

- (i) a person, the class, or some members of the class interested cannot be ascertained or cannot rightly be ascertained,
- (ii) the person, the class or some members of the class interested if ascertained, cannot be found,
- (iii) the person, or class and the members thereof cannot be ascertained and be found, it is expedient for the purpose of efficient procedure that one or more persons be appointed to represent that person or class or members of the class, the Judge may make the appointment.

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

(3) In any class proceedings a person, class or some members of the class may apply to the Court or a Judge in Chambers to opt in or opt out of the class action.

(4) A Court or Judge in Chambers may on good and justifiable cause permit any person, class or members of the class represented in a class action to opt in or opt out.

1. 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. Judgement 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.

2. 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 an application order a substitution or addition of any person as defendant or correction of any such name on any term as may be just.

7.—(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 proceeding in which he may have no interest.

1. Any 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.

2. 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, with 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.

1. Persons under legal disability may sue by their guardians or defend by guardians appointed for that purpose.

2. Before the name of a person is used in any action as next friend of an infant or other party, or as relator, that person shall sign a written authority for that purpose, and the authority shall be filed in the Registry.

12.—(1) 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 or for the benefit of all persons so interested.

(2) Where there are numerous persons having the same interest in one suit and they seek to defend the action, a Judge may allow one or more of such persons to defend the action on behalf or for the benefit of all persons so interested.

13.—(1) If in any proceeding 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 proceeding dies and the cause of action survives but the person entitled to proceed fails to proceed, a Judge may on the application of either the deceased person's legal practitioner or the opposing party order any person to take the place of the deceased and proceed with the suit.

(3) In default of such application or where the person substituted fails to proceed, judgement may be entered for the defendant or as the case may be for the person against whom the proceedings might have been constituted. 14.—(1) No proceeding shall be defeated by reason of misjoinder or non-joinder 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 name 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 added.

(4) No person under legal disability shall be added as a Plaintiff suing without a guardian and no person shall be added as the guardian of a plaintiff under legal disability without his own consent in writing.

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

15.—(1) 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.

(2) Where the application is to add a plaintiff or a defendant the application shall be accompanied by the statement of claim or defence as the case may be, all the exhibits intended to be used and the depositions of all the witnesses.

Provided that where the application is to substitute a deceased party with another person the application may not be accompanied by the documents specified above.

16. 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.

17.—(1) Where in any action a defendant claims as against any person not already a party to the action (in this section called "the third party") that—

(a) he is entitled to contribution or indemnity; or

(b) he is entitled to any relief or remedy relating to, or connected with the original subject matter of the action and substantially the same as one relief or remedy claimed by the plaintiff; or

(c) any question or issue relating to or connected with the said subject matter is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but also as between the plaintiff and the defendant and the third party or between any or either of them, the Court or a Judge in Chambers may give leave to the defendant to issue and serve a third party notice.

(2) The Court or a Judge in Chambers may give leave to issue and serve a third party notice on ex parte application supported by affidavit, or, where the Court or Judge in Chambers directs a summons to the plaintiff to be issued, upon the hearing of the summons.

18.—(1) The notice shall—

(a) state the nature and grounds of the claim or the nature of the question or issue sought to be determined and the nature and extent of any relief or remedy claimed;

(b) be in accordance with Form 12 or Form 13 in Appendix 6 to these Rules with such variations as circumstances may require ; and

(c) be sealed and served on the third party in the same manner as a writ of summons is sealed and served.

(2) The notice shall, unless otherwise ordered by the Court or by a Judge in Chambers, be served within the time limited for delivering the defence, or, where the notice is served by a defendant to a counter-claim, the reply and with it also shall be served a copy of the writ of summons or originating summons and of any pleadings filed in the action.

1. The third party shall, as from the time of the service upon him of the notice, be a party to the action with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant.

2. The third party may enter an appearance in the action within eight days from service or within such further time as may be directed by the Court or Judge in Chambers as specified in the notice (where the third party is served in Nigeria outside the jurisdiction of the Court, the period for entering appearance shall be at least thirty days) but a third party failing to appear within that time may apply to the Court or

Judge in Chambers for leave to appear, and the leave may be given upon such terms, if any, as the Court or Judge in Chambers thinks fit.

3. If a third party duly served with a third party notice does not enter an appearance or makes default in filing any pleading which he has been ordered to file, he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgement given in the action, whether by consent or otherwise, and by any decision therein or any question specified in the action, and when contribution or indemnity or other relief for remedy is claimed against him in the notice, he shall be deemed to admit his liability in respect of the contribution or indemnity or other relief or remedy.

22.—(1) Where a third party makes default in entering an appearance or filing any pleading which he had been ordered to file and the defendant giving the notice suffers judgement by default, the defendant shall be entitled at any time, after satisfaction of the judgement against himself, or before the satisfaction by leave of the Court or a Judge in Chambers—

(a) to enter judgement against the third party to the extent of any contribution or indemnity claimed in the third party notice, or by leave of the Court or a Judge in Chambers,

(b) to enter such judgement in respect of any other relief or remedy claimed as the Court or a Judge in Chambers shall direct.

(2) It shall be lawful for the Court or a Judge in Chambers to set aside or vary the judgement against the third party upon such terms as may seem just.

23.—(1) If the third party enters an appearance, the defendant giving notice may, after notice of the intended application has been served upon the plaintiff, the third party, and on any other defendant, apply to the Court or a Judge in Chambers for directions, and the Court or Judge in Chambers may—

(a) where the liability of the third party to the defendant giving the notice is established on the hearing of the application, order such judgement as the nature of the case may require to be entered against the third party in favour of the defendant giving the notice ; or

(b) if satisfied that there is a question or issue properly to be tried as between the plaintiff and the defendant and the third party or between any or either of them as to the liability of the defendant to the plaintiff or as the liability of the third party to make any contribution or indemnity claimed, in whole or in part, or as to any other relief or remedy claimed on the notice by the defendant or that a question or issue stated in the notice should be determined not only as between the plaintiff and the defendant but as between the plaintiff, the defendant and the third party or any or either of them, order that question or issue to be tried in such manner as the Court or Judge in Chambers may direct; or

(c) dismiss the application.

(2) Any direction given pursuant to this rule may be given either before or after any judgement has been entered in favour of the plaintiff against the defendant in the action, and may be varied from time to time and may be rescinded.

(3) The third party proceedings may at any time be set aside by the Court or a Judge in Chambers.

24. The Court or a Judge in Chambers upon the hearing of the application for directions may, if it appears desirable to do so, give the third party liberty to defend the action either alone or jointly with

the original defendant upon such terms as may be just, or to appear at the trial and take such part therein as may be just and generally may order such proceedings to be taken, pleading or documents to be filed, or amendments to be made, and give such directions as to the Court or Judge in Chambers may appear proper for having the question and the rights and the liabilities of the parties most conveniently determined and enforced, and as to the mode and extent in or to which the third party shall be bound or made liable by the decision or judgement in the action.

25.—(1) Where the action is tried, the Judge who tries the action may, at or after the trial, enter such judgement as the nature of the case may require for or against the defendant giving the notice or against or for the third party, and may grant to the defendant or to the third party, any relief or remedy which might properly have been granted if the third party had been made a defendant to an action duly instituted against him by the defendant but execution shall not be issued without leave of the Court or of a Judge in Chambers until after satisfaction by the defendant of the judgement against him.

(2) Where the action is decided otherwise than by trial, the Court or a Judge in Chambers may, on application by motion or summons, make such order as the nature of the case may require, and where the plaintiff has recovered judgement, may cause such judgement as may be just to be entered for or against the defendant giving notice or against or for the third party.

#### B.—ACTIONS AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN

26. 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 firm, 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.

27.—(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 Plaintiffs 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 plaintiffs in the originating process provided that the proceedings may continue in the name of the firm. 28.—(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 partner of the firm sued.

1. The above rules in this part shall apply to proceedings between a firm and one or more of its partners and between firms having one or more partners in common, provided such firm or firms carry on business within the jurisdiction.

2. Any person carrying on business within the jurisdiction in the same or such 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.

#### C—ALTERATION OF PARTIES

31.—(1) Where after the institution of a suit a change or transmission of interest or liability occurs in relation to any party to the suit, or any party to the suit dies or becomes incapable of carrying on the suit, or the suit in any other way becomes defective or incapable of being carried on, any person interested may obtain from the Court an order for curing the defect, or enabling or compelling proper parties to carry on the proceedings.

(2) A person served with an order made pursuant to sub-rule (1) of this rule may, within such time as the Court in the order directs, apply to the Court to discharge or vary the order.

1. 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 31, Such person may apply to a Judge to discharge or vary such order at any timewithin fourteen days from the service of the order.

2. Where any person under any legal disability and not having a guardian in the proceedings is served with an order under, rule 32, such a person may apply to a Judge to discharge or vary such order at anytime within fourteen days from the appointment of a guardian for such parry, and until such period of fourteen days has expired, such order shall have no force or effect as against the person under legal disability,

#### D—LEGAL PRACTITIONERS OR AGENTS

34. Where by these Rules any act may be done by any party in any proceeding, such act may be done either by the party in person, or by his legal practitioner, or by his agent (unless an agent is expressly barred under these Rules).

35.—(1) A parry to any cause or matter who sues or defends by a counsel, may change his legal practitioner without an order for that purpose, but 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 remain the legal practitioner of the party for the duration of the action.

(2) A copy of the notice accompanied by an affidavit stating that the notice has been duly filed in the Registry shall also be filed.

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

36.—(1) Where a legal practitioner who has acted for a party in a cause or matter ceases to act and the party has not given notice of change in accordance with sub-rule 1 of rule 35 of this order, the legal practitioner may apply to the Court for an order declaring that the legal representative has ceased to be the 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 the legal practitioner serves on every party to the cause or mails a copy of the notice otherwise he shall be considered the legal practitioner of the party for the remaining duration 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 the application.

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

37. After an order is made under rules 35 or 36 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 the party of any document not required to be served personally.

#### ORDER 10

##### JOINDER OF CAUSES OF ACTION

1. Subject to the following rules of this order, the plaintiff may unite in the same action or 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 such causes of action or may make such order as may be necessary or expedient for the separate disposal thereof.

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

3.—(1) Subject to sub-rule (2) of this rule, a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in the action in respect of any matter (whenever and however arising), may instead of bringing a separate action, make a counter claim in respect of that matter; and where he does so, he shall add the counter claim to his defence.

(2) Sub-rule 1 of this rule shall apply in relation to a counter claim as if the counter claim were a separate action and as if the person making the counter claim were a plaintiff and the person against whom it is made, the defendant

(3) A counter claim may be proceeded with notwithstanding that judgement is given for the plaintiff in the plaintiff's action or that the action is stayed, discontinued or dismissed.

4.—(1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counter claim or if two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of such causes of action or of parties as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

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

#### ORDER 11

##### CONSOLIDATION



- 1.—(1) Where two or more matters are pending in the Court and it appears to the Court that—
  - (a) same question of law or fact arises in both or all of them ; or
  - (b) the rights to relief claimed therein are in respect of or arise out of the same or similar transaction or series of transactions ; or
  - (c) the interest of justice of the trial so demands, the Court may order that the causes or matters be consolidated on such terms as it thinks just and the Court shall give such directions as may be necessary with respect to the hearing of the causes or matters so consolidated.
- (2) An order to consolidate may be made where two or more causes or matters are pending between—
  - (a) the same plaintiffs and the same defendants ; or
  - (b) the same plaintiffs and different defendants ; or
  - (c) different plaintiffs and different defendants.
- (3) Applications for consolidation may be made by summons or notice for directions in Chambers or they may be made in Court by motion on notice.

#### ORDER 12

#### THE UNDEFENDED LIST

1. Whenever application is made to a Court for the issuance of a writ of summons in respect of a claim to recover a debt or liquidated money demand and the application is supported by an affidavit setting forth the grounds upon which the claim is based and stating that in the deponent's belief there is no defence thereto, the Court shall, if satisfied that there are good grounds for believing that there is no defence thereto, enter the suit for hearing in what shall be called the "Undefended List", and mark the writ of summons accordingly, and enter thereon a date for hearing suitable to the circumstances of the particular case.
2. There shall be delivered by the Plaintiff to the Registrar for the issuance of the writ of summons as aforesaid, as many copies of the above mentioned affidavit as there are parties against whom relief is sought, and the Registrar shall annex one such copy to each copy of the writ of summons for service.
- 3.—(1) If the party served with the writ of summons and affidavit delivers to the Registrar, not less than five days before the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the merit, the Court may give him leave to defend upon such terms as the Court may think just.
  - (2) Where leave to defend is given under this rule, the action shall be removed from the Undefended List and placed on the ordinary cause list and the Court may order pleadings, or proceed to hearing without further pleadings.
  - (3) Where pleadings are ordered the provisions of order 13 rule 3 of these Rules shall apply.

1. Where any defendant neglects to deliver the notice of defence and affidavit prescribed by rule 3(1) of this order, or is not given leave to defend by the Court, the suit shall be heard as an undefended suit, and judgement given thereon, without calling upon the plaintiff to summon witnesses before the Court to prove his claim formally.

2. Nothing herein shall preclude the Court from hearing or requiring oral evidence, if it so thinks fit, at any stage of the proceedings under rule 4 of this order.

#### ORDER 13

#### PLEADINGS

#### A—GENERAL

1. Unless the Court gives leave to the contrary the plaintiff shall serve a statement of claim in the manner prescribed in order 3 rule 3 (1) of these Rub together with copies of documentary evidence therein mentioned on the defendant, or, if there are two or more defendants on each defendant, and shall do so either when the writ, or notice of the writ, is served on the defendant unless the Court or Judge in Chambers otherwise orders.

2.—(1) Subject to sub-rule (2) of this rule, a defendant who enters an appearance and intends to defend the action shall, unless the Court gives leave to the contrary serve :

(a) a statement of defence which may include any preliminary objection he wishes to raise to the plaintiff's action ;

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

(c) written statement on oath of the witnesses ;

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

(e) list of non-documentary exhibits at the time' he files his memorandum of appearance.

