

SCHEDULE

CIVIL PROCEDURE RULES

ARRANGEMENT OF RULES

[ORDER 1](#)

FORM AND COMMENCEMENT OF ACTION

1. Mode of beginning civil proceedings.
2. (1) Proceedings which must begin by writ.
(2) Proceedings which may begin by originating summons.
(3) Proceedings which may begin, by motion or petition.

[ORDER 2](#)

EFFECT OF NON-COMPLIANCE

1. Effect of non-compliance
2. Application to set aside for irregularity.

[ORDER 3](#)

CAUSES OF ACTION

1. All causes of action may be joined.
- 2., Counterclaim against plaintiff,
3. Court may order separate trials, etc.

[ORDER 4](#)

WRIT OF SUMMONS

1. Registrar to issue writ of summons.
2. Contents of writ of summons.
3. Alteration of writ
4. Several causes of action in one suit.
5. Consolidation of causes or matters.
6. Leave to issue out of jurisdiction.
7. Printing.
8. (1) Forms of writ.

- (2) Provisions for framing additional forms.
- 9. Sealing of writs.
- 10. Endorsement of claim
- 11. (1) Endorsement as to capacity.
- (2) Summons for service out of Jurisdiction.
- 12. Endorsement as to legal practitioner and address.
- 13. Concurrent writ.
- 14. Writ for service out of jurisdiction.
- 15. "Issue", when effected.
- 16. Validity and renewal of writ.
- 17. Pre-action counselling certificate

[ORDER 5](#)

ORIGINATING SUMMONS

- 1. Application.
- 2. Forms for originating summons.
- 3. Contents of summons.
- 4. Endorsement as to capacity.
- 5. Endorsement as to legal practitioner and address.
- 6. Concurrent originating summons.
- 7. Summons for service out of jurisdiction.
- 8. "Issue" when effected.
- 9. validity and renewal of originating summons.
- 10. *Expatte* originating summons.

[ORDER 6](#)

PETITION: GENERAL PROVISIONS

- 1. Application.
- 2. Contents of petition.
- 3. Presentation of petition.
- 4. (1) Date of hearing and serving of petition.

- (2) Fixing time for hearing petition.
- 5. Certain applications not to be made by petition.

ORDER 7

INTERLOCUTORY APPLICATIONS

1. - *Motions Generally*

- 1. Time to apply.
- 2. (1) application by motion (2)
Motion list.
- 3. Affidavit to support motion.
- 4. Affidavit to be served with motion.
- 5. Hearing of motion
- 6. Adjournment.
- 7. Motion to be on notice, except in emergency.

2 - *Ex parte Motion.*

- 8. Affidavit in support of *ex parte* motion.
- 9. Arguments on motion.
- 10. Orders on *ex-parte* motions.
- 11. Court may vary or discharge order.

. 3 - *Orders to show cause.*

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

4 - *Notice of Motion*

- 17. Notice of motion.
- 18. Service *Of* notice.
- 19. Service on solicitor.
- 20. Copy of affidavit to be served with notice.

21. Order for service.
22. Service with writ of summons.
- 5 - *Evidence in Interlocutory Proceedings*
23. Oral evidence in addition to or in lieu of affidavits
24. Evidence w addition to or in lieu of affidavits.
25. Notice to parties and interested persons.
26. Evidence: How taken.
27. Affidavit not filed with motion paper.

[ORDER 8](#)

AFFIDAVITS

- 1 Evidence on motion.
2. Title of affidavits.
3. Use of defective affidavits.
4. Special time for filing affidavits.
5. Affidavit in support of *ex-parte* applications.
6. Noticed of intention to use affidavits in chambers.
7. Use .in chambers of affidavits used in court.
8. Alterations in accounts to be initialled.
9. Exhibits.
10. Certificate on Exhibit.
11. Application of evidence Act.
12. Affidavit taken in commonwealth Country admissible without proof of sea
etc.

[ORDER 9](#)

PLACE OF INSTITUTING AND OF TRIAL SUITS

1. Suits relating to land and personality distrained or seized
2. Suits for penalties.
3. Suits upon suits.
4. Other suits.

5. Suits commenced in wrong division.

6. Transfer of proceedings.

ORDER 10

PARTIES

A - General

1. Persons claiming jointly, severally or in the alternative, may be plaintiffs.

2. Action in name of wrong plaintiff.

3. All persons may be joined as defendants.

4. Counter-claim: mis-joinder.

5. (1) Non-joinder.

(2) Mis-joinder of parties.

6. Joint and several demand.

7. Suits or claims on behalf of others.

8. Where joint interest, parties may be authorised to sue or defend for others.

9. On an application for a declaration or an injunction

10. Partners.

11. Infants as parties.

12. Lunatics, etc.

13. (1) Appearance by infant: (2) Form 14.

14. Next friend.

15. Trustees, executors, etc., may be used as representing the estate.

16. Where defendant added.

17. Application to add or strike out party.

18. (1) Third party notice.

(2) How leave obtained.

19. Form and issue of notice,

20. Effect of notice.

21. Appearance.

22. Default by third party.

23. Procedure after default.
24. Third party directions.
25. Leave to defend.
26. (1) At trial or after.
(2) When no trial.
27. Persons trading as firm.
28. Probate intervention.
29. Recovery of land.
30. Landlord appearing.
31. Recovery of land, person not named defendant: fees.
32. Plaintiff to assign place for service.
33. Court may require security in respect of counter-claim.
34. Act may be done by legal practitioner or agent.

B - Alteration of Parties.

35. Where change of interest, court may make order enabling suit to proceed.
36. When suit does not abate.
37. When cause of action survives.
38. When cause of action accrues to survivors.
39. Death of sole or surviving plaintiff.
40. Dispute as to legal representative.
41. Death of one of several defendants or of a sole surviving defendant.
42. Bankruptcy of plaintiff.
43. Legal practitioner of plaintiff to give notice of abatement.
44. Abated cause, etc., to be struck out.

[ORDER 11](#)

SERVICE OF PROCESS

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 or principal who is out of jurisdiction.
13. B - Service out of jurisdiction
14. Service of writ out of jurisdiction.
15. Interpretation.
16. Application to be supported by affidavit.
17. (1) Notice of writ.
- . (2) Service of notice.
18. Service of originating summons, etc.
19. Service abroad by letter of request.
20. Service out of the jurisdiction under the Civil Aviation Act.
21. Service of documents abroad.
22. Saving for other modes of service.
23. Airmail.
24. Service for foreign tribunals.
25. Substituted service.
26. Other thereon.
- C- General Provisions.*
27. Where violence threatened.
28. Affidavit of service.
29. Expenses of service.
30. Service on Sunday or Public holiday.

31. Recording of service.

[ORDER 12](#)

APPEARANCE

1. Mode of entry of appearance.
2. Defendants address for service.
3. Fictitious address.
4. Defendants appearing by same legal practitioner.
5. Time for appearance.
6. Recovery of land: Limited defence.
7. Summons to set aside writ, etc.
8. Application.

[ORDER 13](#)

DEFAULT OF APPEARANCE

1. Claim for liquidated of appearance.
2. Liquidated demand: several defendants.
3. Recovery of land, etc.
4. Judgements for costs where satisfaction, etc., made.
5. Default of appearance in action actions not specially proved for.
6. Setting aside judgment.
7. Default of appearance to originating summons.
8. Default of appearance by infant or person of unsound mind.
9. Leave in actions by money-lender.
10. Application.

[ORDER 14](#)

ARREST TO ABSCONDING DEFENDANT

1. Defendant leaving jurisdiction or removing property.
2. Warrant of arrest.
3. Bail for appearance or satisfaction.
4. Deposit in lieu of bail.

5. (1) Defendant may be committed to custody
- (2) In what division proceedings may be taken.
6. Cost of subsistence of persons arrested.

[ORDER 15](#)

INTERIM ATTACHMENT OF PROPERTY

1. In what cases.
2. Application for attachment.
3. Form of Order.
4. Where defendant fails to show cause pr give security.
5. Rights of third parties not to be affected.'
6. " Removal of attachment.
7. In what courts proceedings may be taken.

[ORDER 16](#)

ACCOUNTS AND INQUIRIES.

1. Summary order for account.
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. Allowances.
7. Delay in prosecution of accounts, etc.
8. Distribution of fund before all persons entitled are ascertained.

[ORDER 17](#)

ALTERNATIVE DISPUTE RESOLUTION

1. Judge to encourage settlement

[ORDER 18](#)

REFERENCE TO REFEREES

1. Instruction to referee.
2. Interim inquiries of accounts.
3. General Powers of the referee.
4. Evidence.
5. Referee's authority in the inquiry.
6. Limitation in certain particulars.
7. Reports made in pursuance of reference.

[ORDER 19](#)

RECEIVERS

1. Application for receiver and injunction.
2. Giving of security by receiver.
3. Remuneration of a receiver.
4. Receiver's account.
5. Payment of balance, etc by receiver.
6. Default of by receiver.

[ORDER 20](#)

COMPUTATION OF TIME

1. Computation of time
2. No enlargement of time by consent of parties.
3. Court may extend time.
4. Notice of intention to proceed after a year's delay.
5. Time for applications to set aside award.

[ORDER 21](#)

THE UNDEFENDED LIST.