(2) If a summons under, order 12 rule 1 of these Rules is served on a defendant, sub-rule (1) of this rule shall not have effect in relation to him unless by the order of Court made on a motion on notice he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within fourteen days after the making of the order or within such other period as may be specified in the order.

3.—(1) A plaintiff on whom a defendant serves a defence shall serve a reply on that defendant within fourteen days of service of the defence on him if it is needed for compliance with rule 6 of this order and, if no reply is served, rule 10 of this order shall apply.

(2) A plaintiff on whom a defendant serves a counter-claim as in Form 14 in Appendix 6 to these Rules, shall, if he intends to defend it, serve on that defendant within fourteen days a defence to counter-claim.

(3) Where a plaintiff intends to file both a reply and a defence to counter-claim, he shall include them in the same document.

(4) A reply to any defence shall be served by the plaintiff before the expiration of fourteen days after the service on him of that defence, and a defence to a counter-claim shall be served by the plaintiff before the expiration of fourteen days after the service on him of the counter-claim to which it relates.

4.—(1) 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, and numbered consecutively.

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

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

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

5. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful 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.

6.—(1) A party shall plead specifically any matter (for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality) which if not specifically pleaded might take the opposite party by surprise.

(2) Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or the defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or the defendant shall be implied in his pleading.

(3) Without prejudice to sub-rule(l) of this rule, a defendant in an action for the recovery of land shall plead specifically every ground of defence on which he relies and a plea that he is in possession of the land by himself or his tenant is not sufficient.

7.—(1) 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 notice or written proceeding requiring particulars, may in all cases be ordered, upon such terms as to costs and otherwise, as may be just.

(2) Before applying for particulars by summons or notice, a party may apply for them by letter and the costs of the letter and of such particulars delivered pursuant to the delivery of the letter shall be allowable on taxation.

(3) Particulars of a claim shall not be ordered under this rule to be filed before defence unless the Court or Judge in Chambers is of the opinion that they are necessary or desirable to enable the defendant to plead or ought for any other special reason to be so delivered. 8.—(1) The party at whose instance particulars have been filed under a Judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the service of the particulars upon him that he had initially.

(2) Except as provided in this rule, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings or give any extension of time.

9. Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not adjudged a lunatic.

10.—(1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

(2) Subject to sub-rule (3) of this rule—

(a) there is at the close of the pleadings an implied joinder of issue on the pleadings last served;

(6) a party may in his pleadings expressly join issue on the last preceding pleading.

(3) There shall be no joinder of issue, implied or expressed, on a statement of claim or counter-claim.

(4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, in the case of an express joinder of issue,, any such allegation is excepted from the joinder and is stated to be admitted, in which case, the express joinder of issue operates as a denial of every other such allegation.

11. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

12.—(1) (a) Where the plaintiff seeks relief in respect of several distinct claim or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

(b) The same rule shall apply where the defendant relies upon several distinct grounds of set-off or counter-claim founded upon separate and distinct facts.

(2) Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief and the same rule shall apply to any counter-claim made or relief claimed by the defendant in his defence..

13. It shall not be sufficient to deny generally the facts alleged by the statement of claim, but the defendant shall deal specifically with them, either admitting or denying the truth of each allegation of fact seriatim, as the truth or falsehood of each is within his knowledge, or (as the case may be) stating that he does not know whether any given allegation is true or otherwise.

14.—(1) When a party denies all allegations of fact he shall not do so evasively, but shall answer the point of substance.

(2) When a matter of fact is alleged with diverse circumstances it shall not be sufficient to deny it as alleged along with those circumstances, but a full and substantial answer shall be given.

1. The defence shall admit Such material allegations in the statement of claim as the defendant knows to be true, or-desires to be taken as established without proof thereof.

2. Where any defendant seeks to rely upon any fact as supporting a right of set-off or counter-claim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counter-claim as the case may be, and the particulars of such set-off or counter-claim shall be given.

3. The defence of a defendant shall not debar him at the hearing from disproving any allegation of the plaintiff not admitted by the defence, or from giving evidence in support of a defence not expressly set up by the defence, except where the defence is such as, in the opinion of the Court, ought to have been expressly set up by the defence, or is inconsistent with the statements thereof, or is, in the opinion of the Court, likely to take the plaintiff by surprise or to raise new issues not fairly arising out of the pleadings, as they stand, and such as the plaintiff ought not to be then called upon to meet.

18. The Court, if it considers that the statement of claim and the defence filed in any suit insufficiently disclose and fix the real issues between the parties, may order such further pleadings to be filed as it may deem necessary for the purpose of bringing the parties to an issue.

19. Where the Court is of the opinion that any allegation of fact, denied or not admitted by any pleading, ought to have been admitted, the Court shall make such order as may be just with respect to costs.

20. The Court may at any time, on the application of either party, strike out any pleading or any part thereof, on the ground that it discloses no cause of action, or no defence to the action, as the case may be, or on the ground that it is embarrassing, or scandalous or vexatious, or an abuse of the process of the Court; and the Court may either give leave to amend the pleading, or may proceed to give judgement for the plaintiff or the defendant, as the case may be, or may make such other order, and upon such terms and conditions, as may seem just.

21. When a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of the contract, promise, or agreement, whether with reference to any statute or otherwise.

22. Wherever the contents of any document 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.

23. 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 it as a fact without setting out the circumstances from which it is inferred.

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

25.—(1) Whenever any contract or any relation between 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 the contract or relation as a fact, and to refer generally to those letters, conversations, or circumstances without setting them out in detail.

(2) If as in sub-rule (1) of this rule, the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from those circumstances, he may state them in the alternative.

1. Neither party needs in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied (such as consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim).

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

3. In every case in which the cause of action is a stated or settled account the same shall be alleged with particulars but in any 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 need not be alleged in the pleadings.

4. Where in any action a defence of tender before action is pleaded, defendant shall pay into Court in accordance with rule 1 of order 15 of these Rules the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into Court has been made.

5. Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counter-claim.

31.—(1) Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgement for the defendant for the balance, or otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

(2) Sub-rule (1) of this rule shall apply mutatis mutandis where the balance is in favour of the plaintiff.

32.—(1) The pleadings in an action are deemed to be closed—

(a) at the expiration of fourteen days after service of the reply or, if there is no reply but only a defence to counter-claim, after service of the defence to counter-claim; or

(b) if neither a reply nor a defence to counter-claim is served, at the expiration of fourteen days after service of the defence.

(2) The pleadings in an action are deemed to be closed at the time provided by sub-rule (1) of this rule, notwithstanding that any request of order for particulars has been made but has not been complied with at that time.

#### B— STATEMENT OF CLAIM

23.—(1) Every statement of claim or counter-claim shall state specifically the relief claimed either singly or in the alternative, and it shall include any general or other relief, which may be given as a Judge may think just as if it had been asked for.

(2) Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, the claims or causes shall be stated 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.

34. Whenever a statement of claim is filed, the plaintiff may alter, modify or extend his claim without any amendment of the indorsement of the writ :

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

#### C — STATEMENT OF DEFENCE AND COUNTER-CLAIM

35.—(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 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) (i) In an action for debt or liquidated money demand, a mere denial of the debt shall not be sufficient defence.

(ii) 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.

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

(iv) 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, endorsing, accepting, presenting or notice of dishonour of the bill or note.

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

(5) No denial or defence shall be necessary as to damages claimed or their amount; 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 counter-claim.

(7) Where a defendant by his defence sets up any counter-claim 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 counter-claim 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 sub-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 counter-claim, and such service shall be regulated by the same rules as those governing the service of the originating process, and every defence and counter-claim so served shall be endorsed in Form 14 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 counter-claim 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 counter-claim thereby made shall deliver a defence in a mode and manner prescribed under this order and the provisions of the order shall apply to such a person.

(11) Where in an action, a set off or counter-claim is established as a defence against the plaintiff's claim, the Judge may, if the balance is in favour of the defendant, give judgement 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.

(12) (i) 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.

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

(13) 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 counter-claim 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.

(14) Whenever any defendant in his defence or in any further defence pursuant to sub-rule 12 or 13 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 15 with such modification as circumstances may require) and may thereupon obtain judgement up to the time of the pleading of such defence, unless the Judge either before or after the delivery of such concession otherwise orders.

(15) A defendant to an originating summons shall file a counter-affidavit together with all the exhibits he intends to rely upon and a written address within .

14 days after service of the originating summons.

#### D — REPLY

36.—(1) Where the Plaintiff desires to make a reply, he shall file it within fourteen days from the service of the defence.



(2) Where a counter-claim is pleaded, a reply thereto is called a defence to counter-claim and shall be subject to the rules applicable to defence in these Rules.

#### ORDER 14

#### DEFAULT OF PLEADINGS

1. If the plaintiff's claim is only for a debt or liquidated demand and the defendant does not, within the time allowed by these Rules or as ordered by Court or Judge in Chambers for that purpose, file a defence, the plaintiff may at the expiration of the time, apply for final judgement for the amount claimed, with costs.

2. When in any action for a debt or liquidated demand there are several defendants, and one of them defaults as mentioned in rule 1 of this order the plaintiff may have final judgement entered against the defendants so defaulting, and issue execution upon that judgement without prejudice to his right to proceed with his action against the other defendants.

3. If the plaintiff's claim is 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, default as mentioned in rule 1 of this order, the plaintiff may apply to a Judge for interlocutory judgement against the defendant or defendants and the value of the goods and the damages, or the damages only as the case may be, shall be ascertained in any way which the Judge may order.

4. When in any such action as in rule 3 of this order there are several defendants, if one or more of them defaults as mentioned in rule 1 of this order, the plaintiff may apply to a Judge for interlocutory judgement against the defendant or defendants so defaulting and proceed with his action against the others. In such case the value and amount of damages against the defendant or defendants in default shall be assessed at the trial of the action or issues therein against the other defendants unless the Judge shall otherwise order.

Where the claim is for debt or liquidated demand and also for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any defendant in default as mentioned in rule 1 the plaintiff may apply to a Judge for final judgement for the debt or liquidated demand, and may also apply for interlocutory judgement for the value of the goods and damages or the damages only as the case may be and proceed as mentioned in rules 4 and 5.

If the plaintiff's claim is for debt or liquidated demand or for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, or for any such matters, 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 judgement, final or interlocutory, as the case may be, for the part unanswered :

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

And provided also that where there is a counter claim, execution of any such judgement as above mentioned in respect of the plaintiff's claim shall not issue without leave of the Judge.

1. 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 judgement, and such judgement shall be given upon the statement of claim as the Judge shall consider the plaintiff to be entitled to.
2. Where in any such action as mentioned in rule 7 of this order, there are several defendants, if one of such defendants is in such default as aforesaid, the plaintiff may apply for judgement against the defendant so defaulting, and proceed against the other defendants.
3. In any case in which issues arise in a proceeding other than between plaintiff and defendant, if any party to any such issue defaults in filing any pleading, the opposite party may apply to a Judge for such judgement, if any, as upon the pleadings he may appear to be entitled to, and the Judge may order judgement to be entered accordingly or may make such other order as may be necessary to do justice between the parties.
10. Any judgement 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.
11. In this order a defendant makes default in pleading when he fails to file and serve his statement of defence on the plaintiff within the time fixed for doing so by these Rules or by the Court.

#### ORDER 15

#### 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 any other party and the Court may receive such notice in evidence as an admission without further proof.
- 2.—(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 part of the case of any other party and the Court may receive such notice in evidence as an admission without further proof.  
  
(2) When a party wishes to challenge the authenticity of any document, he shall, not later than seven days of service of that document give notice that he does not admit the document and requires it to be proved at the trial.  
  
(3) Where a party gives notice of non-admission and the document is proved at the trial the cost of proving the document, which shall not be less than a sum of five thousand naira, shall be paid by the party who has challenged it unless at the trial or hearing the Judge shall certify that there were reasonable grounds for not admitting the authenticity of the document.
- 3.—(1) Either party may after close of pleadings, 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 fourteen days after service give notice of admission or non-admission of the fact or facts failing which he shall be deemed to have admitted it unless a Judge otherwise orders.

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

(3) Where there is a refusal or neglect to admit the same within fourteen 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 any stage of the proceedings where admissions of facts have been made either on the pleadings or otherwise, make such orders or give such judgement as upon such admissions a party may be entitled to, without waiting for the determination of any other question between the parties.

5. Where a notice to admit or produce comprises documents that are not necessary, the costs occasioned thereby, which shall not be less than five thousand naira, shall be borne by the party giving such notice.

#### ORDER 16

##### PROCEEDINGS IN LIEU OF DEMURRER

1. No demurrer shall be allowed.

2.—(1) A party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial.

(2) A point of law so raised may, by consent of the parties, or by order of the Court or a Judge in Chambers on the application of either party, be set down for hearing and disposed of at any time before the trial.

1. If, in the opinion of the Court or a Judge in Chambers the decision on the point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the Court or Judge in Chambers may thereupon dismiss the action or make such other order therein as may be just.

2. The Court or a Judge in Chambers may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge in Chambers may order the action to be stayed or dismissed, or judgement to be entered accordingly, as may be just.

3. No action or proceeding shall be open to objection on the ground that a merely declaratory judgement or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not.

#### ORDER 17

##### AMENDMENT

1. A party may amend his originating process and pleadings at any time before judgement but not more than three times.
2. Application to amend may be made to a Judge. Such application shall be supported by an affidavit exhibiting 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, 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.—(1) 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 seven days from the date of the order, such party shall forfeit the right to amend or shall pay an additional fee of N200.00 (two hundred Naira) for each day of default.

(2) Where the party pays an additional fee for the default, it shall file an application for regularization exhibiting evidence of payment of the penalty up to the date of filing the amendment.

1. 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.

2. Whenever any indorsement or pleading is amended it shall be marked in the following manner:

"Amended the ..... Day of .....Pursuant to order of (name of Judge) dated the ..... day of ..... "

#### ORDER 18

#### SETTLEMENT OUT OF COURT AND SETTLEMENT OF ISSUES

1.—(1) When a matter comes before the Court for the First time, the Judge shall in circumstances where it is appropriate, grant to the parties, time, not more than thirty days within which parties may explore possibilities for settlement of the dispute.

(2) Where parties fail to settle within thirty days or such other period as the Court may grant, the case shall without more, proceed to trial. 2.—(1) Where a matter is to proceed to trial, the parties shall file respectively, issues for determination at the trial. The issues may state questions of law or admitted facts or questions of disputed facts or questions partly of law of the one part and partly of facts of the other.

(2) Where the parties have filed their respective issues for determination and the parties have not agreed on the issues for determination, or the Judge is of the opinion that the issues formulated by the parties do not adequately address the controversy between the parties, the Judge may, in spite of the issues formulated by the parties, formulate appropriate issues for determination and such shall be the issues for determination at the trial of a matter.

3. Notwithstanding the provision of rule 2 of this order where a party believes that the issues for determination should be determined by a hearing in open Court, such party may do so by application on notice stating the question(s) or issue(s) sought to be tried.

4. Where the Court intends to formulate issues for determination, it shall be done in open Court and on notice to the parties to attend the hearing for the formulation of issues for determination.

#### ORDER 19

#### PROCEEDINGS AT TRIAL

1. When a case has been listed for hearing and none of the parties appears, the Judge shall, unless he sees good reasons to the contrary, strike the case out.

2. When a case is called 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 case is called for hearing, if defendant appears and the plaintiff does not appear, the defendant, if he has no counterclaim, shall be entitled to judgement dismissing the action, but if he has a counterclaim, then may prove such counterclaim, so far as the burden of proof lies upon him.

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

(2) Any judgement 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 case struck out or to set aside a judgement shall be made within six days after the order or judgement or such other longer period as the Judge may allow.

1. The Judge may, if he thinks it expedient in the interest of justice, postpone or adjourn a trial for such time and upon such terms if any, as he shall deem fit; provided that a party shall not be entitled to more than three adjournments during the course of trial.

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

3. The order of proceedings at the trial of a case shall be as prescribed in rules 8-15 of this order.

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

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

10.—(1) In exceptional circumstance, to be determined by the Judge, a party who desires to call any witness not being a witness whose deposition on oath accompanied his pleading shall apply to the Judge for leave to call such witness.

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

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

(2) Notwithstanding the provisions of sub-rule 1 of this rule, the Judge may on his own motion, 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 the action.

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

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

13.—(1) An exhibit shall not be released until after the trial to any party

(2) Unless otherwise ordered by the Court, an exhibit shall not be released 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 labelled 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.

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

14.—(1) Any party may apply for and on payment of the prescribed fee obtain an office copy of the list of exhibits for the purpose of appeal to the Court of Appeal.

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

15. A Judge may, on his own motion or upon an application by a party, strike out any proceeding for lack of diligent prosecution.

ORDER 20

EVIDENCE GENERALLY

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

(2) All agreed documents or other exhibits shall be tendered from the bar or by the party where he is not represented by a legal practitioner.

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

(4) Real evidence shall be tendered during the trial.

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

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

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

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

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

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

3. No document, plan, photograph or model 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, except the Judge in the interest of justice otherwise orders or directs.

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

1. Certified true copies of all writs, processes, records, pleadings, and documents filed in any Court shall be admissible in evidence in all matters to the same extent as the original would be admissible.

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

(a) the party obtaining such order shall file in the registry an undertaking in Form 17 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 18 with such modifications or variations as may be directed in the order for its issuance, 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.

7. 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 19, the form may be modified or varied as may be necessary to meet the circumstances of the particular case in which it is used.

8. The Judge may at any stage of any proceeding order the attendance of any person for the purpose of producing any writing 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 hearing or trial.

9. Any person wilfully 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.

10. 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 and such payment shall be made by the party at whose instance such person is summoned.

11. If any person duly summoned by subpoena to attend for examination refuses to attend or if having attended, refuses to be sworn, affirm or to answer any lawful question he shall be in contempt of Court and be dealt with by the Judge.

Where the examination of any witness before any examiner under Rule 7 of this order shall have been conducted, the original depositions authenticated by the signature of the examiner, shall be transmitted by him to the Registry and filed.

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

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.

A party may by subpoena ad testificandum or duces tecum require subpoena for 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.

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.

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 direction which may be given in any case.

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 proceeding in the same cause or matter.



Where it is intended to issue out a subpoena, a praecipe for that purpose as in Form 20 shall be filed. No subpoena shall be issued unless all Court fees have been paid (including fee for service) and sufficient money on the prescribed scale is deposited to cover the witness's first day's attendance.

20. A subpoena shall be in one of Forms 21, 22 or 23 with such variations as circumstances may require.

21. 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.

22. 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.

23. 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 6 of these Rules shall so far as possible apply to service and proof of service of a subpoena.

24. Any subpoena shall remain in force from the date of issue until the trial of the action or matter in which it is issued.

25. Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of or 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.

26. A witness shall not be examined to perpetuate his testimony unless an action has been commenced for that purpose.

27. No action to perpetuate the testimony of a witness shall be set down for trial.

28. 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 give "Notice to Produce" to that other party.

29. 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.

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

31. 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.

1. 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.

2. On the application of any party to a legal proceeding, the Court may order that such party be at liberty to inspect and take copies of any entry in a banker's book for any of the purposes of such proceeding. An order under this rule may be made either with or without summoning the bank or any other party; and shall be served on the bank three days before the same is to be obeyed, unless the Court otherwise directs.
3. The costs of any such application, and the costs of anything done or to be done under an order of the Court made under or for the purposes of the foregoing rule, or under the provisions of section 97 of the Evidence Act relating to the proof of an entry in a banker's book, shall be in the discretion of the Court, which may order the same or any part thereof to be paid to any party by the bank, where the same have been occasioned by any default or delay on the part of the bank. Any such order against a bank may be enforced as if the bank were a party to the cause or matter.
4. Expressions relating to banker's books include ledgers, day books, cash books, account books and all other books used in the ordinary business of the bank.

#### ORDER 21

#### NON-SUIT

1. Where satisfactory evidence is not given entitling the plaintiff or the defendant to the judgement of the Court, the Judge may on his own motion or upon application non-suit the plaintiff, but the parties or their counsel shall have the right to make submissions on the propriety or otherwise of making such order.

#### ORDER 22

#### FILING OF WRITTEN ADDRESSES

1. The Court shall have the power to order for the filing of written addresses in all cases.
1. The Court shall at the trial of any case whether by writ or originating summons, petitions, originating motion or otherwise order the filing of written addresses by the parties in support of or in defence to a claim.
2. Where the other party calls evidence he shall within twenty one days after the close of evidence file a written address.
3. Upon being served with other party's written address the party beginning shall within twenty one days file his reply address.
4. The party who files the first address shall have a right of reply on points of law only. The reply shall be filed within seven days after service of the other party's address.
5. A written address shall be printed in black ink on high quality white opaque A4 size paper and set out in sub paragraphs numbered serially and shall contain :
  - (i) the claim or application on which the address is based ;

(ii) a brief statement of the facts with reference to the exhibit attached to the application or tendered at the trial; the issues arising from the evidence for determination, and

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

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

2. Oral argument of not more than twenty minutes shall be allowed for each party.

3. When final written addresses or written addresses in respect of any application under these rules have been filed and such come up for adoption and either of the parties is absent, the Court shall either on its own motion or upon oral application by the counsel for the party present, order that the addresses be deemed adopted if it is satisfied that all the parties had notice of the date for adoption. The Court shall be satisfied that, that party had notice of the date for adoption if on the previous date last given the party or his counsel was present in Court.

4. Each party shall file two copies of his written address in Court and serve a copy thereof on every party.

## ORDER 23

### JUDGEMENT, ENTRY OF JUDGEMENT

1. The Judge shall after trial, deliver judgement in open Court.

2. Where a Judge has written and signed a judgement pursuant to rule 1 of this order but could not deliver same on ground of ill health, death or any other reason, such decision may be read by another Judge of the Court as the Chief Judge may direct.

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

4. When any judgement is directed to be entered by an order made on application for judgement, the judgement 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 judgement shall not be entered until a given date, in which case it shall take effect from that date.

5. The Judge at the time of making any judgement 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 judgement or order or from some other point of time, as the Judge deems fit and may order interest at a rate not exceeding ten per cent per annum to be paid upon any judgement.

6.—(1) When any judgement or order directs the payment of money, the Court may, upon sufficient reason, order that the amount shall be paid by instalments with or without interest.

(2) The order may be made at the time of giving judgement or at anytime afterwards and may be rescinded upon sufficient cause at any time.

7. Every judgement or order made in any cause or matter requiring any person to do an act shall state the time or the time after service of the within which the act is to be done.

8. In any cause or matter where the defendant has appeared by a legal practitioner, no order for entering judgement shall be made by consent unless the consent of the defendant is given in writing and counter-signed by the defendant's legal practitioner.

1. Where the defendant has no legal practitioner such order shall not be made unless the defendant gives consent in person in open Court.

2. If the Court reserves judgement at the hearing, parties to the suit shall be served with notice to attend and hear judgement, unless the Court at the hearing states the day on which judgement will be delivered, in which case there be no further notice.

3. All parties shall be deemed to have notice of the decision or judgement if pronounced at the hearing, and all parties served with notice to attend and hear judgement shall be deemed to have notice of the judgement when pronounced.

[

#### ORDER 24

##### DRAWING UP OF ORDERS

1. Every order shall be signed by the Judge who delivered the decision but where the Judge dies or retires, or for any other reason he is unable to sign the drawn up order, the order shall be signed by the Chief Judge.

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

3. Where an order has been made not embodying any special term nor including any special direction, but simply enlarging time for taking any proceeding or doing any act or giving leave—

(a) for the issuance 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.

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

#### ORDER 25

## COSTS

1.—(1) When on the application of the plaintiff or defendant, as the case may be, it appears to the Court either at commencement or at any stage of the proceedings—

- (a) that the plaintiff or defendant is ordinarily resident out of jurisdiction ; or
- (b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so ; or
- (c) subject to sub-rule (2) of this rule, that the plaintiffs address is not stated in the writ or other originating process or is incorrectly stated therein ; or
- (d) that the plaintiff or the defendant has changed his address during the course of the proceedings with a view to evading the consequence of the litigation, then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff or the defendant to give such security for the plaintiffs costs or defendant's costs of the action or other proceedings as it thinks just.

(2) The Court shall not require a plaintiff to give security by reason only of sub-rule (1) (c) of this rule if he satisfies the Court that the failure to state his address or the mis-statement thereof was made innocently and without intention to deceive.

(3) The reference in the foregoing rule to a plaintiff and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counter-claim.

2.—(1) In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been unnecessarily 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 judgement or making the order.

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

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

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

3. In actions brought by persons resident out of the jurisdiction, when the plaintiff's claim is founded on judgement 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.

4. 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.

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

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

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

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

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

1. 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 other act, including the cost of any order made on the application shall be borne by the party making the application unless the Judge otherwise orders.

2. 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

13.—(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 and any Cost 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 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 direction as aforesaid should have been given in relation to it to act as if the appropriate direction had been given.

14.—(1) Subject to the following provisions of this rule, where in any proceeding 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 the Judge considers to be responsible whether personally or through a servant or agent, an order :

- (a) disallowing the costs as between the legal practitioner and the legal practitioner's client ; and
  - (b) directing the legal practitioner to pay to the client's costs which the client has been ordered to pay to other parties to the proceedings ; or
  - (c) directing the legal practitioner personally to indemnify such other parties against costs payable by them.
- (2) The provisions of rule 13 sub-rule 1 of this order shall apply where proceedings in Court cannot conveniently proceed or fail or are adjourned without useful progress being made :
- (a) because of the failure of the legal practitioner to attend in person or by a proper representative ; or
  - (b) because of the failure of the legal practitioner to deliver any document for the use of the Court which ought to have been delivered or 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 the legal practitioner has been given a reasonable opportunity to appear before the Judge to show cause why the order should not be made.
- (4) If, on the taxation of costs to be paid out of a fund, one-sixth or more of the amount of the bill for those costs is taxed off, the legal practitioner whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.
- (5) The Judge may direct that notice of any proceeding or order against a legal practitioner under this rule shall be given to the legal practitioner's client in such manner as may be specified in the direction.

## ORDER 26

### INTERLOCUTORY APPLICATIONS

#### A —MOTIONS GENERALLY

1. Subject to these Rules, interlocutory applications may be made at any stage of an action.
- 2.—(1) Where by these Rules an application is authorized to be made to the Court or to a Judge in Chambers, such application may be made by motion.  
  
(2) The Registrar shall make up, for each day on which there are motions to be heard, a motion list, on which he shall enter the names of each cause in which a motion is made, the party moving and the terms of the order sought by him.
3. Every motion shall be supported by an affidavit setting out the grounds on which the party moving intends to rely and such motion shall be filed along with a written address.
4. Where service of a motion is required by these Rules or directed by the Court or a Judge, the motion shall be served together with all affidavits on which the party moving intends to rely, as well as with a written address.

5. A party on whom a motion has been served as per the preceding rules of this order and who intends to reply may do so by filing his written address in reply along with a counter affidavit if he so wishes and shall do so, not later than seven days from the service of the motion on him.

6. A motion may be heard at any time while the Court is sitting.

7.—(1) No motion shall be made without previous notice to the parties affected thereby.

(2) Notwithstanding sub-rule 1 of this rule, the Court may, if satisfied that to delay the motion till after notice is given to the parties affected would entail irreparable damage or serious mischief to the party moving, make an order ex parte upon such terms as to costs or otherwise and subject to rule 12 of this order, and upon such undertakings, as the justice of the case demands.

(3) 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.

#### B—EX PARTE MOTIONS

8.—(1) A motion ex parte shall be supported by an affidavit which, in addition to the requirements of rule 3 of this order, shall state sufficient grounds why delay in granting the order sought would entail irreparable damage or serious mischief to the party moving.