1. The undefended list: affidavit.

2. Copy of affidavit to be served
3. Notice of intention to defend.
4. Judgment in undefended suit.
5. Oral evidence.

[ORDER 22](#)

PROCEEDINGS IN LIEU OF DEMURRER

1. Abolition of demurrer.
2. Points of law to be raised by pleadings.
3. Dismissal of action.
4. Striking out pleading where no reasonable cause of action disclosed.
5. Declaratory judgment

[ORDER 23](#)

PLEADINGS

1. Service of statement of claim.
2. Service of defence.
3. Service of reply and defence to counter-claim.
4. (1) Pleadings to state material facts and not evidence.
(2) How facts to be stated. Particulars to be given necessary. Matters which must be specially pleaded.
(1) Further and better statement or particulars.
(2) Letter for particulars.
(3) Particulars before defence.
8. Order for particulars not a stay.
9. Special denial.
10. Denial by joinder of issue.
11. Pleadings to be consistent.
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. Presumptions of law.
27. Pleadings: probations.
28. Technical objection.
29. Application.
30. Claim beyond endorsement.
31. Stated or settled account.
32. Defence of tender.
33. Defence of set-off.
34. Judgment for balance.
35. Close of pleadings.

[ORDER 24](#)

AMENDMENT

1. General power to amend.
2. Amendment of endorsements and pleadings.
3. Application for leave.

4. Failure to amend after order.
5. Amendments how made.
6. Date of order or amendment to be marked.
7. Clerical mistakes and accidental omission.

[ORDER 25](#)

DEFAULT OF PLEADINGS.

1. Default of plaintiff in filing statement of claim.
2. Claim for debt or liquidated demand.
3. Several defendants: one default.
4. Default of defence: claim for unliquidated damages.
5. Default of defence: claim in detinue.
6. Default of defence: claim for possession of land.
7. Default of defence: mixed claims.
8. Default of defence to counter- claim.
9. Sitting aside judgment.
10. Interpretation.

[ORDER 26](#)

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
6. Stay of action.
7. Order upon summons
8. Failure of claimant to appear, or neglect to obey summons.
9. Costs etc.

[ORDER 27](#)

WITHDRAWAL AND DISCONTINUANCE

1. Withdrawal of appearance.
2. Discontinuance of action without leave.
3. Discontinuance of action, etc. with leave.
4. Effect of discontinuance.
5. Stay of subsequent action until costs paid.
6. Withdrawal of summons.

[ORDER 28](#)

ADMISSIONS

1. Admission of case of other party.
2. Notice to admit.
3. Judgment on admission of facts.
4. Admission and production of documents specified in list of documents.

[ORDER 29](#)

PAYMENT INTO AND OUT OF COURT

1. Payment into Court.
2. How far admission of claim. -3.
Acceptance of sum paid.
4. Non-acceptance of sum paid in.
5. Payment into Court with denial of liability.
6. Custody of money: payment into bank.
7. Payment by plaintiff.
8. No payment out without order.
9. Payment out: small intestate estate.

[ORDER 30](#)

DISCOVERY AND INSPECTION.OF DOCUMENTS

1. Discovery by interrogatories.
2. Application for leave to deliver interrogatories.
3. form of interrogatories
4. Corporation or companies.

5. Affidavits-answer:-filing.
6. Form 6? affidavit in answer.
7. Objections to answering interrogatories.
8. Order to answer or answer further.
9. Application for discovery of documents.
10. Discovery of documents in marine insurance policies.
11. Affidavit of documents.
12. Power to order list of documents in lieu of affidavit.
13. Production of documents.
14. Inspections of documents referred to in pleadings or affidavit.
15. Form of notice to produce.
16. Time for inspection when notice given under rule 14.
17. (1) Order for inspection.
(2) Affidavit in support of application: when required.
- 18.: (1) Verified copies.
(2) Power to order discovery of particular documents or class of documents.
19. Premature discovery
20. Non-compliance with order for discovery.
21. Service on party deemed sufficient service.
22. Liability of legal practitioner.
23. Using answer to interrogatories at trial.
24. Discovery against sheriff.
25. Application of order to infants.
26. Power to revoke order made.

ORDER 31

INTERLOCUTORY INJUNCTIONS 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.
7. Directions.
8. Allowance on income of property *pendent elite*.

[ORDER 32](#)

TRANSFER AND CONSOLIDATION

Transfers

1. Order transferring proceedings from Magistrate's Court to High Court or to Magistrate's Court.
2. Payment of fees for filing.
3. Duties of Registrar,
4. Party failing to attend.
- 5. Construction.**
6. Consolidation.
7. Interpretation.

[ORDER 33](#)

SETTLEMENT AND TRIAL OR ISSUES

1. At or before hearing.
2. Court may give directions,
3. When to be settled.
4. Notice to be given.
5. Court may attend or frame additional issues.
6. Time, etc of trial of question or issues.
7. Dismissal of action, etc after decision of preliminary issue.
8. Provisions subject to other written laws.

[ORDER 34](#)

APPLICATIONS AND PROCEEDINGS IN CHAMBERS

1. Business to be disposed of in chambers.

2. Procedure on applications in chambers.
3. Effect of order in chambers.

[ORDER 35](#)

TRIAL PROCEEDINGS IN GENERAL

1. Time for setting down.
2. (1) Attendance by proxy.
(2) Failure to appear by both parties.
3. Default of appearance by defendant at trial.
4. Default of appearance by plaintiff.
5. Judgment by default may be set aside on terms.
6. Adjournment of trial.
7. Evidence in mitigation of damages in action for defamation.
8. Judgment to be entered at or after trial.
9. Times of trial to be entered at or after trial.
10. Trial with assessors.
11. Order or proceeding.
12. Burden of proof: party to begin evidence.
13. Summing up.
14. Case of other party.
15. General reply.
16. Case closed.
17. Evidence in reply.
18. Address thereon.
19. Documentary evidence. .
20. List of exhibits.
21. Rejected exhibits.
22. Custody of exhibits after trial.
23. Office copy of list of exhibits.
24. Where written pleadings not filed or parties are illiterate.

25. Disallowance of various questions.

[ORDER 36](#)

WRITTEN ADDRESS

1. Application.
2. Party beginning shall within 21 days file written address on close of evidence.
3. The other party to file written address with 21 days of the calls evidence.
4. Filing of reply on point of law.
5. Oral argument.
6. Content
7. Copies of written address

[ORDER 37](#)

ORIGINATING SUMMONS PROCEEDINGS

1. Application for determination of question.
2. Construction of enactment.
3. Service.
4. Evidence.
5. Discretion of court.
6. Court may make the order prayed for.
7. Application affecting party in default of appearance.
8. Counter-claim by defendant.

[ORDER 38](#)

PROCEDURE RELATING TO EVIDENCE

1. Recording of Evidence
 2. Witnesses to be examined orally.
 3. Evidence by affidavits.
 4. Particular facts.
- Limitation of medical and expert evidence.
5. Limitation of plans, etc in evidence

6. Plans and expert evidence *in* accident actions.
7. Revocation and variation.
8. Extension to all proceedings..
9. Office copies admissible in evidence.
11. Court or Judge in chambers may order depositions to be taken.
12. Forms of order for a commission.
13. Letter of request.
14. Examination of witnesses abroad.
15. Form or order for examination of witnesses abroad.
16. Order for attendance of person to produce written, etc.
17. Disobedience to order for attendance.
18. Expenses of persons ordered to attend.
19. Examiner to have copy of writ and pleadings.
20. Examination: how taken.
21. Depositions to be taken down in writing, etc.
22. Refusal of witnesses to attend or be sworn.
23. Objection by witness to question.
24. Costs occasioned by refusal or objection.
25. Depositions to be transmitted to Registry.
26. Special report by examiner.
27. Depositions not to be given in evidence without consent or by leave of Judge.
28. Oaths.
29. Attendance of witness under *subpoena* for examination.
30. Practice as to taking evidence at any stage of action.
31. Special directions as to taking evidence.
32. Notice to use affidavit or depositions at trial.
33. Evidence in proceedings subsequent to trial.
34. Form of *praecipe* for *subpoena*.

35. Form of writ of *subpoena*.
36. *Subpoena* for attendance of witness in chambers.
37. Correction of errors in *subpoena*.
38. Service of *subpoena*.
39. Duration of *subpoena*.
40. Facilities for providing deeds, etc.
41. Obtaining evidence for foreign tribunals.
42. Banker's book: Court may order inspection.

[ORDER 39](#)

JUDGMENTS AND ORDERS

1. Delivery of judgment in open Court.
2. Notice when judgment reserved.
3. When parties deemed to have had notice.
4. Minute of judgment: its effect.
5. Where set-off allowed
6. Decree to be obeyed without demand.
7. Court may direct time for payment or performance and interest.
8. Payment by installments.
9. Date of order: when drawn.
10. What orders need not be drawn
11. Filing of orders.

[ORDER 40](#)

HABEAS CORPUS PROCEEDINGS

1. *Habeas corpus ad subjiciendum*
2. Application for leave.
3. Producing person detained in Court.
4. Service of order.
5. Return to the order for release.
6. Procedure at hearing.