(2) In an application for anton piller order, the applicant shall in addition show :

(a) that he has a strong prima facie case,

(b) that he may suffer serious damages,

(c) that the defendant has incriminating documents and that there is a real possibility that the defendant may destroy such material before the discovery process.

1. Any party moving the Court ex parte may support his motion by argument addressed to the Court on the facts put in evidence, and no party to the suit or proceedings, although present, other than the party moving, shall be entitled to be heard.

2. Where a motion is made ex parte, the Court may make or refuse to make the order sought, or may direct the motion to be made on notice to the parties to be affected thereby or may grant an order to show cause why the order sought should not be made.

3. Where an order is made on a motion ex parte, any person affected by it, may, within seven days after service of it, or within such further time as the Court shall allow, apply to the Court by motion to vary or discharge it; and the Court may, on notice to the party obtaining the order, either refuse to vary or discharge it, or may vary or discharge it with or without imposing terms as to costs or security, or otherwise, as seems just.

12.—(1) No order made on motion ex parte shall last for more than fourteen days after the party or person affected by the order has applied for the order to be varied or discharged or last for another fourteen days after application to vary or discharge it has been argued.

(2) If a motion to vary or discharge an exparte order is not taken within fourteen days of its being filed, the exparte order shall lapse.



## C— ORDER TO SHOW CAUSE

13. An order to show cause shall specify a day when cause is to be shown, be called the return day to the order, which shall ordinarily be not less than three days after service.

14. A person served with an order to show cause may, before the return day, produce evidence to contradict the evidence used in obtaining the order, or setting forth other facts on which he relies to satisfy the Court to discharge or vary such order.

15. On the return day, if the person served does not appear and it appears to the Court that the service on all proper parties has not been duly effected, the Court may enlarge the time and direct further service or make such further order as seems just.

(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 three 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 which shall be accompanied by a written address.

(2) The notice of motion or summons shall be served on all persons directly affected, and where it relates to any proceeding 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 the morany 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 seven 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 fourteen days after the grant of leave.

(5) An affidavit giving the names and addresses of, and the places and days of service on the 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 the 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 of 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

(c) that the defendant has incriminating documents and that there is a real possibility that the defendant may destroy such material before the discovery process.

1. Any party moving the Court ex parte may support his motion by argument addressed to the Court on the facts put in evidence, and no party to the suit or proceedings, although present, other than the party moving, shall be entitled to be heard.
  2. Where a motion is made ex parte, the Court may make or refuse to make the order sought, or may direct the motion to be made on notice to the parties to be affected thereby or may grant an order to show cause why the order sought should not be made.
  3. Where an order is made on a motion ex parte, any person affected by may, within seven days after service of it, or within such further time as the Court shall allow, apply to the Court by motion to vary or discharge it; and the Court may, on notice to the party obtaining the order, either refuse to vary or discharge it, or may vary or discharge it with or without imposing terms as to costs or security, or otherwise, as seems just.
- 12.—(1) No order made on motion ex parte shall last for more than fourteen days after the party or person affected by the order has applied for the order to be varied or discharged or last for another fourteen days after application to vary or discharge it has been argued.
- (2) If a motion to vary or discharge an ex parte order is not taken within fourteen days of its being filed, the ex parte order shall lapse.

#### C— ORDER TO SHOW CAUSE

13. An order to show cause shall specify a day when cause is to be shown, be called the return day to the order, which shall ordinarily be not less than three days after service.
14. A person served with an order to show cause may, before the return day, produce evidence to contradict the evidence used in obtaining the order, or setting forth other facts on which he relies to satisfy the Court to discharge or vary such order.
15. On the return day, if the person served does not appear and it appears to the Court that the service on all proper parties has not been duly effected, the Court may enlarge the time and direct further service or make such further order as seems just.
16. If the person served appears or the Court is satisfied that service has been duly effected, the Court may proceed with the matter.
17. The Court may either discharge the order or make the same absolute, or adjourn the consideration thereof, or permit further evidence to be produced in support of or against the order, and may modify the terms of the order so as to meet the merits of the case.

#### D — NOTICE OF MOTION

1. Unless the Court gives special leave to the contrary, there shall be at least two clear days between the service of a motion and the day named in the notice for the hearing of the motion.
2. Notice of motion may, with leave of the Court, be served by any person, notwithstanding that such person is not an officer of the Court.

3. Where a party acts by a solicitor, service of notice of motion on the solicitor shall be deemed good service on that party.
4. There shall be served along with the notice of motion, a copy of any affidavit on which the party moving intends to rely at the hearing of the motion.
5. If at the hearing of any motion, the Court is of the opinion that any person, to whom notice has not been given, ought to have or ought to have had such notice, the Court may either strike out the motion, or adjourn the hearing thereof in order that the notice may be given upon such terms as the Court may deem fit.

#### E — EVIDENCE IN INTERLOCUTORY PROCEEDINGS

1. Oral evidence shall not be heard in support of any motion unless by leave of the Court.
2. The Court may, in addition to or in lieu of affidavits, if it thinks it expedient, examine any witness viva voce, or receive documents in evidence, and may summon any person to attend to produce documents before it, or to be examined or cross-examined before it in like manner as at the hearing of a suit.
3. Such notice as the Court in each case according to the circumstances, considers reasonable, shall be given to the persons summoned, and to such persons (parties to the cause or matter or otherwise interested) as the Court considers are entitled to inspect the documents to be produced, or to examine the person summoned, or to be present at his examination, as the case may be.
  1. The evidence of a witness on any such examination, shall be taken in manner as nearly as may be at the hearing of a suit.
  2. Upon the hearing of any motion the Court may, on such terms as to costs and adjournment as it may deem fit, allow any additional affidavit to be after the affidavit has been duly filed and served on the opposing party.

#### ORDER 27

#### AFFIDAVITS

1. Upon any motion, petition, summons or other application, evidence may be given by affidavit, but the Judge may on his own motion 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 the person's affidavit shall not be used as evidence save by special leave.
2. Every affidavit shall bear the title in the proceedings 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 proceeding, 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. The party intending to use any affidavit in support of any application 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 alteration shall not be made by erasure.

Accounts, extracts from registers, particulars of creditors debt and other documents referred to by affidavit, shall not be annexed to the affidavit or referred to as annexed but shall be referred to as exhibits.

Every certificate on all exhibits referred to in an affidavit signed by the commissioner before whom the affidavit is sworn shall be marked with the short title of the proceedings.

A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a Court, Judge, Notary Public or person having authority to administer oath in any part of the Commonwealth outside Nigeria in testimony of an affidavit being taken before it or such person in that part shall be admitted in evidence without proof of the seal or signature of that Court, Judge, Notary Public or person.

## ORDER 28

### INTERLOCUTORY INJUNCTIONS AND INTERIM PRESERVATION OF PROPERTY

- 1.—(1) An application for the grant of an injunction may be made by a party to an action before, during or after the trial of the action, whether or not a claim for injunction was included in that party's action.  
(2) Where the applicant is the plaintiff and the case is one of urgency, the application may be made ex parte on affidavit but, except as aforesaid, the application shall be made by motion on notice or summons.  
(3) The plaintiff may not make such an application before the issue of the process by which the action is to be begun, except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issuance of the process and service of the process together with the ex parte order obtained on the defendant and such other terms, as the Court thinks fit.
- 2.—(1) On the application of any party to an action, the Court may make an order for the detention, custody or preservation of any property which is the subject matter of the action or as to which any question may arise therein or for the inspection of any such property in the possession of a party to the action.

(2) For the purpose of enabling any order under sub-rule (1) of this rule to be carried out, the Court may by order authorise any person to enter upon any land or building in the possession of a party to the action.

(3) Where the right of any party to a specific fund is in dispute in an action, the Court may on the application of the party, order the fund to be paid into Court or otherwise secured.

(4) An order under this rule may be made on such terms, as the Court may think just.

(5) An application for an order under this rule shall be made by summons or motion on notice.

(6) Unless the Court otherwise directs, an application by the defendant for such an order may not be made before he enters an appearance.

3.—(1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any action, the Court may, on the application of a party and on such term as it thinks just, by order authorise or require any sample of any property which is the subject matter of the action or as to which any question may arise therein, any observation to be made on the property or any experiment to be tried on or with the property.

(2) For the purpose of enabling any order under sub-rule (1) to be carried out, the Court may by the order authorise any person to enter any land or building in the possession of any party.

(3) Sub-rules (5) and (6) of rule 2 of this order shall apply in relation to an application for an order under this rule.

4.—(1) The Court may, on the application of any party, make an order for the sale by such person, in such manner and on such terms as may be specified in the order, of any property (other than land) which is the subject matter of the action or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other reason it is desirable to sell forthwith.

(2) Sub-rules (5) and (6) of rule 2 of this order shall apply in relation to an application for an order under this rule.

5.—(1) Where on the hearing of an application made before the trial of a cause or matter, for an injunction or appointment of a Receiver or an order under rules 2, 3, or 4 of this order, or it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merit thereof for the purposes of the application, the Court may make an order accordingly or may make such order with regard to the period before trial as the justice of the case requires.

(2) Where the Court makes an order for early trial, it shall by the order determine the place and mode of the trial.

1. Where the plaintiff or the defendant by way of counter-claim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears, from the pleadings or by affidavit or otherwise to its satisfaction, may order that the party seeking 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 security is claimed and such further sum if any for interests and costs as the Court may direct and that, upon the payment being made, the property claimed be given up to the party claiming it, but subject to the provisions of any law relating to exchange control.

2. Where an application is made under any of the foregoing provisions of this order, the Court may give directions as to the further proceedings in the action.

3. Where any real or personal property forms the subject matter of any proceeding, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all such parties.

## ORDER 29

### DISPUTING THE COURT'S JURISDICTION

1. Where a defendant wishes to—

(a) dispute the Court's jurisdiction to try the claim ; or (b) argue that the Court should not exercise its jurisdiction, he may apply to the Court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have, and the Court may take such application together with the Plaintiffs substantive suit in so far as the substantive suit does not involve the taking of oral evidence.

2. A defendant making such application must first file along with the application a memorandum of appearance stating that he is appearing conditionally.

1. A defendant who files a memorandum of appearance does not, by so doing, lose any right that he may have to dispute the court's jurisdiction.

2. An application under this order shall :

(a) be made within twenty one days after service on the defendant of the originating process, and

(b) be supported by affidavit where it is not based on ground of law alone.

5. If the defendant files an acknowledgment of service and does not make such application within the period specified in rule 4 of this order, any such application can only be taken at the conclusion of the trial.

## ORDER 30

### INTERIM ATTACHMENT OF PROPERTY

1. Where—

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

(a) in any suit founded on contract or for detinue in which the cause of action arose within the jurisdiction—

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

(i) the defendant is beneficially entitled to any property in the jurisdiction in the custody or under the control of any other person in the jurisdiction, or such person is indebted to the defendant,

(c) then in either such case, the Plaintiff may apply to the Court either at the time of the institution of the suit or at any time thereafter until final judgement, to call upon the defendant to furnish sufficient security to fulfil any decree that may be made against him in the suit, and on his failing to give the security, or pending the giving of such security, to direct that any property movable or immovable belonging to the defendant shall be attached until the further order of the Court.

2. The application for attachment shall contain a specification of property required to be attached, and the estimated value thereof so far as the Plaintiff can reasonably ascertain the same, and the plaintiff shall; at the time of making the application, declare that to the best of his information and belief the defendant is about to dispose of or remove his property with such intent as aforesaid.

3.—(1) If the Court after making such investigation as it may consider necessary is satisfied that the defendant is about to dispose of or remove his property with intent to obstruct or delay the execution of the decree, it shall be lawful for the Court to order the defendant, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order or produce and place at the disposal of the Court when required, the said property, or value of the same or such portion thereof as may be sufficient to fulfil the decree, or to appear and show cause why he should not furnish security.

(2) Pending the defendant's compliance with the order, the Court may by warrant direct the attachment until further order of the whole, or any portion, of the property specified in the application.

4.—(1) If the defendant fails to show such cause, or to furnish the required security within the time fixed by the Court, the Court may direct that the property specified in the application if not already attached, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached until further order.

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

1. The attachment shall not affect the rights of persons not parties to the suit, and in the event of any claim being preferred to the property attached before judgement, such claim shall be investigated in the manner prescribed for the investigation of claims to property attached in execution of a decree.

2. In all cases of attachment before judgement, the Court shall at any time remove the attachment, on the defendant furnishing security as above required, together with security for the costs of the attachment, or upon an order for a non-suit or striking out the matter.

7.—(1) The application may be made to the Court in the Judicial Division where the defendant resides or in the case of urgency, where the property proposed to be attached is situate and the Court may make such order as the Court shall deem just.

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

#### ORDER 31

##### NEEDLESS DETENTION OF CHATTELS AND REPARATION FOR IT

1. Where a Court on an application of a party, makes an order to hold to bail, or of sale, injunction or attachment or any warrant to stop the clearance of, or to arrest any chattel upon any condition and—

(a) it later appears to the Court that an order made by it was applied for on insufficient grounds ; or

(b) the suit in which the application was made is struck out or dismissed or judgement is given against the applicant by default or otherwise and it appears to the Court that there was no probable ground for instituting such a suit, the Court may on application of the defendant made at any time before the expiration of three months from the termination of the suit, award the defendant an amount of compensation not larger than one that could be awarded for damages in any suit.

#### ORDER 32

##### STAY OF PROCEEDINGS OR EXECUTION PENDING APPEAL

1. Where any application is made to the Court for a stay of execution, or of proceedings under any judgement or decision appealed from, such application shall be made by notice of motion supported by affidavit setting forth the grounds upon which a stay of execution or of proceedings is sought.

2. The Court shall have the power to make or refuse an order for stay of execution or of proceedings subject to such conditions as shall appear just including the deposit in Court of any money adjudged due to any party in the judgement appealed to or from.

3. An applicant for stay of proceedings or execution of a judgement shall cause to be compiled the records of appeal within ninety days from the date of filing a notice of appeal and where the record is not so compiled, the respondent may apply to strike out the application or discharge the order if already granted.

4.—(1) Application for stay of proceedings or execution shall be regarded as an urgent matter.