7. Order to be clear.
8. Bringing up prisoner to give evidence, etc.
9. Form of writ.

[ORDER 41](#)

COMMITTAL FOR CONTEMPT OF COURT

1. Committal for contempt of Court.
2. Application to Court.
3. Saving for power to commit without application for the purpose.
4. Provisions as to hearing.
5. Contempt in face of court: saving for.
6. Powers to suspend execution of committal order.
7. Discharge or person committed.
8. Saving for other powers.

[ORDER 42](#)

APPLICATION FOR JUDICIAL REVIEW

1. Case appropriate for application for judicial review.
2. Joinder of claims for relief.
3. Grant of leave to apply for judicial review.
4. Delay in applying for relief.
5. Mode of applying for judicial review
6. Statements and affidavits.
7. Claim for damages.
8. Application for discovery, interrogatories, cross-examination, etc.
9. Hearing of application for judicial review.
10. Savings for person acting in obedience to *mandamus*.
11. Consolidation of applications.

[ORDER 43](#)

APPEALS FROM DISTRICT COURT, ETC

1. Notice of appeal.

2. Contents, etc. of notice appeal.
3. Copies of proceedings.
4. Appeal to Judge of High Court.
5. Respondent to be supplied with copy of proceedings.
6. Proceedings time.
7. Where time expires.
8. Constitution of court hearing appeals.
9. Time and place of hearing.
10. Appeals from courts below
11. Directions for departure
12. Where appellant fails to appear.
13. Where appellant appears.
14. Appeal limited to grounds given in notice.
15. Request to confirm judgment under appeal.
16. Counter-appeal.
17. Objections to form of grounds for appeal.
18. Defects in proceedings under appeal.
19. Defects in notice of appeal or recognisance.
20. Additional evidence.
21. Mode of taking evidence.
22. Fees.
23. Allowance to witnesses.
24. Stay of execution.
25. Costs.
26. Security for costs.
27. Security for costs.
28. Enforcement of judgment.
29. Enforcement of orders.
30. High court may enlarge time.

31. Interpretation.

[ORDER 44](#)

APPEALS TO THE HIGH COURT FROM DECISIONS OF AUDITORS

1. Application.
2. Method of appeal.
3. Evidence
4. Service
5. Contents of notice, date of hearing.
6. Reasons for appeal to be filed.
7. Copy of affidavits to be served on the parties.
8. Service on auditor other than the auditor who gave the decision.

[ORDER 45](#)

STAY OF EXECUTION PENDING APPEAL TO THE COURT OF APPEAL

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

[ORDER 46](#)

MISCELLANEOUS PROVISIONS

1. What orders to be made
2. Recovery of penalties and costs.
3. Notices.
4. Office hours.
5. Filing.
6. Fees.

[ORDER 47](#)

SITTINGS OF THE COURT AND VACATION

1. Days of sitting.
2. Public or private sittings of Court.
3. Office hours.

4. Days of sittings: long vacation.
5. Vacation Courts.
6. Vacation not reckoned in time for pleading.
7. Chambers.

[ORDER 48](#)

PROBATE AND ADMINISTRATION

Grant of Probate or Administration in General

1. Petition to be made to Probate Registrar.
2. Preservation of property.
3. Unauthorised persons intermeddling with property.
4. Production of testamentary papers.
5. Court may order production.
6. Examination respecting papers.
7. Notice to executor to come in and prove.
8. Liability of executor neglecting to apply for probate.
9. Identity.
10. Court may refuse grant until all persons interested are given due notice.
11. Value of property.
12. Answer required before grant.
13. Notice to prohibit grant.
14. Effect of notice.
15. Form of suit.

Custody of wills

16. Testator may deposit will.
17. Custody of will of which probate is granted.
18. Will not to be given out without order of Court.

Probate or Administration with Will annexed.

19. Examination of will as to its execution.
20. Proof of execution where attestation clause is defective.

21. Where will not executed according to law.
22. Evidence of failure of attesting witnesses.
23. Will of blind or illiterate testator.
24. Interlineations, erasures, obliterations.
25. Documents referred to in a will or annexed or attached.
26. Executor dying without proving or not appearing.
27. (1) Marking of Will or copy sworn to.
- (2) Codicils.
28. *Viva voce* examination of persons making affidavits

(Administration not with Wills)

29. Form of administration not with Will annexed.
30. Administration bond.
31. Assignment of bond.

Administration of Property

32. Administration summons.
33. Order for administration.
34. Orders relating to property.
35. Administration may be granted to officer.
36. Officer to act under direction of Court.
37. Court may appoint person to be administrator.
38. Remuneration of administrator.

Administration of estate of Foreign citizens

39. Securing and collection of estate.
40. Application by consular officer or person authorised by him to administer estate.

Administration generally

41. Accounts to be filed.

42. Duties and powers to be performed and exercised by probate Registrar.
43. Court may refuse application.

44. Grant to be signed by Probate Registrar.

[ORDER 49](#)

PROBATE (NON-CONTENTIOUS) PROCEDURE

1. Production to testamentary papers.
2. Court may order production.
3. Examination respecting papers.
4. Notice to executor to come in and prove.
5. Liability of executor to come and prove.
6. Petition to be made to Probate Registrar.
7. Application for grants through legal practitioners.
8. Personal applications.
9. Duty of Registrar on receiving application for grant.
10. Oath in support of grant.
11. Grant in additional name.
12. Marking of Wills.
13. Engrossment for purposes of record.
14. Evidence as to due execution of Will.
15. Execution of Will of blind or illiterate testator.
16. Evidence as to terms, conditions and date of execution of Will.
17. Attempted revocation of Will.
18. Affidavit as to due execution, terms, etc of Will.
19. Wills of persons on military service and seamen.
20. Evidence of foreign law.
21. Order of priority for grant where deceased left a will.
22. Grants to attesting witnesses, etc.
23. Value of property.
24. Answers required before grant.
25. Notice to prohibit grant.
 - (1) Effect of notice.

(2) Citations:

27. Form of suits.

Custody of Wills

28. Testator may deposit will.

29. Custody of wills of which probate granted.

30. Will not given out without order of Court

Probate or Administration with Will annexed.

31. *Examination of* will as to its execution.

32. Proof of execution where attestation clause is defective.

33. Where Will not executed according to law.

34. Evidence on failure of attesting witnesses.

35. Will of blind or illiterate testator.

36. Interlineations, erasures, obliterations.

37. Documents referred to in a Will.

38. Executor dying without proving or appearing.

39. (1) Marking of will or copy sworn to (2)

Codicils.

40. Viva voce examination of persons making affidavits.

41. Right of assignee to a grant.

42. Joinder of administrator.

43. Additional personal representatives.

44. Grants where two or more persons entitled in same degree.

45. Exceptions to Rules as to priority.

46. Grants to person having *spes successionis*.

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[ORDER 53](#)

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THE CIVIL PROCEDURE RULES

ORDER 1

FORMS AND COMMENCEMENT OF ACTION

1. Subject to the provisions of any enactment, civil proceedings may commence by writ, originating summons, originating motion or petition.
2. (1) Proceedings shall commence by writ, where a claim is -
 - (a) made by a plaintiff for any relief for any tort or other civil wrong;
 - (b) made by a plaintiff based on allegation of fraud; made by a plaintiff for damages for breach of duty whether the duty exists by virtue of a contract or a provision of law or independently of a contract or provision or death of a person or in respect of personal injuries to a person or damage to property; or made by an interested person, for a declaration.
- (2) Proceedings may commence by originating summons where -
 - (a) the main issue is, or likely to be one of construction -
 - (i) of a written law or of an instrument made under any written law; or
 - (ii) of any deed, Will, contract or other document or some other question of law; or
 - (b) there is unlikely to be a substantial dispute of law.
- (3) Proceedings may commence by originating motion or petition where these Rules or any written law provide.

ORDER 2

EFFECT OF NON-COMPLIANCE.

1. (1) Where in commencing proceedings, or at any stage in the course of a proceedings, there appears a failure to comply with the provisions of these Rules, in respect of time, place, manner, form or content or other, the failure may be treated as an irregularity, which shall not nullify the respective proceedings, document, Judgment or Order.
 - (2) A Court may, on the ground of a failure to comply, -
 - (a) set aside either wholly or in part, the proceedings in which the failure occurred or any step taken in a proceedings or any document, Judgment or Order in it; or
 - (b) exercise its powers under these Rules to allow amendments (if any) to be made; or

(c) make any Order dealing with the proceedings generally as it thinks just, on such terms as to costs.

An application to set aside for irregularity, -

(a) may be made by summons or motion on notice, and the grounds of objection shall be stated in the summons

or notice of motion; and

(b) shall not be allowed unless it is made within a reasonable time before the applicant takes any fresh step after

noticing the irregularity.

ORDER 3

CAUSES OF ACTION

1. (1) Subject to Rule 3, a plaintiff may in an action claim relief against the same defendant in respect of two or more causes

of action -

(a) where the defendant is alleged to be liable in the same capacity, in respect of all the causes of action; or

(b) where the defendant is Alleged to be liable in the capacity of executor or administrator of an estate in respect of one

or more of the causes of action and in his personal capacity but with reference to the same estate in respect of the others); or

(c) with leave of a Court.

(2) An application for leave under this Rule shall be made by motion ex-parte before a writ or originating summons, as

the case may be, is issued and an affidavit in support of the motion shall state the grounds for the application.

2. (1) Subject to sub-rule (2), a defendant in an action who claims a relief against the plaintiff in a matter may, instead of

bringing a separate action, make a counter-claim in respect of that matter; and include the counter-claim to his defence.

(2) Sub rule (1) shall apply 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 a defendant.

(3) A counter-claim may proceed even where Judgment is given for a plaintiff in his action, or plaintiff's action is stayed, discontinued or dismissed.

3. (1) Where claims in two or more causes of action are included by a plaintiff in the same action, or by a defendant in a

counter-claim, or where two or more plaintiffs or defendants are parties to the same action, and it appears to a 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 inconvenient, the Court may Order separate trials or make any expedient Order.

(2) On the application of a party against whom a counter-claim is made, that the subject-matter of the counter-claim

ought for any reason to be disposed by a separate action, a Court may Order the counter-claim to be tried separately.

4. Causes or matters pending in the same Court may by Order of the Court be consolidated and the Court shall give such directions necessary to the hearing.

ORDER 4

WRIT OF SUMMONS

1. (1) A writ of summons shall be issued by a Registrar, or other officer of Court empowered to issue the summons, on an

application.

(2) An application shall be made in writing by the plaintiff's solicitor who completes Form 1, as in the Appendix.

(3) Where an applicant for a writ of summons is illiterate, or has no solicitor, a Registrar or other officer of Court may

dispense with a written application, put himself instead and record full particulars of the oral application made and on that record a writ of summons may be prepared, signed and issued.

2. A writ of summons shall -

(a) contain the name and place of abode of the plaintiff and of the defendant so far as they can be ascertained; and

(b) state briefly and clearly -

- (i) the subject-matter of the claim, and the relief sought; and
 - (ii) the date of the writ, and place (called the return-place) of hearing.
- 3. Any alteration of a writ without the leave of Court shall render the writ void.
- 4. A plaintiff may unite in the same suit several causes of action, but a Court may Order separate trials where, it thinks that the cause(s) of action cannot be conveniently tried together or it is necessary or expedient for their separate disposal, and the Court may also make just Order as to adjournment and costs.
- 5. Causes or matters pending in the same Court may by, Order of the Court be consolidated and the Court shall give such directions as may be necessary to the hearing of the causes or matters so consolidated.
- 6. Subject to these Rules or any written law in force in the Federal Capital Territory, Abuja, no writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without leave of a Court or Judge in Chambers.
- 7. A writ of summons shall be printed on opaque A4 paper of good quality.
- 8. (1) A writ shall conform with Forms 1, 2, 3 or 4, as in the Appendix in all matters, causes and proceedings to which they are applicable, with such variations as circumstances may require.
(2) In case of proceedings for which forms are not yet prescribed by these Rules, the Chief Registrar may, with the approval of a Court, from time to time, frame the relevant forms.
- 9. The sealing of any writ or process may not be necessary in addition to the signature of the Registrar or other officer, by whom the writ or process shall be signed, except where sealing is expressly directed by these Rules or any written law.
- 10. (1) Before a writ is issued it shall be endorsed with the particulars of claim.
(2) Where the statement of claim is not endorsed on the writ, endorsement shall contain a concise statement of the nature of the claim made or the relief or remedy required in the action commenced.
(3) Where the claim made by a plaintiff is for a debt or a liquidated demand only, endorsement shall contain a statement of the amount claimed in respect of the debt or demand, and costs.
- 11. (1) Before a writ is issued it shall be endorsed where -
 - (a) the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues; and

(b) a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.

(2) Where a writ is issued in an action brought by a plaintiff acting by order or on behalf of a person resident outside the jurisdiction, it shall be endorsed with a statement of that fact and with the address of the person so resident outside jurisdiction.

12. (1) Where a plaintiff sues by a legal practitioner, the writ shall be endorsed with the plaintiff's address and the legal

practitioner's name or firm and a business address of his within the jurisdiction.

(2) Where the legal practitioner is the agent of another, the writ shall be endorsed with name of firm and business

address of his principal.

(3) Where a plaintiff sues in person, the writ shall be endorsed with -

(a) his residence address but where his place of residence is not within the jurisdiction or if he has no place of residence,

the address of a place within the jurisdiction where documents for him may be delivered or sent;

(b) his occupation; and

(c) an address for service.

13. (1) One or more concurrent writs may, at the request of a plaintiff, be issued at the time when the original writ is issued

or at anytime thereafter before the original writ ceases to be valid.

(2) With no limitation to the generality of sub-rule (1), a writ for service within the jurisdiction may be issued as a

concurrent writ, with one which, or notice of which, is to be served out of the jurisdiction; and a writ which or notice of which, is to be served out of the jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction.

(3) A concurrent writ is a true copy of the original writ with differences only (if any), as are necessary having regard to

the purpose for which the writ is issued.

14. A writ which, or notice of which, is to be served out of the jurisdiction shall not be issued without leave of the court, but where a claim made by a writ is one which by a written law, the Court has power to hear and determine despite the fact that the respondent is not within jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction, the provisions of this Rule shall not apply.

15. A writ is issued when signed on by a Registrar or other officer of Court duly authorised to sign the writ and accompanied by

- (a) a statement of claim;
- (b) copies of documents mentioned in the statement of claim to be used in evidence;
- (c) witness statement on oath; and
- (d) a certificate of pre-action counseling.

16. (1) For purposes of service, a writ (other than a concurrent writ) shall be valid in the first instance for twelve months

beginning with the date of its issue, and a concurrent writ shall be valid in the first instance for the remaining period of validity of the original writ which is the date of issue of the concurrent writ.

(2) Where a writ has not been served on a defendant, a Court may by Order extend the validity of the writ from time to

time for such period, not exceeding twelve months at any one time, beginning from the day following the anniversary or expiry, as specified in the Order, if an application for extension is made to a Court before that day or such later day as the Court may allow.

(3) A writ whose validity has been extended, shall be marked with an official stamp showing the period for which the

validity of the writ has been extended, before its is served on a defendant.

(4) Where the validity of a writ is extended, the Order shall apply 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.

17. A certificate of pre-action counseling signed by Counsel and the litigant, shall be filed along with the writ where proceedings are initiated by Counsel, showing that the parties have been appropriately advised as to the relative strength or weakness of their cases, and the Counsel shall be personally liable to pay the costs of the proceedings where it turns out to be frivolous.

ORDER 5

ORIGINATING SUMMONS

(1) An originating summons shall be in Forms 54, 55, 56, 57 or 58, as in the Appendix, whichever is appropriate.

(2) The party taking out an originating summons (other than an ex parte summons) is described plaintiff and the party against whom it is taken out is described as defendant.

2. (1) An originating summons shall include a -
 - (a) statement of questions, which the plaintiff seeks determination or directions of the Court;or
 - (b) concise statement of the relief or remedy claimed with sufficient particulars to identify the cause(s) of action.
3. (1) An originating summons shall be endorsed before it is issued. (2) An endorsement shall contain, where -
 - (a) a plaintiff sues in a representative capacity, a statement of such capacity; or
 - (b) a defendant is sued in a representative capacity, a statement of such capacity;
 - (c) a plaintiff is acting by Order or on behalf of a person resident outside the jurisdiction, a statement of such fact, and the address of the person;
 - (d) a plaintiff sues by a legal practitioner, plaintiff's address and the legal practitioner's name or firm and a business address of his within the jurisdiction;
 - (e) the legal practitioner is the agent of another, the name or firm and business address of his principal;
 - (f) a plaintiff sues in person,
 - (i) the residential address, or if the residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction where documents for him may be delivered or sent;
 - (ii) his occupation; and
 - (iii) an address for service.
4. An originating summons for service within the jurisdiction may be issued and marked as a concurrent originating summons with one for service out of the jurisdiction; and an originating summons for service out of jurisdiction may also be issued and marked as a concurrent originating summons with one for service within the jurisdiction.
5. An originating summons which, or notice of which, is to be served out of the jurisdiction shall not be issued without leave of a Court, but where a claim made by an originating address summons is one which, by a written law, a Court has power to hear and determine, despite the fact that the respondent is not within jurisdiction of Court, or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction, the provisions of this Rule shall not apply.

6. An originating summons is issued on signature by a Registrar or other officer of the Court duly authorized, accompanied by relevant documents the applicant may wish to rely on.

7. (1) For purposes of service, an originating summons (other than a concurrent one) shall be valid in the first instance for

twelve months beginning on the date of issue and a concurrent originating summons shall be valid in the first instance only for the remaining period of validity of the original summons, at the date of issue of the concurrent summons.

(2) Where an originating summons has not been served on a defendant, the Court may by Order extend its validity from time to time for a period, not exceeding twelve months at any one time, beginning with the day following the anniversary of issue or order, provided, an application for extension is made to the Court within a reasonable time before or after that day.

(3) An originating summons of extended validity shall be marked with an official stamp showing the period of extension

before it served on a defendant.

(4) Where the validity of an originating summons is extended, the Order shall apply to any other summons (whether

original or concurrent) issued in the same action which has not been served, so as to extend the validity of that other summons until the expiration of the period specified in the Order.

(5) No ex-parte originating summons shall be issued unless filed along with a summons inter parties.

ORDER 6

PETITION: GENERAL PROVISIONS

(1) A petition shall contain a concise statement of the claim made or relief or remedy required in the proceedings.