(2) Where the Court has refused an application for stay, no application for stay of proceedings or execution shall be made to it on the same matter.



5. Where any application is made to the Court under this order, a formal order shall be drawn up embodying the terms of the decision of the Court and bearing the date upon which the order is made.

#### ORDER 33

#### INTERPLEADER

##### 1.—(1) Where—

(a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto ; or

(b) claim is made to any money, goods or chattels taken or intended to be taken by a sheriff in execution under any process, or to the proceeds or value of any such goods or chattels by a person other than the person against whom the process is issued, the person under liability as mentioned in sub-rule (1) (a) of this rule or, as the case may be, the sheriff, may apply to the Court for relief by way of interpleader.

(2) Reference in this order to sheriff shall be construed as including references to any other officer charged with the execution of process by or under the authority of the Court. 2.—(1) Any person making a claim to or in respect of any money, taken in goods, or chattels taken or intended to be taken under process of the Court or to the proceeds or value of any such goods or chattels, shall give notice of his claim to the sheriff charged with the execution of the process and shall include in his notice a statement of his address, and that address shall be his address for service.

(2) On receipt of a claim made under this rule, the sheriff shall forthwith give notice thereof to the execution creditor and the execution creditor shall, within seven days after receiving the notice, give notice to the sheriff informing him whether he admits or disputes the claim.

(3) An execution creditor who gives notice in accordance with this provision admitting the claim shall only be liable to the sheriff for any fees and expenses incurred by the sheriff before the receipt of that notice.

##### (4) Where—

(a) the sheriff receives a notice from an execution creditor under sub-rule 2 of this rule, disputing a claim, or the execution creditor fails, within the period mentioned in that sub-rule to give the required notice ; and

(b) the claim made under this rule is not withdrawn, the sheriff may apply to the Court under this order.

(5) A sheriff who receives a notice from an execution creditor under sub-rule (2) of this rule admitting a claim made under this provision, shall withdraw from possession of the money, goods or chattels claimed and may apply to the Court for relief under this provision of the following kind, that is to say, an order restraining the bringing of an action against him for or in respect of his having taken possession of that money or those goods or chattels.

3.—(1) An application for relief under this order shall be made by originating summons unless made in a pending action in which case it shall be made by motion in the action.

(2) Where the applicant is a sheriff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2 (5) of this order, the summons shall be served on any person who made a claim under rule 2 (1) of this order, to or in respect of that money, or those goods or chattels, and that person may attend the hearing of the application.

(3) No appearance need be entered to an originating summons under this provision.

4. The applicant shall satisfy the Court or a Judge in Chambers by affidavit or otherwise that—

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

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

(c) The applicant is willing to pay or transfer the subject matter into Court or to dispose of it as the Court or a Judge in Chambers may direct.

Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.

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

If the claimants appear in pursuance of the summons, the Court or a Judge in Chambers 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 plaintiff, and which the defendant

If a claimant, having been duly served with a summons calling on him to appear and maintain, or relinquish his claims, does not appear in pursuance of the summons, or having appeared, neglects or refuses to comply with any order made after his appearance, the Court or Judge in Chambers 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.

The Court or a Judge in Chambers may, in or for the purposes of any interpleader proceeding, make all such orders as to costs and all other matters as may be just and reasonable.

## ORDER 34

### APPLICATION FOR JUDICIAL REVIEW

1.—(1) 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, and
- (c) all the circumstances of the case.

2. On an application for judicial review any relief mentioned in rule 1 may be claimed as an alternative or in addition to any other relief so 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 on which they are sought;
- (b) an affidavit verifying the facts relied on; and
- (c) a written address in support of application for leave.

(3) The Judge hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise in 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 any other proceeding 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 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 three 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 which shall be accompanied by a written address.

(2) The notice of motion or summons shall be served on all persons directly affected, and where it relates to any proceeding 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 seven 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 fourteen days after the grant of leave.

(5) An affidavit giving the names and addresses of, and the places and days of service on the 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 the 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 of 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 ground shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

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

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

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

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

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

(6) 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 interlocutor's 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), the order shall, subject to sub rule 4, direct that the proceedings shall be quashed forthwith on their removal into Court.

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

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

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

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

## ORDER 35

### COMMITTAL FOR CONTEMPT OF COURT

1.—(i) The power of the Court to punish for contempt of court may be exercised by an order of committal.

(2) An order of committal may be made by the Court where contempt of Court—

(a) is committed in connection with—

(i) any proceeding before the Court;

(ii) criminal proceedings,

(b) is committed in the face of the Court, or consists of disobedience to an order of the Court or a breach of an undertaking to the Court; or

(c) is committed otherwise than in connection with any proceeding.

2.—(1) An application for an order of committal shall be made to the Court by motion on notice supported by an affidavit and shall state the grounds of the application.

(2) The notice of motion, affidavit and grounds shall be served personally on the person sought to be committed but the Court may dispense with personal service where the justice of the case so demands.

3. Nothing in the foregoing provisions of this order shall be taken as affecting the power of the Court to make an order of committal of its own motion against a person guilty of contempt of Court.

4.—(1) Subject to sub-rule (2) of this rule, the Court hearing an application for an order of committal may sit in private in the following cases that is to say where—

(a) the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder; or

(b) the application arises out of proceedings in which a secret process, discovery or invention was in issue ;

(c) It appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private, but except as aforesaid, the application shall be heard in open Court.

(2) If the Court hearing an application in private by virtue of sub rule (1) of this rule decides to make an order of committal against the person sought to be committed, it shall in open Court state—

(a) the name of that person ;

(b) in general terms the nature of the contempt of Court in respect of which the order of committal is being made ; and

(c) if he is being committed for a fixed period, the length of that period.

(3) Except with the leave of the Court hearing an application for an order of committal, no ground shall be relied upon at the hearing except the grounds set out in the statement under rule 2 of this order.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf he shall be entitled to do so.

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

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

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

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

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

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

9.—(1) Every writ of attachment, issued in a case to which this order applies shall be made returnable before the Court.

(2) If a return of non est inventus is made, one or more writs may be issued on the return of the previous writ.

## ORDER 36

### WRIT OF EXECUTION

#### GENERAL

1. In this order, unless the context otherwise requires, "writ of execution" includes a writ of fieri facias, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs.

2.—(1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in following cases, that is to say where—

(a) six years or more have elapsed since the date of the judgment order, or

(b) any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment order, or

(c) the judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the judgment or order, and it is sought to issue execution against the assets, or

(d) under the judgment or order any person is entitled to relief subject to the fulfillment of any condition which it is alleged has been fulfilled, or

(e) any goods sought to be seized under a writ of execution are in the hands of a Receiver appointed by the Court or a sequestrator.

(2) Sub-rule (1) of this rule is without prejudice to any enactment or rule by virtue of which a person is required to obtain the leave of the Court for the issuance of a writ of execution or to proceed to execution on or otherwise to the enforcement of a judgment or order.

(3) Where the Court grants leave, whether under this rule or otherwise, for the issuance of a writ of execution and the writ is not issued within one year after the date of the order granting such leave, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

3. A writ of execution hi aid of any other writ of execution shall not issue Leave without the leave of the Court.

4.—(1) An application for leave to issue a writ of execution may be made ex parte unless the Court directs it to be made by summons.

(2) Such an application shall be supported by an affidavit—

(a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount duethereunder at the dale of the application;

(b) stating, where the case falls within rule 2 (1) (a) of this order, the reasons for the delay in enforcing the judgment or order; ,

(c) stating, where the case falls within rule 2 (1) (b) of this order, the change which has taken place in the parties entitled or liable to execution since the date of the judgment or order;

(a) stating, where the case falls within rule 2 (1) (c) or (d) of this order, that a demand to satisfy the judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so,

(e) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.

(3) The Court hearing the application may grant leave in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in an action may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

5.—(1) Notwithstanding anything in rules 2 and 4 of this order, an application for leave to issue a writ of sequestration shall be made to a Judge by motion.

(2) Subject to sub-rule (3) of this rule, the notice of motion, stating the grounds of the application, shall be served personally on the person against whose property it is sought to issue the writ.



(3) The Judge hearing an application for leave to issue a writ of sequestration may sit in private in any case in which there is an application to the Judge to sit in private, if the application were for an order.

6.-(1) The issuance of a writ of execution takes place on its being sealed by an officer of the appropriate office..

(2) A praecipe for the issuance of a writ shall be filed before the writ is issued.

(3) The praecipe shall be signed by or on behalf of the solicitor of the person entitled to execution or if that person is acting in person, by that person.

(4) No such writ shall be sealed unless at the time of the tender thereof for sealing— . .

(a) the person tendering it produces—

(b) the judgment or order on which the writ is to issue, or an office copy thereof, or

(c) where the writ may not issue without the leave of the Court, the order granting the leave or evidence of the granting of it, and

(b) the officer authorized to seal it is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.

(5) Every writ of execution shall bear the date of the day on which it is issued.

(6) In this rule "the appropriate office" means—

(a) where the cause or matter in which execution is to issue is proceeding in a Division Registry, that Registry ;

(b) where that cause or matter is an admiralty cause or matter which is not proceeding in a Registry, the Admiralty Registry;

(c) in any other case, the Court Registry.

7.—(1) For the purpose of execution, a writ of execution is valid in the first instance for twelve months beginning with the date of its issuance.

(2) Where a writ has not been wholly executed the Court may by order extend the validity of the writ from time to time for a period of twelve months at any time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire or such later day, if any as the Court may allow.

(3) Before a writ, the validity of which had been extended under this rule is executed, either the writ shall be sealed with the seal of the office out of which it was issued showing the date on which the order extending its validity was made or the applicant for the order shall serve a notice sealed as aforesaid, on the sheriff to whom the writ is directed informing him of the making of the order and the date thereof.

(4) The production of a writ of execution, or of the notice as is mentioned in sub-rule (3) of this rule purporting in either case can be sealed as mentioned in that sub-rule, shall be evidence that the validity of that writ, or, as the case may be of the writ referred to in that notice, has been extended under this rule.

8.—(1) Any party at whose instance a writ of execution was issued may serve a notice on the sheriff to whom the writ was directed requiring him, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.

(2) If a sheriff on whom such notice is served fails to comply with it, the party by whom it was served may apply to the Court for an order directing the sheriff to comply with the notice.

#### ORDER 37

#### GARNISHEE PROCEEDINGS

1.—(1) Where a person (in this order referred to as "the judgment creditor" has obtained a judgment or order for the payment by some other person (in this order referred to as "the judgment debtor" of a sum of amount in value to at least N20, 000 not being a judgment or order for the payment of money into Court, and any other person within the jurisdiction (in this order referred to as "the garnishee") is indebted to the judgment debtor, the Court may, subject to the provisions of this order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or as much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

(2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in sub-rule (1) or so much therefore as may be specified in the order, to answer the judgment or order mentioned in that and the costs of the garnishee proceedings.

(3) An order under this rule shall not require a payment which would reduce below N5, 000 the amount standing in the name of the judgment debtor in an account with a building society or a credit union.

2. An application for an order under rule 1 of this order shall be made ex parte supported by an affidavit—

(a) stating the name and last known address of the judgment debtor;

(b) identifying the judgment or order to be enforced and stating the amount of the judgment or order and the amount remaining unpaid under it as (at) the time of the application;

(c) stating, that to the best of the information or belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information or the grounds for his belief; and

(d) stating, where the garnishee is a deposit-taking institution having more than one place of business, the name and address of the branch at which the judgment debtor's account is believed to be held and the number of that account or, if it be the case, that all or part of this information is not known to the deponent.

3.—(1) unless the Court otherwise directs, an order under rule 1 of this order to show cause shall be served

(a) on the garnishee personally, at least, fifteen days before the day appointed thereby for the further consideration of the matter; and

(b) on the judgment debtor, at least seven days after the order has been served on the garnishee and at least seven days before the day appointed for the further consideration of the matter.

(2) An order under rule 1 of this order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

4.—(1) Where on the further consideration of the matter, the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may make an order absolute under rule 1 of this order against the garnishee.

(2) An order absolute under rule 1 of this order against the garnishee may be enforced in the same manner as any other order for the payment of money.

1. Where on the further consideration of the matter, the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the Court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried, without, if it orders trial before a matter, the need for any consent by the parties.

2. If in garnishee proceedings it is brought to the notice of the Court that some other person other than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge upon, the Court may order that person to attend before the Court and state the nature of his claim with particulars thereof.

3. Any payment made by a garnishee in compliance with an order absolute under this order, and any execution levied against him in pursuance of such an order, shall be a valid discharge of liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or judgment or order from which they arose is reversed.

#### ORDER 38

#### PROCEEDINGS IN FORMA PAUPERIS

1. The provision of this order shall remain in force until statutory provisions are made for legal aid in connection with civil proceedings before the Court and thereupon shall cease to have effect.

2. The Judge may admit a person to sue or defend in forma pauperis, except in bankruptcy proceedings, if satisfied that his means do not permit him to employ legal aid in the prosecution of his case and that he has reasonable ground for suing or defending as the case may be.

3.—(1) The application shall, if the Judge so directs, be accompanied by an affidavit signed and sworn by the applicant himself stating that the applicant satisfied the requirements of rule 2 of this order as to his means, and setting forth all the material facts on which he relies in his desire to sue or defend, distinguishing between those which are within his personal knowledge and those which he bases on information and belief, and in the latter case, setting forth the sources of his information and belief.

(2) If the application is in the opinion of the Judge, worthy of consideration it shall be referred to a legal practitioner willing to act, and unless the legal practitioner certifies that in his opinion the applicant has good cause of action or good ground of defence, as the case may be, the application shall be refused.

1. 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 right, and a person so admitted to sue or defend shall not, unless the Court otherwise orders, be liable to pay or be entitled to receive any costs.

2. On granting the application, a Judge may assign to the applicant any legal practitioner willing to be so assigned, and any legal practitioner so assigned shall not be discharged by the applicant except with leave of the Court or of a Judge in Chambers.