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

(3) Where a person brings a petition -

(a) by a legal practitioner, the petition shall be endorsed with that person's address and the legal practitioner's name or

firm and a business address of his within the jurisdiction, and also, if the legal practitioner is the agent of another, the name or firm and business address of his principal;

(b) in person, the petition shall be endorsed with -

(i) the address of his place of residence and if his place of residence is not within the jurisdiction or if he has no place-of

residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent;

(ii) his occupation; and

(iii) an address for service of the Respondent.

(4) A petition shall be presented in the Court Registry, where a day and time for its hearing shall be fixed by the Registrar.

(5) Unless the Court directs, a petition shall be served on a Respondent not less than seven days before the day fixed for the hearing.

(6) No application in any pending cause or matter may be made by petition.

ORDER 7

INTERLOCUTORY APPLICATIONS

—Motions Generally

1. An interlocutory application may be made at any stage of an action.

2. (1) Where by these Rules an application is authorized to be made to a Court or Judge in chambers or a Registrar, the application may be made by motion. (2) A Registrar shall draw up, for each day on which there are any motions to be heard, a motion list with an entry of the names of each cause, the party moving, and the terms of the Order sought.

3. A motion shall be supported by affidavit setting out the grounds on which the party moving intends to rely and no affidavit shall be used at the hearing unless it is duly filed.-

4. Where service of a motion is required by these Rules or directed by a Court or Judge, the motion shall be served together with all affidavits on which the party moving intends to- rely.

5. A motion may be heard at anytime while a Court is sitting.

6. The hearing of any motion may, from time to time, be adjourned on such terms as a Court may think fit.

7. (1) A motion shall be made with at least two (2) days notice to the parties affected.

(2) Despite sub rule (1), a Court may make an Order ex parte on such terms as to costs and undertakings, where it is

satisfied that to delay a motion till after notice is given to the parties affected would entail irreparable damage or serious mischief to the party moving.

(3) A motion ex parte for an interim Order of injunction shall not be heard unless a Motion on Notice has been filed.

2 Exparte Motion

8. A motion ex parte shall be supported by an affidavit stating sufficient grounds why delay in granting the Order sought would entail irreparable damage or serious mischief to the party moving.

9. A party moving a Court ex parte may support his motion by argument addressed to the Court on the facts put in evidence, while the other party to the proceedings, although present in court shall not be heard.

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

11. Where an Order is made on a motion ex parte, a party affected by it may within seven days after service of the Order, or

within further time as a Court may 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 with or without imposing terms as to costs or security, or, as may seem just.

12. (1) An Order made on a motion ex-parte shall last for only 14 days after the party affected by the Order has applied for

the Order to be varied or discharged or last for another 14 days after application to vary or discharge it had been concluded. (2) Where a motion to vary or discharge an ex-parte Order is not taken within 14 days of its being filed, the ex-parte (2) Order shall automatically lapse.

3- Orders to show Cause

13. An Order to show cause shall specify a day when cause is to be shown, to be called the return-day, usually 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 state other facts on which he relies to move the Court to discharge or vary the Order.

15. Where a person served does not appear on the return-day, and it appears to a 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 other Order as seem just.

16. If a person served appears, or a Court is satisfied that service has been duly effected, the Court may proceed with the matter.

17. A Court may either discharge the Order or make the Order absolute, or adjourn the consideration of it, or permit further evidence to be produced in support of or against the Order, and may modify the terms of the Order to meet the merits of the case.

4.— **Notice of Motion**

18. Unless the Court gives special leave, there shall be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

19. Notice of a motion may be served by any person, without leave of a Court.

20. Where a party acts by a legal practitioner, service of notice of a motion on the legal practitioner shall be deemed good service on that party.

21. There shall be served along with the notice of motion a copy of an affidavit on which the party moving intends to rely at the hearing of the motion.

22. Where at the hearing of a motion, a Court is of opinion that a person, to whom notice has not been given, ought, to have or to have had the notice, the Court may either dismiss the motion, or adjourn the hearing, in order that the notice may be given, on such terms as the Court may see fit.

23. A party to a motion on notice shall file and serve his written address on which he intends to rely in the argument of or opposition to the motion except in the case of an ex parte application, in which case the

address shall be filed at the time of service of the motion.

5.— **Evidence in Interlocutory Proceedings**

24. (1) Oral evidence shall not be heard in support of any motion unless by leave of a Court.

(2) Where a party moving is illiterate, a Court may direct evidence to be taken by the Registrar or other officer of Court,

and the minute(s) of that evidence may be used as an affidavit.

25. A Court may, in addition to or in lieu of affidavits examine any witness viva voce, or receive documents in evidence and may summon a person to attend to produce documents or be examined or cross-examined before it.

26. Where a Court summons a person, it shall give reasonable notice to the person summoned, and to such other parties interested, as the Court considers 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.

27. The evidence of a witness on any such examination shall be taken in like manner as at the hearing of a suit.

28. On hearing of a motion the Court may, on such terms as to cost and adjournment, allow any additional affidavit to be used after the affidavit has been duly filed and served on the opposite side.

ORDER 8

AFFIDAVITS

1. On a motion, petition or summons, evidence may be given by affidavit; but a Court or Judge chambers may, on the application of a party, order the attendance for cross-examination of the deponent, but where such order has been made and the deponent does not attend, his affidavit shall not be used as evidence unless by special leave.

2. An affidavit shall be titled in the cause or matter in which it is sworn; but where there are more than one plaintiff or

defendant, it is sufficient to state the full names of the first plaintiff and first defendant respectively, and indicate that there are other plaintiffs or defendants, as the case may be.

3. A Court or a Judge in chambers may receive an affidavit sworn to, for the purpose of being used in any cause or matter despite any defect by a misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form, and may direct a memorandum to be made on the affidavit that it was so received.

4. Where a special time is limited for filing an affidavit, any affidavit filed after that time shall not be used, unless by leave of a

Court or Judge in chambers.

5. Except by leave of a Court or Judge in chambers, no order made ex parte, founded on an affidavit shall be of any force

except the affidavit on which an application was made was actually made before the order was applied for and produced or filed at the time of making the motion.

6. A party intending to use an affidavit in support of any application made by him in chambers shall give notice to other parties concerned.

7. An affidavit which has been previously made and read in Court on any proceeding in a cause or matter may be used before a Judge in chambers.

8. Every alteration in an account verified by affidavit to be left at chambers shall be marked with the initials of the commissioner before whom the affidavit is sworn, and the alterations shall not be made by erasure.
9. Accounts, extracts from registers, particulars of creditors' debts and other documents referred to by affidavit, shall not be annexed to the affidavit, or referred to in the affidavit as annexed but shall be referred to as exhibits.
10. Every certificate on an exhibit referred to in an affidavit signed by the commissioner before whom an affidavit is sworn shall be marked with the short title of the cause or matter.
11. Sections 77 to 89 of the Evidence Act governing affidavits, shall apply as part of these Rules.
12. A document bearing the seal or signature of a Court, Judge, Notary Public or a person having authority to administer oath in any part of the Commonwealth outside Nigeria in testimony of an affidavit or him in that part shall be admitted in evidence without proof.

ORDER 9

PLACE OF INSTITUTING AND OF TRIAL OF SUITS

1. All suits relating to -

(a) land, and mortgage or charge, or other interest or injury; or

(b) personal property distrained or seized for any cause, shall, where the land is situated, or the distress or seizure took

place in the Federal Capital Territory, be commenced and determined in the High Court of the Federal Capital Territory, Abuja.

2. All actions for recovery of penalties and forfeitures and also all actions against public officers, shall where the cause of action arose in the Federal Capital Territory, be commenced and tried in the High Court of the Federal Capital Territory, Abuja.

3. All suits for specific performance, or breach of contract, shall, where the contract ought to have been performed, or where the defendant resides or carries on business in the Federal Capital Territory, be commenced and determined in the High Court of the Federal Capital Territory, Abuja.

4. (1) All other suits shall where the defendant resides or carries on business or where the cause of action arose in the

Federal Capital Territory, be commenced and determined in the High Court of the Federal Capital Territory, Abuja.

(2) Where there are more defendants than one, resident in different Judicial Divisions, the suit may commence in any of

them, subject to an Order the Court may make, on the application of any of the parties, or on its own motion, as to the most convenient arrangement for the trial of the suit.

5. A suit commenced in a Judicial Division other than where it ought to have been commenced may continue in that Judicial Division until final determination, unless the Court directs, or the defendant pleads specially an objection to the jurisdiction before or at the time of pleadings.

6. No proceedings which may have been taken previously to such plea in objection shall be in any way affected thereby; but the Judge shall order that the cause be transferred to the Judicial Division to which it may be proved to his satisfaction to belong, or, failing such proof, that it be retained and proceed in the Court in which it has been commenced, and the order shall not be subject to appeal.

ORDER 10

PARTIES

1. (1) More than one person may be joined in an action as plaintiffs in whom a right to relief (arising out of the same

transaction or in a series of transactions) is alleged to exist whether jointly or severally, where, if the plaintiffs decide to bring separate actions, any common question of law or fact would arise; and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, without any amendment.

(2) Where a defendant applies and it appears that the joinder in sub rule (i) may embarrass any of the parties or delay

the trial of the action, a Court or Judge in chambers may order separate trial or make such order as may be expedient in the circumstances.

2. Where an action commences in the name of a wrong person as plaintiff, or where is doubtful that it commenced in the name of the right plaintiff, a Court or Judge in chambers, if satisfied that it commenced through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, may order any other person to be substituted or added as plaintiff upon such terms as may be just.

3. (1) More than one person may be joined as defendants against whom the right to any relief is alleged to exist, whether

jointly or severally.

(2) Judgment may be given against any one or more defendants according to their respective liabilities.

4. Where a person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counter-claim

or set-off, the defendant may establish his set-off or counter-claim against the other parties other than the co-plaintiff so joined, despite the mis-joinder.

5. (1) Where it appears to a Court, at or before hearing, that all the persons possibly interested in the suit have not been

made parties, the Court may adjourn, and direct that those persons be made either plaintiffs or defendants in, the suit.

(2) Further to sub rule (1), a Court shall issue a notice to be served on the relevant party(s), as if it were a writ of

summons or in such other manner as the Court thinks fit to direct.

(3) Where there is proof that notice was duly served, the person served whether he appears or not, shall be bound by all

proceedings:

(4) A person served, but who fails to appear within a time limited by the notice for his appearance, may at any time

before judgment apply to the Court for leave to appear, and the leave may be given upon such terms as the Court thinks fit.

(5) A Court may, at any stage of the proceedings and on such just terms Order that the name of any party improperly

joined, be struck out, whether as plaintiffs or defendants.

(6) Where a person has a joint and several demand against more persons than one, either as principals or sureties, it is

not necessary for him to bring before the Court, as parties, all persons liable, as he may proceed against any one or more persons severally or jointly and severally liable.

7. (1) Where a plaintiff sues, or a defendant counter-claims, in any representative capacity, it shall be so expressed on the

writ.

(2) A Court may Order any of the persons represented to be made parties either in lieu of, or in addition to, existing

parties.

8. Where more persons than one have the same interest in one suit, one or more of them may, with the approval of the

Court, be authorized by the other persons interested to sue or to defend the suit on behalf of all parties.

9. On an application for a declaration or an injunction, the Court may appoint one or more persons to represent any class or group of persons who -

(a) may be commonly interested in any matter; or

(b) are commonly affected or likely to be commonly affected by any act or action of any person or authority, where

such class or group or persons may not be easily ascertainable or conveniently found, if satisfied that it is expedient to do so.

10. (1) Any two or more persons likely to benefit or be liable, as partners, may sue or be sued in the name of the partnership

when the cause of action arose.

(2) A party to an action may apply to the Court for a statement of the names and addresses of the persons who were

partners when a cause of action arose, to be furnished in a manner directed by the Court, and verified on oath.

11. An Infant may sue as plaintiff by its next friend, and may defend by guardian(s) appointed for that purpose.

12. A lunatic or person of unsound mind may sue as plaintiff by their committee or next friend, any may defend any action by

their committee or guardian(s) appointed for that purpose.

13. (1) An infant shall not enter an appearance except by his guardian or litem.

(2) An order for appointment of a guardian shall not be necessary where a legal practitioner applying to enter

appearance, makes and files an affidavit in Form 14, as in the Appendix with necessary variations.

(3) This provision shall also apply where an infant is served with a petition or notice of motion, or a summons.

14. Before the name of a person is used in an action as next friend, other party, or relator of an infant, that

person shall sign a written authorization, which shall be filed in the Registry.

15. (1) Trustees, executors, or administrators may sue and be sued as representatives of the property or estate in which they

act, without joining any of the persons beneficially interested in the trust or estate, but the Court or a Judge in chambers may at any stage of the proceedings, order any such beneficiary to be made a party, either in - addition to or in lieu of existing parties.

(2) The provisions of Rule (11) shall also apply to trustees, executors and administrators suing or sued in proceedings

to enforce a security by foreclosure.

16. Where a defendant is added or substituted, the writ of summons shall be amended accordingly and the plaintiff shall, unless ordered by the court or a Judge in chambers, file an amended writ and cause the new defendant to be served in the same manner as original defendants are served and the proceedings shall be continued as if the new defendant had originally been made a defendant,

17. An application to add, strike out or substitute a party may be made to a Court or Judge in chambers at anytime before trial, by motion or summons, or in a summary manner at the trial of the action

18. (1) Where in an action, a defendant claims against any person not already a party to the action ("in this order called "the

third party") that -

(a) he is entitled to indemnity; or

(b) he is entitled to any relief connected with the original subject matter of the action and substantially the relief claimed

by the plaintiff; or

(c) an issue relating to the subject-matter is substantially the same arising between the plaintiff and the defendant and

should properly be determined between the plaintiff, the defendant and the third party, or between any of them, the Court or a Judge in chambers may give leave to the defendant to issue and serve a third-party notice.

(2) A Court or Judge in chambers may give leave to issue and serve a third-party notice on -

(a) an ex parte application supported by affidavit; or

(b) a Court direction, at the hearing of a summons for issue to plaintiff.

(3) Leave shall not be granted where proceedings have commenced and an order for pleadings has already been made

by the Court before the day of commencement of these Rules.

19. (1) The third-party notice shall -

(a) state the grounds of the claims or the nature of the issue sought to be determined and the extent of relief claimed;

(b) conform with Forms 23 or Form 24, as in the Appendix with such variations possible; and

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

(2) The notice shall, unless Ordered by a Court or 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.

20. A third party shall, as from the time of the service of the notice, be a party to the action with the same right of defence against any claim made against him.

21. (1) A third party may enter an appearance in an action within -

(a) eight days from service or such time as the Court or Judge in chambers may direct, as specified in the notice; or

(b) at least, thirty days from service, where the third party is served in Nigeria outside the jurisdiction of the High Court

of the Federal Capital Territory, Abuja.

(2) A third party who fails to appear within a time specified in sub rule 1, may apply to a Court or Judge in chambers for

leave to appear, which may be given upon any terms.

22. Where a third party duly served with a notice does not enter an appearance nor file any pleading which he has been ordered to file, he is presumed to admit the claim(s) stated in the notice and shall be bound by all decisions in the proceedings.

23. (1) Where a third party defaults as in rule 21, the defendant shall at any time, be entitled to enter judgment against the

third party -

(a) after satisfaction of the Judgment against himself, to the extent of any contribution or indemnity claimed in notice; or

(b) by leave of a Court or Judge in chambers, before the satisfaction of the Judgment against himself, in the relief

claimed.

(2) The Court or a Judge in chambers may set aside or vary the judgment against the third party upon such terms as may

seem just.

24. (1) Where a third party enters an appearance, the defendant giving notice may, after serving all interested parties notice

of the intended application apply to a Court or Judge in chambers for directions.

(2) A Court or Judge in chambers may -

(a) where the liability of a third party to the defendant giving notice is established on the hearing of the application,

enter judgment order such judgment against the third party in favour of the defendant giving notice, as the nature of the case may require; or

(b) where satisfied that there is an issue to try between the plaintiff, the defendant and the third party as to the liability

of the defendant to the plaintiff or the liability of the third party to make any contribution or indemnity claimed, in the whole or part, or as to any other relief or remedy claimed in the notice by the defendant order that question or issue to be tried in such manner as a Court or Judge in chambers may direct; or

(c) dismiss the application.

(3) Any directions given pursuant to this rule may be given either before or after any judgment has been entered in

favour of the plaintiff against the defendant in an action, and may be varied from time to time or rescinded.

(4) A third party proceedings may at any time be set aside by a Court or Judge in chambers.

25. A Court or Judge in chambers upon the hearing of an leave to application for directions may, if desirable give the third party, leave -

(a) to defend the action either alone or jointly with the original defendant, on such terms as may be just; or

(b) to appear at the trial and take part in it, and generally may Order, proceedings to be taken, pleadings or documents

to be filed, amendments to be made, and give such directions as –

(i) appear proper for having the issues and the rights and liabilities of the parties most conveniently determined and

enforced; and

(ii) to the mode in, and extent to, which the third party shall be bound by the judgment.

26. (1) A trial Judge in an action may, enter judgment as the nature of the case may require -

(a) for or against a defendant giving the notice or for or against the third party; or

(b) granting appropriate relief to a defendant or to the third party as would occasion if the third party had been made a

defendant to an action duly instituted against him by the defendant:

(2) An execution for Judgment obtained in sub rule 1 shall not be issued without the leave of a Court or Judge in

chambers, until after satisfaction by a defendant of the judgment against him.

(3) Where an action is decided otherwise than by trial, a Court or Judge in chambers may -

(a) on an application by motion or summons, make an Order as the case may require; and
(b) where the plaintiff has recovered judgment, cause to enter such Judgment for or against the defendant giving notice
or the third party.

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

28. In probate actions, a person not named in the writ may intervene and appear in the action, on filing an affidavit showing how he is interested in the estate of the deceased.

29. A person not named as a defendant in a writ of summons for the recovery of land may by leave of a Court or Judge in chambers, appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or by his tenant.

30. A person appearing to defend an action for the recovery of land as landlord, in respect of property of which he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

31. Where a person not named as defendant on any writ of summons for the recovery of land has obtained Leave of a Court or Judge in chambers to appear and defend, he shall -

(a) enter an appearance according to this Order; and
(b) pay the proper fees for the notice of such appearance to be given by the Registrar, to the plaintiff's legal practitioner
or to the plaintiff who sues in person; and
(c) from then on, be named as a party defendant to the action.