6.—(1) Neither the legal practitioner whose opinion is sought nor the legal practitioner assigned to the applicant or any other person shall, except by leave of the Court or of a Judge in Chambers, take or agree to take or seek to obtain any payment whatsoever from the applicant or any other person in connection with the application or the action taken or defended thereunder.

(2) If the applicant pays or agrees to pay money to any person whatsoever in connection with his application or the action taken or defended thereunder, his application shall be refused or, if already granted, the order granting it shall be rescinded.

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

7.—(1) The Judge may at any time revoke the order granting the application and thereupon the applicant shall not be entitled to the benefit of this provision in any proceeding 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 the Court or of a Judge in Chambers.

8. The Court may order payment to be made to the legal practitioner assigned out of any money recovered by the applicant or may charge in favour of the legal practitioner assigned, upon any property recovered by the applicant, such sum as in all the circumstances may seem fit.

1. Every writ, 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.

2. No person shall be permitted to appeal in forma pauperis, except by leave of the trial or the appellate Court, and then only on grounds of law

## ORDER 39

### ASSESSOR

1. Where an Assessor sits with a Judge during a trial, he shall only discuss with or advise the Judge on the issue he was co-opted for.

2. The Assessor shall not write any opinion in form of judgment or order and shall not dissent or concur with the judgment or order the Judge has given.
3. An Assessor shall in advising the Court, limit himself to the issue in which he is an expert on, and on which account he was appointed to sit with the Court.
4. The Judge is not bound to accept and act on the opinion or advice of the Assessor.
5. The Assessor shall subscribe to judicial oath of secrecy before the Judge or

#### ORDER 40

#### RECEIVER

- 1.—(1) An application for the appointment of a Receiver may be made by motion on notice.  
(2) An application for an injunction ancillary or incidental to an order appointing a Receiver may be joined with the application for the order.  
(3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so ex parte on affidavit in an appropriate case.  
(4) The Court hearing an application under sub-rule (3) of this rule may grant an injunction restraining the party beneficially entitled to any interest in the property of which a Receiver is sought from assigning, charging or otherwise dealing with that property pending the hearing of a summons for the appointment of a Receiver and may require such a summons, returnable on such date as the Court may direct, to be issued.
- 2.—(1) Where a judgment is given, or an order is made directing the appointment of a Receiver, then, unless the judgment or order otherwise directs, a person shall not be appointed a Receiver in accordance with the judgment or order until he has given security as in Form 24 to these Rules, in accordance with this rule.  
(2) Where, by virtue of sub-rule (1) of this rule, or any judgment or order appointing a person named therein to be a Receiver, a person is required to give security in accordance with this rule, he shall give security as in Form 25 to these Rules, as may be approved by the Court duly to account for what he receives as a Receiver and to deal, with it as the Court directs.  
(3) Unless the Court otherwise directs, the security shall be by guarantee or, if the amount for which the security is to be given does not exceed two thousand naira, by an undertaking.  
(4) The guarantee or undertaking shall be filed in the Court Registry.
3. A person appointed a Receiver shall be allowed such proper remuneration if any, as may be fixed by the Court.
- 4.—(1) A Receiver shall submit accounts as in Form 26 to these Rules, to the Court at such intervals or on such dates as the Court may direct in order that they may be passed.

(2) Unless the Court otherwise directs, each account submitted by a Receiver shall be accompanied by an affidavit as in Form 26 verifying it.

(3) The Receiver's account and affidavit (if any) shall be left at the Registrar's office, and the claimant or party having the conduct of the proceedings shall thereupon obtain an appointment for the purpose of passing the account.

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

5. The days on which a Receiver shall pay into Court the amount shown by his account as due from him, or such part thereof as the Court may certify as proper to be paid in by him, shall be fixed by the Court.

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

(2) Without prejudice to sub-rule (1) of this rule, where a Receiver fails to attend for the passing of any account or fails to pay into Court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the Receiver in any subsequent account and may, where he has failed to pay any such sum into Court, charge him with interest at the rate of ten per cent per annum on that sum while in his possession as a Receiver.

#### ORDER 41

##### REFERENCE TO REFEREE

1.—(1) In any case in which a matter is referred to a Referee under, the provisions of the Federal High Court Act, 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.

(2) The instructions shall specify whether the Referee is merely to transit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his investigation.

2. The Court may at any stage of the proceedings direct any such necessary inquiries or accounts to be made or taken notwithstanding that it appears that there is some special or further relief sought for, or some special issues to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

3.—(1) The Referee may, subject to the order of the Court, 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.

(2) The Referee shall, as far as practicable, proceed with the inquiry from day to day.

4. Subject to any order to be made by the Court 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 Court in the manner as the 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 Judge of the Court, but not so as to make the tribunal of the Referee a public Court of justice.

1. Subject to any order of Court, the Referee shall have the same authority in the conduct of any inquiry as a Judge of the Court when presiding at any trial.

2. Nothing in these provisions authorizes any Referee to commit any person to prison, or to enforce any order by attachment or otherwise, but the Court may, in respect of matters before a Referee, make any order of attachment or committal it may consider necessary.

7.—(1) The report made by a Referee in pursuance of a reference under these Rules shall be made to the Court and notice thereof served on the parties to the reference.

(2) A Referee may in his report submit any question arising therein for the decision of the Court or make a special statement of facts from which the Court may draw such inferences as it thinks fit.

(3) On the receipt of a Referee's report, the Court may—

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

(b) vary the report ;

(c) require an explanation from the Referee ;

(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 ; or

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

(4) When the report of the Referee has been made, an application to vary the report or remit the whole or any part of the question or issue original!) referred may be made on the hearing by the Court to the further consideration of the cause or matters, after giving not less than four days notice thereof, and any other application with respect to the report may be made on the hearing without notice.

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

## ORDER 42

### PAYMENT INTO AND OUT OF COURT

I.—(1) Where after service in any, proceeding for debt or damages, a defendant envisages 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 the money is paid into Court in satisfaction of one or more of several causes of action, the notice shall specify the cause or causes of action in respect of which payment is made and the sum paid in respect of each such cause of action unless a Judge otherwise directs.

(6) The notice shall be in Form 27 with such modifications or variations as circumstances may require, the receipt of the notice shall be acknowledged in writing by the plaintiff within three days. The notice may be modified or withdrawn or delivered in an amended form by leave of a Judge upon such terms as may be just.

(7) Where money is paid into Court with denial of liability, the 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 fourteen days (of the receipt of the notice of payment into Court or where more than one payment into Court has been made, within fourteen 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 28 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 claims 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 four 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, by summons to a Judge, for leave for the parties or either of them to make a statement in open Court in terms approved by the Judge.



3. If the whole of the money in Court is not taken out under rule 2, the money remaining in Court shall not be paid out except in satisfaction of the claim or specified cause or causes of action in respect of which it was paid in pursuance of an order of a Judge which may be made at any time before, during 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 fourteen 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 29 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 fourteen 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 in Form 29 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 the defendant or defendants against whom the action is continued.

5. A person made a defendant to a counter-claim 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 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 money paid or expenses incurred or for maintenance or otherwise for or on behalf of or for the benefit of the person under legal disability or otherwise or to the 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 out of Court shall be made on notice to the other side.

#### ORDER 43

#### DISCOVERY AND INSPECTION

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 seven days of close of pleadings.

2. Interrogatories shall be in Form 30 with such modifications or variations as circumstances may require.

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

4. Any objection to answering any one or more of several interrogatories on the ground that it is or the same is scandalous or irrelevant may be taken in the affidavit in answer.

5. Interrogatories shall be answered by affidavit to be filed within seven 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 as well as the other parties or as the Court or Judge may direct.

6. An affidavit in answer to interrogatories shall be in Form 31 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 seven days of close of pleadings or within such period as the Court or Judge may direct and shall form part of the proceedings. The party on whom such a request is served shall answer on oath completely and truthfully within seven days of the request or within such other time as the Judge may allow.

(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 32 with such modifications or variations as circumstances may require.

(4) On the hearing of the application, the Court or Judge in Chambers may either refuse or adjourn the hearing, if satisfied that the discovery is not necessary or make such order, either generally or limited to certain classes of documents, as may, in its or his discretion, be thought fit.

(5) Discovery shall not be ordered when and so far as the Court or Judge in Chambers is of the opinion that it is not necessary either for disposing fairly of the action or for saving costs.

9—(1) Any process to be filed after the close of pleadings 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 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.

1. 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.

2. 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.

3. Any party may at the trial of a cause or matter, use in evidence any or more of the answers or any part of an answer of the opposite party to answers 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.--(1) Where in any action arising on a marine insurance policy, an application for discovery of documents is made by the insurer, the following provision shall apply—

(a) On hearing of the application, the Court or Judge in Chambers may, subject as provided in sub-rule (2) of this rule, make any order in accordance with sub-rule 8 of this order;

(b) Where in any case the Court or Judge in Chambers is satisfied, either on the original application or on a subsequent application, that it is necessary or expedient, having regard to the circumstances of the case, to make an order for the production of ship's papers, the Court or Judge in Chambers may make the orders as in Form 33 to these Rules.

(c) In making an order under this rule the Court or Judge in Chambers may impose such terms and conditions as staying proceedings or otherwise as the Court or Judge in Chambers in its or his discretion thinks just.

(2) Rule 8 of this order shall not apply to any application made under this rule.

15. The affidavit to be made by any person against whom an order for documents has been made under rule 5 of this order or under sub-rule (a) or (b) of rule 14 of this order shall specify which, if any of the documents therein mentioned he objects to produce, and it shall, except in the case of an order made under sub-rule (b) of rule 14 of this order be as in Form 33 to these Rules with such variations as circumstances may require.

16.—(1) On the hearing of any application for discovery of documents the Court or Judge in Chambers in lieu of ordering an affidavit of documents to be filed may order that the party from whom discovery is sought delivers to the opposite party a list of the documents which are or have been in his possession, custody or power, relating to the mailers in question.

(2) The list shall, as nearly as may be, follow the form of the affidavit as in Civil Form 31 in the Appendix to these Rules.

(3) The ordering of the list shall not preclude the Court or Judge in Chambers from afterwards ordering the party to, make and file an affidavit of documents.

17. The Court or a Judge in Chambers may at any time during the pendency of an action, order the production by any party, upon oath, of such of the documents in his possession or power, relating to any matter in question in the action as the Court or Judge in Chambers shall think right, and the Court may deal with the documents, when produced, in such manner as appears just.

18.—(1) Every party to a cause or matter shall be entitled at any time, by notice in writing, to give notice to any other party in whose pleadings or affidavits reference is made to any document to produce the document for the inspection of the party giving the notice, or of his legal practitioner, and to permit him or them to take copies thereof.

(2) Any party not complying with the notice shall not afterwards be at liberty to put such documents in evidence on his behalf in that action, unless he shall satisfy the Court or a Judge in Chambers that the document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or Judge in Chambers deems sufficient for not complying with the notice, in which case the Court or Judge in Chambers may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or Judge in Chambers may think fit.

19. Notice to any party to produce any document referred to in his pleadings or affidavit shall be in Form 34 to these Rules with such variations as circumstances may require.

20.—(1) The party to whom notice is given under rule 19 of this order shall, within two days from the receipt of the notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in sub-rule 16 of this order, or if any of the documents referred to in that notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within seven days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the

office of his legal practitioner, or in the case of banker's book or other books of accounts, or books in constant use for the purpose of any trade or business, at their usual place of custody and stating which (if any) of the documents he objects to produce, and on what ground.

(2) The notice shall be in Form 34 in Appendix to these Rules with such variations as circumstances may require.

21.—(1) If the party served with notice under rule 19 of this order omits to notify a time for inspection, or objects to give inspection, or offers inspection elsewhere than at the office of his legal practitioner, the Court or a Judge in Chambers may, on the application of the party desiring it, make an order for inspection in such place and in such manner as the Court or Judge in Chambers may think fit.

(2) The order shall not be made when and so far as the Court or Judge in Chambers is of opinion that it is not necessary either for disposing fairly of the action or for saving costs.

(3) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

22.—(1) Where inspection of any business book is applied for; the Court or a Judge in Chambers may, if it or he thinks fit, instead of ordering inspection of the original books, order a copy of any entry therein to be furnished and verified by the affidavit of some person who has examined the copy with original entries, and the affidavit shall state whether or not there are in the original books any and what erasures, interlineations, or alterations.

(2) Notwithstanding that such copy has been supplied, the Court or Judge in Chambers may order inspection of the book from which the copy was made.

(3) Where, on an application for an order for inspection, privilege is claimed for a document, it shall be lawful for the Court or a Judge in Chambers to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(4) The Court or a Judge in Chambers may, on the application of any party to an action at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any particular document or documents or any class or classes of documents, specified or indicated in the application, is or are, or has or have at any time been, in his possession, custody, or power, when he parted with the same and what has become of it.

(5) Application for the order shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has or has at some time had in his possession, custody or power the document or documents, or the class or classes of documents specified or indicated in the application and that they relate to the matters in question in the action, or to some or one of them.

23. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a Judge in Chambers may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action or that for any other reason it is desirable that any issue or question in dispute in the action should be determined

before deciding upon the right to the discovery or inspection, order that such issue or question be determined first and reserve the question as to the discovery or inspection.

24.—(1) If any party fails to comply with order to answer interrogatories or for discovery or inspection of documents, he shall be liable to committal.

(2) The party shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a Judge in Chambers for an order to that effect and an order may be made accordingly.

25.—(1) Service of an order for interrogatories or discovery or inspection made against any party or legal practitioner shall be sufficient service to found an application for an attachment for disobedience to the order.

(2) The party against whom the application for attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

26. A legal practitioner upon whom an order against any party for interrogatories or discovery or inspection is served under rule 25 who neglects without reasonable excuse to give notice thereof to his client, shall be liable to pay the costs occasioned thereby.

27.—(1) Any party may, at the trial of a cause, matter or issue 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.

(2) in such case the Judge may look at the whole of the answers, and if he is of opinion that any of them is so connected with those put in that those put in ought not to be used without them, he may direct them to be put in.