32. Where a plaintiff, on whose behalf a suit is instituted (either alone or jointly with another person), is out of, or temporarily within jurisdiction, he shall disclose a place within the jurisdiction where notices or other Court papers issuing may be served on him.

33. Where on oath, the Court is satisfied that a defendant has a bona fide counter-claim against a plaintiff which can be conveniently tried by the Court, the Court may, stay proceedings in the suit instituted by the plaintiff until plaintiff provides enough security to comply with the orders or judgment of the Court with respect to such counter-claim as the Court thinks reasonable.

34. Where by these Rules, an act may be done by a party in an action, that act may be done either by the party in person, or by his legal practitioner, or by his agent (unless an agent is expressly debarred under these Rules or any written law in force in the Federal Capital Territory, Abuja.

B - Alteration of Parties

35. (1) Where after the commencement of a suit -

(a) a change of interest occurs to any party; or

(b) a party dies or becomes incapable of carrying on; or

(c) the suit in any way becomes defective or incapable of being carried on, a person interested may obtain from the

Court, an Order for curing the defect or enabling proper parties to carry on the proceedings.

(2) A person served with an order obtained in sub rule (1) may, within the time prescribed by a Court, apply to the Court

to discharge or vary the order.

36. The death of a plaintiff or defendant shall not cause a suit to abate if the cause of action survives.

37. Where there are two or more plaintiffs or defendants, and one of them dies, but the cause of action survives the surviving

plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, the suit shall proceed at the instance of the surviving plaintiff(s) against the surviving defendant(s).

38. (1) Where there are two or more plaintiffs and one of them dies, but the cause of action does not survive the surviving

plaintiff(s) alone, but them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of the legal representative of the deceased plaintiff, enter the name of the legal representative in the suit in the place of the deceased plaintiff and the suit shall proceed at the instance of the surviving plaintiff(s) and the legal representative of the deceased plaintiff.

(2) Where no application is made to Court by any person claiming to be the legal representative of a deceased plaintiff,

the suit shall proceed at the instance of the surviving plaintiff(s), and the legal representative of the deceased plaintiff shall, after notice to appear, be interested in, and be bound by Judgment given in the suit, as if the suit had proceeded at his instance co-jointly with the surviving plaintiff(s), unless the Court sees cause to direct otherwise.

39. (1) Where a sole plaintiff or sole surviving plaintiff dies, a Court may, on an application of the legal representative of the

deceased sole plaintiff, enter the name of that legal representative in the place of the plaintiff in the suit, and the suit shall then proceed.

(2) Where no application is made to a Court within a reasonable time by any person claiming to be the legal

representative of the deceased sole plaintiff or sole surviving plaintiff, a Court may make an Order that the suit shall abate, and award to the defendant, reasonable costs which he may have incurred in defending the suit, to be recovered from the estate of a deceased sole plaintiff or surviving plaintiff.

(3) A Court may, on an application of a defendant, and on terms as to costs as may seem just, make an Order for

bringing in the legal representative of the deceased sole plaintiff or surviving plaintiff; to proceed with the suit, In order to come to a final determination of the issues in dispute.

40. (1) Where a dispute arises as who is the legal representative of a deceased plaintiff, a Court may either stay action in the

suit until the dispute is duly determined in another suit, or decide at or before hearing, who shall be admitted to be such legal representative for the purpose of prosecuting that suit

(2) A party in a suit may change his legal practitioner but, unless and until notice of that change is filed and copies of the

notice are served on each party to the matter, the former legal representative shall be considered the legal practitioner of the party until the conclusion of the matter.

41. (1) Where there are two or more defendants and one of them dies, the cause of action survives, but does not survive

against the surviving defendant(s) alone.

(2) In the case of the death of a sole defendant, or sole surviving defendant, where the action survives,

(3) a plaintiff may make an application to Court, specifying the name, description and place of abode of any person

whom he alleges to be the legal representative of the deceased defendant and whom he desires to be made the defendant in his stead.

(4) A Court: shall then enter the name, of the legal representative in the suit in the place of the deceased defendant and

shall issue an Order to him to appear on a day mentioned, to defend the suit and the case shall then proceed as if the legal representative had originally been made a defendant, and had been a party to the former proceedings in the suit.

42. (1) The bankruptcy of a plaintiff in a suit, maintained by an assignee or trustee for the benefit of creditors, shall not be a

valid objection to the continuance of such suit, unless the assignee or trustee declines to continue the suit, or neglects or refuses to give security for costs in it. Within a reasonable time as a Court may Order.

(2) Where an assignee or trustee neglects or refuses to continue the suit and to give the security within the time limited

by an Order, a defendant may, within 8 days after the neglect or refusal, plead the bankruptcy of the plaintiff as a reason for abating the suit.

43. Where a suit becomes abated or there is a change of interest as these Rules have provided for, the legal practitioner for the plaintiff shall certify the fact to the Registrar, who shall cause an entry of that fact made in the Cause Book opposite the name of the cause or matter.

44. Where a cause or matter has been standing for 1 year in the Cause Book marked as "abated" or "standing over generally", that cause or matter, at the expiration of the year shall be struck out of the Cause Book.

ORDER 11

SERVICE OF PROCESS

A - Service within Jurisdiction

1. (1) Service of writs of summons, notices, petitions, pleadings, orders, summons, warrants, all other court processes, and written communications of which service is required, shall be made by the -

- (a) bailiff or other officer of Court authorized by the Court; or
- (b) a person appointed (either specially or generally) by a Court or Judge in chambers;
- (c) a solicitor who gives an undertaking to a Registrar receiving the process, at the time of filing, that his chambers shall

serve the process on the other party or his solicitor, and would also file with the Registrar a proof of the service effected, signed by the other party or his solicitor;

- (d) Order of a Judge in chambers of the mode, of service.

(2) Where a party is represented by a legal practitioner and personal service is not required, service of notices may be made by or on such legal practitioner or his clerk under his control. Subject to 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.

3. 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.

(1) A Court may for sufficient reasons appoint any process to be excused by a special bailiff, who shall have the privileges

and liabilities of an officer of the Court.

(2) The expenses of the special bailiff shall be defrayed by the party on whose application he is appointed unless the Court (in a particular case) decides otherwise.

(1) Where it appears to a 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 by -

(a) delivery of the document to some adult inmate at the usual or last known place of abode or business of the person to

be served; or

(b) 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) advertisement in the Federal Gazette, or in some newspaper circulating within the jurisdiction; or

(d) notice put up at the principal Court house of, or a place of public resort in the judicial Division where the respective

proceeding is instituted, or at the usual or last known place of abode or of business, of the person to be served; or

(e) e-mail or any other scientific device now known or later developed; and

(f) courier service or any other means convenient to the Court.

(2) An application to a Court for an Order of substituted service or other service, shall be supported by an affidavit, setting the grounds on which the application is made.

(3) When a party to be served is in the service of government, Court may transmit the document to be served with a copy of

it, to a senior officer of that government agency in the Federal Capital Territory, Abuja or elsewhere, and that officer, or Local Government shall cause the service of the document on the proper party accordingly.

(4) Where partners are sued in the name of their firm, the writ or other document shall be served on

(a) either one or more of the partners; or

(b) a person with control or management at the principal place of business of the partnership within the Federal Capital

Territory; and such service shall be good service upon the firm.

8. When a suit is against a corporate body authorized to sue and be sued in its name or in the name of an officer or trustee, the document may be served, subject to the enactment establishing that corporation or company or under which it 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 corporate office.

9. Where a person on whom service is to be effected is living or serving on board of a ship, service shall be sufficient if document is delivered to the person on board who at the time of service is in charge of the ship.

10. Where a person on whom service is to be effected is a prisoner in a prison, or lunatic in an asylum, it shall be sufficient service to deliver the document to the superintendent or any person appearing to head the prison or asylum.

11. Where an infant is party to an action, service shall be on his father or guardian, if none, then upon the person with whom the infant resides or under whose care he is, unless a Court or Judge in chambers orders otherwise.

12. Where service is to be made on a person residing out of jurisdiction, but carrying on business within the jurisdiction in his

own name or under the name of a firm through an authorized 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 that agent and such 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 summons may be allowed by the Court or a Judge in

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

chambers whenever -

(b) any Act, deed, will, contract, obligation, or liability affecting land or hereditaments situated within the jurisdiction is

sought to be construed, testified, 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 for the administration of the personal estate of a deceased person, who at the time of his death was

domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, which ought to be executed according to the law in force in the Federal Capital Territory; or

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

to recover damages or other relief for or in respect of a breach of a contract -

- (i) made within the jurisdiction;
- (ii) made by or through an agent trading or residing within the jurisdiction on behalf of a principal 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 breach committed within the jurisdiction of a contract whenever 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; or
- (f) the action is founded on a tort or other civil wrong committed within the jurisdiction; or
- (g) any injunction is sought as to anything 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
- (h) any person out of jurisdiction is a necessary or proper party to an action properly brought against some other party within the jurisdiction; or
- (i) 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 kind of the following, that is to say, sale, foreclosure, deliver possession by the mortgagor, redemption, re-conveyance, deli of possession by the mortgagee; but does not seek (unless and except so far as permissible under paragraph (e) of this Rule) any personal judgment or order for payment of any moneys due under mortgage; or
- (j) the action is one brought under the Civil Aviation Act or any regulations made in pursuance of that Act or any law relating to carriage by air.