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

2. This order shall apply to infant plaintiffs and defendants, and to their next friends and guardians ad litem.

3. Any order made under the provisions of this order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court or a Judge in Chambers made or given at or before trial.

#### ORDER 44

#### ACCOUNTS AND INQUIRIES

1.—(1) Where a writ is endorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time, after the defendant has entered an appearance or after the time limited for appearing, apply for an order for an account under this rule.

(2) An application under this rule shall be made by summons and supported by affidavit or other evidence filed on a plaintiff behalf, stating concisely the grounds of his claim to an account.

(3) On the hearing of the application, the Court may, unless satisfied by the defendant, by affidavit or otherwise, that there is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

2.—(1) The Court may, on application made by summons at any stage of proceedings in a cause or matter, direct any necessary accounts or inquiries to be taken or made.

(2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgment or order so that, as far as may be each distinct account and inquiry may be designated by a number.

3.—(1) Where the Court orders an account to be taken, it may by the same or subsequent order give directions with regards to the manner in which the account is to be taken or vouched.

(2) Without prejudice to the generality of sub-rule (1) of this rule, the Court may direct that in taking the account, the relevant books of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objections thereto as they think fit.

4.—(1) Where an account has been ordered to be taken, the accounting party shall make out his account and, unless the Court otherwise directs, verify it by an affidavit to which the accounts shall be exhibited.

(2) The items on each side of the account shall be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs, the accounting party shall lodge the account with the Court and shall at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

5. Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any item in his account is erroneous in respect of amount or in any other respect shall give him notice thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or, as the case may be the grounds for alleging the item is erroneous.

6.—(1) If it appears to the Court that there is undue delay in the prosecution of accounts, or inquiries, or in other proceedings under any judgment or order, the Court may require to explain the delay and may then make such order for staying the proceedings or for expediting them or for the conduct thereof and for cost as the circumstances require.

(2) The Court may direct any party or legal practitioner to take over the conduct of proceedings in question and to carry out any direction made by an order under this rule and make such order as it thinks fit as to the payment of legal practitioner's costs.

7. Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow

immediate payment of their shares to the persons ascertained without reserving any part of the shares to meet the subsequent costs of ascertaining those other persons.

#### ORDER 45

#### ARREST OF ABSCONDING DEFENDANT

1. If in any suit the defendant is about to leave Nigeria 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 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 two 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, 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 six 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 to 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 46

### COURT SITTING AND VACATION

1. A Court may at its discretion, appoint any day(s) and any place(s) from time to time for the hearing of actions as circumstances require.
2. The sittings of a Court for the hearing and determination of the rights and obligations of the parties shall be public, but subject to the provisions of the Constitution of the Federal Republic of Nigeria, the Court may, for special reasons, hear any particular action in the presence only of the parties, with their legal practitioners (if any) and the officers of the 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 Court for the dispatch of civil matters will be held on every weekday except:
  - (a) on any public holiday ;
  - (b) during the week beginning with Easter Monday ;
  - (c) during the period beginning on 23rd December and ending on the 5th January next following.
  - (d) during the long vacation, i.e. the period beginning in any day in August and ending on a date not less than six weeks later ending on a Friday as the Chief Judge may by notification in the Gazette appoint.
- 5.—(1) Despite the provisions of rule 4, an action may be heard by a Judge in Court during any of the periods mentioned in rule 4 (1) (b) or(c), (except on a Sunday or public holiday), or sub rule (d), where the action is urgent or a Judge, at the request of all the parties concerned, agrees to hear the action.
  - (2) An application for an urgent hearing shall be made by summons. Chambers and the decision of the judge on the application shall be final.
6. The time for filing and service of pleadings as well as delivery of rulings and judgments shall not run during the long vacation, Christmas or Easter vacations or on any public holiday declared by the Federal Government unless otherwise directed by the Chief Judge.
7. No business shall be transacted in Chambers on Sundays and public holidays.

## ORDER 47

### CAUSE LISTS

1. The Registrar shall 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 weekly cause list which shall set out the arrangement of causes before each of the sittings 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.
1. Where any Thursday is a public holiday, the weekly cause list shall be posted up on the day last preceding which is not a public holiday.

2. The weekly cause lists and other such lists shall be posted up on one or more notice boards set up in such place or places within or near the Court premises as the Chief Judge may designate.
3. Copies of the weekly cause list shall be made available for purchase upon payment of the prescribed fees.

#### ORDER 48

##### 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 six days, holidays shall be left out in computing the period.

2. In this order holiday means a day, which is a Sunday or a public holiday as declared by the Federal Government.

3.—(1) No pleading, summons, motions, orders, originating process, documents and other processes shall be served before 6.00 a.m. or after 6.00p.m. Service effected after 6.00 p.m. shall be deemed to have been effected the following day provided that service effected after 6.00p.m. on Saturday shall be deemed to have been effected on the following Monday.

(2) Service before 6.00 a.m. shall for the purposes of these Rules be deemed defective service.

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 proceeding:

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 N200.00 (Two hundred Naira)for each day of such default at the time of compliance.

5. Parties cannot consent to enlarge any of the times fixed by the provisions of these Rules for taking any step, filing any document, or giving any notice.

#### ORDER 49

##### TRANSFER

1. A cause or matter may, before evidence is taken, and at the request of either party to the suit be transferred by a Judge before whom the cause or matter is pending to another Court of the same Division.

2. A cause or matter may at any stage of the proceedings be re-assigned to another Judge of the same Division or of any other Division by the Chief Judge whether or not the cause or matter is being heard before him.

3. If for any reason a Judge hearing a cause or matter, and who has taken any step in the proceedings, considers it necessary, either at his own opinion or upon application of any party to the proceedings, to have the cause or matter transferred to another Judicial Division, the Judge shall refer the cause or matter to the Chief Judge who may direct that the matter be transferred to the appropriate Judicial Division in accordance with these Rules.

4. Where a Judge retires or is transferred to another Division and having part-heard a cause or matter which is being re-heard de novo by another Judge, the evidence already given before the retired Judge or the Judge transferred out of the Division can be read at the re-hearing without the witness who had given it being recalled, but if the witness is dead or cannot be found, the onus of establishing that the witness is dead or cannot be found shall lie on the party that wishes to use the evidence.

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

#### ORDER 51

##### EFFECT OF NON-COMPLIANCE

1.—(1) Where in beginning or purporting to begin any proceeding or at any stage in the course of or in connection with any proceeding, there has by reason of anything done or left undone, been 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 sub-rule (1) of this rule and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein, or it may exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

2.—(1) An application to set aside for irregularity any proceeding, any step taken in any proceeding 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.

(2) Any application under sub-rule (1) of this rule may be made by summons or motion on notice, and the grounds of objection shall be stated in the summons or motion on notice.

#### ORDER 52

##### ARBITRATION

###### A—REFERENCE TO ARBITRATOR

1. Where in any case a matter is referred to one or more Arbitrators under the provisions of the Arbitration and Conciliation Act, the Arbitrators shall be nominated by the parties in such manner as may be agreed upon between them.

2. Where the parties cannot agree with respect to the nomination, or if the persons nominated refuse to act, and the parties are desirous that the nomination made by the Court, the Court shall appoint the Arbitrators.

3. The Court shall by an order under its seal refer to the Arbitrators the matter in difference in the suit which they may be required to determine, and shall fix a time for the delivery of the award, and the time so fixed shall be slated in the order.

4. Where reference is made to two or more Arbitrators, provision shall Umpire be made in the order for a difference of opinion among them, by the appointment where of an umpire, or by declaring that the decision shall be with the majority, or by empowering the Arbitrators to appoint an umpire, or otherwise as may be agreed between the parties, or if they cannot agree, as the Court may determine.

5. When reference to arbitration is made by an order of Court, the same Attendance process to the parties and witnesses, whom the Arbitrators or umpire may desire to have examined, shall issue as in ordinary suits and persons not attending in compliance with such process, or making any other default, or refusing to give evidence, or being guilty of any contempt of the Arbitrators or umpire during the investigations of the suit, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the Arbitrators or umpire, as they would incur for the same offences in suits tried before the Court.

6.—(1) When the Arbitrators are not able to complete the award within the period specified in the order for want of the necessary evidence or information, or other good and sufficient cause, the Court may, from time to time, enlarge the period for delivery of the award, if it thinks it proper.

(2) Where in any case an umpire is appointed, it shall be lawful for him to enter on the reference in lieu of the Arbitrators, if they have allowed their time, or their extended time, to expire without making an award or have delivered to the Court, or to the umpire, a notice in writing stating that they cannot agree.

(3) An award shall not be liable to be set aside only by reason of us not having been completed within the period allowed by the Court, unless on proof that the delay in completing the award arose from misconduct of the Arbitrators or umpire, or unless the award shall have been made after the issuance of an order by the Court superseding the arbitration and recalling the suit.

7.—(1) When, in any case of reference to arbitration by an order of \* ml, the Arbitrator or umpire dies, or refuses or becomes incapable of acting, it shall be lawful for the Court to appoint a new Arbitrator or Arbitrators or umpire in place of such person or persons.

(2) Where the Arbitrators are empowered by the terms of the order or reference to appoint an umpire, and do not appoint an umpire, any of the parties may serve the Arbitrators with a written notice to appoint an umpire and if within seven days after the notice is served, no umpire is appointed, it shall be lawful for the Court upon the application of the party having served such notice as aforesaid and upon proof to its satisfaction of such notice having been served, to appoint an umpire.

(3) In any other case of appointment under this rule, the Arbitrators or umpire so appointed shall have the like power to act in the reference as if their names had been inserted in the original order of reference.

8.—(1) The award shall contain a conclusive finding, and may not find on the contingency of any matter of fact being afterwards substantiated or deposed to.

(2) The award shall comprehend a finding on each of the several matters referred.

1. It shall be lawful for the Arbitrators or umpire upon any reference by an order of Court, if they think fit, and if it is not provided to the contrary, to state their awards as to the whole or any part thereof in the form of a special case for the opinion of the Court.

2. The Court may, on the application of either party, modify or correct an award where it appears that a part of the award is upon matters not referred to the Arbitrators, (provided that, that part can be separated from the other part, and does not affect the decision on the matter referred); or where the award is imperfect in form, or contains any obvious error which can be amended without affecting the decision.

1. The Court may also on the application, make such order as it thinks just, respecting the costs of the arbitration, if any question arises about the costs or their amount, and the award contains no sufficient provision concerning them.

2. In any of the following cases the Court shall have power to remit the award, or any of the matters referred to arbitration, for reconsideration by the Arbitrators or umpire, upon such terms as it thinks proper—

(a) if the award has left undetermined some of the matters referred to arbitration ;

(b) if it has determined matters not referred to arbitration ;

(c) if the award is so indefinite as to be incapable of execution ;

(d) if an objection to the legality of the award is apparent upon the face of the award.

13.—(1) No award shall be liable to be set aside except on the ground of perverseness or misconduct of the Arbitrators or umpire.

(2) Any application to set aside an award shall be made within three months after the publication thereof.

14. If no application is made to set aside the award, or to remit it or any of the matters referred, for reconsideration, or if the Court has refused any such application, either party may file the award in Court, and the award shall thereupon have the same force and effect for all purposes as a judgment.

#### B—ARBITRAL PROCEEDINGS

15. Every application in this rule to the Court under the Arbitration and Conciliation Act-

(a) to revoke an arbitration agreement under Section 2 thereof;

(b) to appoint an Arbitrator under Section 7 (3) thereof;

(c) to stay proceedings under Section 5 thereof;

(d) to remove an Arbitrator or umpire under section 30 thereof; .

- (e) to direct an Arbitrator or umpire to state the reasons for an award under Section 26 thereof;
- (f) to ask that a case on trial which is the subject of an arbitration agreement be referred to an arbitration under Section 4 thereof;
- (g) to set aside an award under section 29 thereof;
- (h) for declaration that an award is not binding on a party to the award on the ground that it was made without jurisdiction or because the Arbitrator misconducted himself or that the proceedings was arbitrary or that the award has been improperly procured under Section 30 thereof;
- (i) generally to determine any question of law arising in the course of or concerning any arbitration agreement or proceedings referred to the Court ;
- (J) to subpoena a witness to attend under Section 23 thereof, shall be made by originating motion.

#### C—ENFORCEMENT OF ARBITRAL AWARDS

16.—(1) An application to enforce an award on an arbitration agreement in the same manner as a judgment or order may be made ex parte, but the Court hearing the application may order it to be made on notice.

(2) The supporting affidavit shall—

- (a) exhibit the arbitration agreement and the original award or in case certified copies of each ;
- (b) state the name, usual or last known place of abode or business of the applicant and the person against whom it is sought to enforce the award;
- (c) state as the case may require either that the award has not been complied with or the extent to which it has not been complied with a the date of the application.

#### D—REGISTRATION OF FOREIGN ARBITRAL AWARDS

17. Where an award is made in proceedings on an arbitration in a foreign territory to which the Foreign Judgment (Reciprocal Enforcement) Act extends, if the award was in pursuance of the law in force in the place where it was made; it shall become enforceable in the same manner as a judgment given by a Court in that place and the proceedings of the Foreign Judgments (Reciprocal Enforcement) Act shall apply in relation to the award as it applies in relation to a judgment given by that Court.

#### ORDER 53

#### APPEALS AND APPLICATIONS UNDER THE TRADE MARKS ACT AND PATENTS AND DESIGNS ACT

##### A—GENERAL

- 1.—(1) The rules under the general procedure rules shall apply necessary modifications where there are no specific rules under this order.
- (2) Every appeal or application to the Court under this order shall be begun by originating motion.
- (3) Notice of the motion by which any appeal or application is made shall be served on the Registrar.

(4) Where the Registrar refers to the Court an application made to him under the Trade Marks Act or the Patents and Designs Act, as the case may be, unless within one month after receiving notification of the decision to refer, the applicant makes to the Court, the application referred to it by the Registrar, the applicant shall be deemed to have abandoned the application.

2.—(1) Every notice of motion by which an appeal is brought shall state the ground of the appeal and if the appeal is against a judgment, an order or any other decision of the Registrar, the notice shall state whether the appeal is against the whole or a part of the decision, and if against part only, shall specify the part.

(2) The notice shall be served, and the appeal entered within thirty days after the date of the order, determination or other decision against which the appeal is brought.

(3) The period specified in sub-rule (2) of this rule shall be calculated from the date in which notice of the decision or in a case where a statement of the grounds for a decision was given later than that notice on which the statement was given to the appellant by the person who made the decision or by a person authorized in that behalf to do so.

(4) The filing of an appeal under this order shall not operate as a stay of proceedings on the judgment, determination or other decision against which the appeal is brought, unless the Court by which the appeal is to be heard so orders.

3. Unless the Court otherwise directs, an appeal under this order shall not be heard sooner than twenty-one days after set vice of notice of the motion by which the appeal is brought.

4.—(1) The notice of the motion by which an appeal is brought may be amended by the appellant without leave, by supplementary notice served not less than seven days before the day appointed for the hearing of the appeal, on each person on whom the notice to be amended was served.

(2) Except with the leave of the Court hearing any such appeal, no grounds other than those stated in the notice of the motion by which the appeal is brought or any supplementary notice under sub-rule (1), maybe relied upon by the appellant at the hearing; but the Court may amend the grounds so stated or make any other order, on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

5.—(1) Upon the first hearing of the motion the Court shall give directions as to the procedure of appeal.

(2) The Court shall have power to receive further evidence on questions of fact, and the evidence may be given in such manner as the Court may direct either by oral examination in Court, by affidavit by deposition taken before an examiner or in any other manner.

(3) The appellant shall apply to the Registrar for a signed copy of any note made to him of the proceedings and furnish the copy to the Court for the use of the Court and in default of production of any such note, or if the note is incomplete, in addition to the note, the Court may hear and determine the appeal on any other evidence or statement of what occurred in those proceedings as appears to the Court to be sufficient.

(4) The Court may give any judgment or decision or make any order which ought to have been given or made by the Registrar, and make such further or other orders as the case may require or may remit the matter with the opinion of the Court for re-hearing and determination by the Registrar.

(5) The Court may, in special circumstances, order such security to be given for the costs of the appeal as may be just.

(6) The Court shall not allow an appeal on the ground merely of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court, substantial wrong or miscarriage of justice has been occasioned thereby.

(7) Where an appeal is against the refusal of a trade mark application by the Registrar, the Registrar shall appear or be represented and be heard in the proceedings on the appeal.

6.—(1) The Registrar—

(a) may refer any application ; and

(b) shall refer any application where the issue refers to a question of it to the Court for determination.

(2) Any reference made under sub-rule (1) to the Court shall be made by originating motion and shall be served on every party to the proceedings to which the application relates.

(3) The notice of motion shall state the grounds of the application, the question of law for determination, the contentions of the Registrar and of other parties if any, on the question of law to which the reference relates, and other relevant matters.

(4) Unless the Court otherwise directs, the motion shall not be heard sooner than fourteen days after service of notice thereof on all parties concerned.

(5) The Registrar shall appear or shall be represented and be heard in the proceedings of a matter referred to the Court.

B—TRADE MARKS

7.—(1) Every action for infringement of a registered trade mark shall be commenced by a writ of summons as provided in order 3 of these Rules.

(2) Where in any proceeding a claim is made for relief for infringement of the right to the use of a registered trade mark, the party against whom the claim is made may, in his defence, put in issue the validity of the registration of that trade mark or may counter-claim for an order that the register of trademarks be rectified by cancelling or varying the relevant entry or both.

(3) A party to any such proceeding who in his pleadings (whether a defence or counter-claim) disputes the validity of the registration of a registered trade mark shall serve along with the pleadings, particulars of the objections to the validity of the registration on which he relies in support of the allegation of invalidity.

(4) A party to any such proceeding who counter-claims for an order that the register of trademarks be rectified shall serve on the Registrar of trademarks, a copy of the counter-claim together with a copy of the particulars mentioned in sub-rule (2); and the Registrar of trademarks shall take part in the



proceeding as he may think fit but may not serve a defence or other pleadings unless ordered to do so by the Court.

#### C—PATENTS AND DESIGNS

8.—(1) An application for the nullification of a patent or a design, as the case may be, shall be by petition.

(2) The respondent to a petition shall serve an answer to the petition within twenty-one days after service of the petition on him.

(3) A petitioner shall serve along with his petition or other pleadings, particulars of the objections to the validity of the patent or design on which he relies.

(4) The particulars given pursuant to sub-rule (3) of this rule shall state every ground on which the validity of the patent or design is questioned and shall include such particulars as shall clearly define every issue which it is intended to raise.

(5) If the grounds stated in the particulars of objections include want of novelty or want of any inventive step, the particulars shall state the manner, time, place of every prior publication or user relied upon and, if prior user is alleged, shall—

(a) specify the name of every person alleged to have made the user;

(b) state whether the user is alleged to have continued until the priority date of the claim in question or of the invention, as may be appropriate, and, if not, the earliest and latest date on which the user is alleged to have taken place ;

(c) contain a description accompanied by drawings, if necessary, sufficient to identify the user; and

(d) if the user relates to machinery or apparatus, state whether the machinery or apparatus is in existence and where it may be inspected.

(6) Where in the case of an existing patent or design—

(a) one of the grounds stated in the particulars of objections is that the invention, so far as claimed in any claim of the complete specification, is not useful ; and it is intended, in connection with the grounds stated in sub-rule 1 of this rule to rely on the fact that an example of the invention which is the subject of any claim cannot be made to work, either at all or as, described in the specification, the particulars shall state that fact and identify each such claim and shall also include particulars of each such example, specifying the respect in which it is alleged that it cannot work or be made to work as described.

9.—(1) Except with the leave of the Judge hearing any action or other proceedings relating to a patent or a design, no evidence shall be admissible in proof of any alleged infringement, or of any objection to the validity of the patent or design, if the infringement or objection was not raised in the particulars of infringements or objections, as the case may be.

(2) In any action or other proceedings relating to a patent or a design, evidence which is not in accordance with a statement contained in the particulars of objection to the validity of the patent or design shall not be admissible in support of an objection unless the Judge, hearing, the proceedings, allows the evidence to be admitted.

(3) If any machinery or apparatus alleged to have been used before the priority date mentioned in rule 8 (5) (b) of this order is in existence at the date of service of the particulars of objections, no evidence of its user before that date shall be admissible unless it is proved that the party relying on the user offered, where the machinery or apparatus is in his possession, inspection of it to the other parties to the proceedings or where it is not, used all reasonable endeavours to obtain inspection of it for those parties."

10.—(1) Every action for infringement of a patent or a design shall be commenced by a writ of summons.

(2) In an action for infringement of a patent or a design (whether or not any other relief is claimed) and in proceedings by petition for the revocation of a patent or design—

(a) the plaintiff or petitioner shall within one month after service of a reply or answer or after the expiration of the period fixed for service thereof, take out a summons for directions as to the place and mode of trial returnable in not less than twenty-one days; and

(b) if the plaintiff or petitioner does not take out a summons in accordance with paragraph (a) of this sub-rule, the defendant or respondent, as the case may be, may do so, and the summons may be heard in Chambers or in Court as the Court thinks fit.

(3) The Court hearing a summons under this rule may give directions for—

(a) the service of further pleadings or particulars;

(b) the discovery of documents;

(c) securing the making of admission ;

(d) the service of interrogatories and of answers thereto;

(e) the taking by affidavit, of evidence relating to matters requiring expert knowledge, and for the filing of such affidavits and the service of copies thereof on the other parties ;

(f) the service on the other parties, by any party desiring to submit experimental proof, of full and precise particulars of the experiments proposed and of the facts which he claims to be able to establish thereby;

(g) the making of experiments, tests, inspections or reports ;

(A) the hearing, as a preliminary issue, of any question that may arise (including any question as to the construction of the specification or other documents), or as the Court thinks necessary or expedient for the purpose of defining and limiting the issue to be tried, restricting the number of witnesses to be called at the trial of any particular issue and otherwise securing that the case shall be disposed of, consistently with adequate hearing, in the most expeditious manner.

(4) Where evidence is directed to be given by affidavit, the deponent shall attend at the trial for cross-examination unless, with the concurrence of the Court, the parties otherwise agree.

(5) On the hearing of a summons under this rule the Court shall consider, if necessary of its own motion, whether an expert shall be appointed under rule 11 to assist the Court.

(6) No action for infringement or petition for the revocation of a patent or design shall be set down for trial unless and until a summons under this rule in the action or proceedings, has been taken out and the directions given on the summons have been carried out or the time fixed by the Court for carrying them out has expired.

11.—(1) In any proceeding under the Patents and Designs Act, the Court may at any time, and on or without the application of any party, appoint an expert to assist the Court by inquiring and reporting on any question of fact or of opinion not involving a question of law or construction as the Court may direct.

(2) The Court may nominate the expert and, where appropriate, settle any question or instructions to be submitted or given to him.

(3) Where the Court appoints an expert to inquire and report under sub-rule (1) of this rule, order 41 of these Rules shall apply in relation to his report as they apply in relation to a report made by a referee under that order.

12. In this order, "Registrar" means the Registrar of Trade Marks or the Registrar of Patents and Designs, as the case may be.

#### ORDER 54

#### APPEALS TO THE COURT FROM PROFESSIONAL BODIES

1. This order shall apply to any appeal to the; Court from decisions of professional bodies under the provisions of any written law which confers the right to appeal to the Court against any such decisions.

2. An appeal to the Court from a decision of any professional body other than those specified in this order shall be by notice of motion.

3. The evidence upon the hearing of the appeal shall be by affidavit except in so far as the Court at the hearing may direct oral evidence to. be given.

4. The notice of motion shall, be served before the expiration of six weeks after the date of the decision to which it relates, upon the professional body.'

5. The notice of motion shall state the grounds of appeal, and the date mentioned in the notice for the hearing of the appeal shall be not less than twenty-eight days after the service of the notice.

6.--(l) The appellant shall within seven days after service on the professional body of the notice of motion, file with the Registrar a copy of the notice and an affidavit or affidavits setting out the reasons stated, .by the professional body for its decision and the facts upon which the appellant intends to rely at the hearing and thereupon the motion shall be set down for hearing.

(2) If the notice of motion is not set down in accordance with this provision, the professional body may apply to the Court, upon notice to the appellant, for an order discharging the notice of motion and for the costs of the application.

7. The appellant shall deliver forthwith to the professional body, a copy of any affidavit filed under rule 6 of this order in support of the motion and any person intending to oppose the motion shall, four

days at least before the hearing, deliver to the appellant a copy of any affidavit intended to be used by him in opposition to the motion.

#### ORDER 55

##### FEES AND ALLOWANCES

1.—(1) Subject to the provisions of any written law, and of the foregoing orders the fees set out in Appendix 2 to these Rules shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in the Appendix.

(2) These fees are waived in respect of a party which is or represents a Government Ministry, non-Ministerial Departments, Federal, State and Local Government or any of their agencies.

(3) The allowances set out in Appendix 4 to these Rules shall be payable to the various categories of witnesses mentioned therein by any person at whose instance they testify.

(4) A witness who testifies at the instance of the Court acting on its own motion shall be paid out of public revenue.

2. The regulations set out in Appendix 5 to these Rules shall be observed by all officers of Court concerned with the rendering of services and or collection of fees payable under the provisions of the foregoing order.

#### ORDER 56

##### MISCELLANEOUS PROVISIONS

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

2.—(1) Where no specific procedure is given in any of the enactments in Appendix 1 to these Rules, the rules and procedure, in these Rules shall apply with necessary modification so as to comply with the subject matter the enactments in Appendix 1 to these Rules deal with.

(2) The Chief Judge may modify or add to the list of rules set out in Appendix 1 to these Rules.

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

2. In all cases in which the publication of any notice is required, the same may be made by advertisement in the Federal Gazette, unless otherwise provided in any particular case by any rule of Court or otherwise ordered by the Court.

3. A document shall not be filed unless it has endorsed on it, the name and number of the case, the date of filing, and whether filed by plaintiff or defendant, and on being filed the endorsement shall be initialled by the Registrar.

4. The fees set out in Appendix 3 to these Rules may be charged in respect of the duties of a notary public or of a notarial act and other duties therein mentioned.

5. The Registries of the Court shall, subject to the directives of the Chief Judge, be opened to the public on every day in the year from 8 o'clock in the forenoon to 2 o'clock in the afternoon, except on Saturdays and Sundays or on any day declared as public holiday by the Federal Government.

6. Where a matter arises in respect of which no provision or no adequate provisions are made in these Rules, the Court shall adopt such similar procedure in other Rules as will in its view do substantial justice between the parties concerned.

9. All writ of summons, originating summons and petitions shall be recorded in a permanent form by the Registrar as in Forms 1, 2, 3 or 4 in Appendix 6 to these Rules.

#### ORDER 57

##### POWERS OF THE CHIEF JUDGE TO AMEND RULES AND ISSUE PRACTICE DIRECTIONS

1. Whenever additional provisions are made to these Rules or any part thereof are amended or modified, the Chief Judge may issue directives for addition, publication or reprint of supplements to these Rules.

2. Whenever the Chief Judge makes amendment or modification to these Rules it shall be sufficient to publish same as supplemental provisions without the necessity of new body of Rules except when necessary.

3. The Chief Judge shall have the power to issue practice directions, protocols, directives and guidance towards the realization of speedy, just and effective administration of justice.

4. Such practice directions, protocols, directives and guidance shall be published and be given effect towards the realization of the fundamental objective of these Rules.

#### ORDER 58

##### ESTABLISHMENT OF COMMUNICATIONS AND SERVICE CENTRE FOR E-FILING

1. The Chief Judge may issue directions to establish a Communications and Service Centre for the purpose of achieving the fundamental objectives of these Rules, which may include designated electronic filing sites for On-line filing of processes and documents.

2. The Chief Judge shall make such further Rules to guide the effective operation of the Communications and Service Centre for E-filing.

3. The establishment of the Communications and E-filing Service Centre shall be as soon as practicable.