14. In this Order, "out of jurisdiction" means out of the Federal Capital Territory, Abuja.

15. (1) An application for leave to serve a writ or notice on a defendant out of the jurisdiction shall be supported by affidavit

stating -

- (a) that in the belief of the deponent, the plaintiff has a good cause of action;
- (b) in what country the defendant is or probably may be found;
- (c) the grounds on which the application is made.

(2) No leave shall be granted in sub rule (1) unless it appears to a Court or Judge in chambers that the case is a proper

one for service out of the jurisdiction under these Rules.

16. An Order giving leave to effect service or notice shall prescribe 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 the service or notice is to be given, and on whether the airmail is available to the defendant.

17. (1) When a defendant is neither a Commonwealth citizen nor in any Commonwealth country, notice of the writ and not

the writ itself shall be served upon him.

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

18. (1) Service out of the jurisdiction may be allowed by a Court or Judge in chambers of the following processes or notices

of it, that is to say -

- (a) an originating summons commenced 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;
 - (ii) under any enactment in which proceedings can commence otherwise than by writ of summons;or
 - (iii) under a Rule of Court in which proceedings can commence otherwise than by writ of summons.
- (c) any summons, order or notice in any interpleader proceedings or for the appointment of an ADR or umpire or to remit, set aside, or enforce an award in an ADR held or to be held within the jurisdiction;
- (d) any summons, order or notice in any proceedings duly instituted whether by writ of summons or other originating process.

(2) Where a person on whom an originating summons, petition, notice of motion, or other originating proceedings or

order or notice is to be served is neither a Commonwealth citizen nor residing within a Commonwealth country, a copy of the document concerned shall be served, together with an information in writing that a process in the form of the copy has been issued or otherwise launched.

(3) The provisions of rules 15, 16 and 17(2) of this Order shall apply respectively, to service under this Rule.

19. (1) Where leave is given to serve a writ of summons or a notice of a writ of summons in any foreign country other

convention country with the following procedure

(a) the document to be served shall be under the seal of Court for use out of the jurisdiction; and

(i) transmitted to the Solicitor-General of the Federation by the Chief Registrar the direction of the Chief Judge, together

with a copy of it, translated into the language of the country in which Service is to be effected; and

(ii) contain 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 (iii) be in Form 7, as in the Appendix with such variations as circumstances may require,

(b) the party procuring a copy of a document for service under the Rule shall, at the time of procuring the document, file

a praecipe in Form 8, as in the Appendix;

(c) an official certificate or declaration on oath, transmitted through the diplomatic channel by the Government or Court

of a foreign country to which this provision applies, shall certify the document to have been personally served or to have been duly served on the defendant in accordance with the law of that foreign country, which certificate shall be filed on record and constitute sufficient proof of service within the requirements of these Rules;

(d) where an official certificate transmitted to a Court as provided in paragraph (c), certifies that efforts to serve the

document have been without effect, a Court or Judge may, upon an ex parte application of a plaintiff, Order substituted service of the document, and a copy of it, and the Order, shall be sealed and transmitted to the Solicitor-General of the Ministry of Justice, together with a request in Form 9, as in the Appendix, with such variations as circumstances may require.

(2) Nothing in these Rules shall affect a practice or power of Court, under which, land, funds, chooses in action, rights or

property within the jurisdiction are sought to be affected, the Court may, without effecting to exercise jurisdiction over any person out of the jurisdiction, cause that person to be informed of the nature or existence of the proceedings with a view to that person having an opportunity of claiming, opposing or intervening.

20. (1) Where, for purposes of an action under the Civil Aviation Act and its Conventions 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 rule shall apply.

(2) The notice shall specify the time for entering an appearance as limited in pursuance of Rule 16.

(3) The notice shall be under the seal of Court, for a service out of the jurisdiction, and shall be transmitted to the

Ministry of Justice, together with a copy translated into the language of the country of the defendant, and with a request for transmission to the Ministry responsible for Foreign Affairs for further transmission of the same to the Government of that country.

(4) The request shall be in Form 10, as in the Appendix with such variations as circumstances may require.

(5) The party procuring a copy of a document for service under this Rule shall at the time of procuring the document file

a praecipe in Form 9, as in the Appendix.

(6) An official certificate from the Minister responsible for Foreign Affairs transmitted by the Ministry of Justice to Court

certifying that the notice was delivered on a specified date to the Government of the country of the defendant is sufficient proof of service, and shall be filed on record and constitute sufficient service.

(7) After an 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 Judgment in all respects as if the defendant has 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 a defendant out of

jurisdiction, the provisions of these Rules shall apply with such variations as circumstances may require.

21. Where leave is given in a matter or where such leave is not required and it is desired to serve any writ of summons, originating summons, notice, or other document in any convention country, the following procedure shall, subject to any special provisions contained in the convention, apply -

(a) the party procuring the service shall file in the registry a request in Form 8 or Form 66, as in the Appendix with such

variations necessary to meet the circumstances of each particular case;

(b) the request in paragraph (a) shall state the desired medium of service, that is say, whether

-

(i) directly through the diplomatic channels, or

(ii) through the foreign judicial authority, and shall be accompanied by the original document and translation 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 further copies which the convention may require, unless the service is required to be made on a Nigerian subject directly through diplomatic channels, in which case the translation and copies need not accompany the request;

(c) the documents to be served shall be under seal of Court for use out of the jurisdiction and shall be forwarded by the

Registrar to the Permanent Secretary of Foreign Affairs for transmission to the foreign country;

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

Diplomatic Agent to the Court, establishing a fact and the date of the service of the document, shall constitute sufficient proof of service, and shall be filed on record as;

22. Rule 21 shall not negate any mode of service in a convention foreign country which is sufficient according to the procedure of the Court and which is not expressly excluded by that Convention country.

23. A court or Judge granting leave to serve a document out of the jurisdiction under these Rules, may in an appropriate case direct that airmail service shall be used by the party effecting service.

24. Where in a matter pending before a court or tribunal in a convention country, 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 that country, the following procedure shall, subject to the Convention, be adopted -

(a) service shall be effected by delivery of the original document or a copy of it, as indicated in the request, and the copy

of the transaction, to the person to be served in person by an officer of the Court, unless a Court or Judge in chambers thinks otherwise;

(b) no Court fees shall be charged in respect of the service, (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);

(c) the Chief Judge shall transmit to the consular or other authority making the request, a certificate establishing the fact

and 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). On an application of the Attorney-General of the Federation, a Court or Judge in chambers may make an Order for substituted service as may be necessary to give effect to Rules 13 to 23.

26. An Order giving leave to effect service out of the jurisdiction shall prescribe the mode of service and shall limit a time after service within which the defendant's to enter an appearance, such time to depend on the place or country where the writ or document is to be served and the Court may receive an affidavit or statutory declaration of the service having been effected, as prima facie evidence of service.

C - General Provisions

27. Where a bailiff or other officer of Court charged with the service of a document on a person is prevented by the violence or threats of that person, or any other person in concert with him, from personally serving document it shall be sufficient to inform' the person to be served of the nature of the document as near that person as practicable.

28. Where the service of a document has' been effected by a bailiff or other officer of Court, an affidavit of service sworn to, by

that bailiff or other officer shall or production, without proof of signature, be prima facie evidence of service.

29. The costs' incidental to the execution of process(es) in a suit shall be laid in the first place by the party requiring the

execution, and the bailiff shall not (except by order of the Court) be bound to serve or execute any process unless the fees and reasonable expenses have been paid.

30. Service shall not be made on a Sunday or public holiday, unless the Court directs otherwise by an Order endorsed on the document to be served.

31. Every Court shall keep a book 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 has not been 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 stated in it.

ORDER 12

APPEARANCE

1. (1) A defendant shall within a time limited in the writ or other originating process enter an appearance in the manner prescribed.

(2) A defendant shall enter an appearance by delivering to a Registrar a memorandum of appearance in Form 11, or

where leave was obtained before appearance, a notice in Form 12, respectively, as in the Appendix.

(3) The memorandum shall be accompanied, where the defendant is an infant, by an affidavit sworn to by his legal

practitioner and the consent of his guardian, as in Form 14 in the Appendix, with such variations as the circumstances may require, and a copy of it.

(4) All the documents shall be signed by the legal practitioner by whom the defendant appears or, where the defendant

appear in person, by the defendant.

(5) On receipt of memorandum of appearance, the registrar shall, in all cases, enter the appearance in the Cause Book and stamp the copies of the memorandum of appearance with the official stamp showing the date on which he received those documents, and deliver one sealed copy to the plaintiff or, as the case may be, his legal practitioner.

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

(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 jurisdiction and where any legal practitioner is only the agent of another legal practitioner, he shall also insert the name and place of business of the principal legal practitioner.

3. (1) Where the memorandum does not contain an address for service, it shall not be accepted.

(2) Where an address for service is fictitious or misleading, the appearance may be set aside by the Court or a Judge in

chambers on the application of the plaintiff

4. If or more defendants in the same action appear by the same by legal practitioner and at the same time, the names of all

the defendants so appearing may be inserted in one memorandum.

5. (1) A defendant may appear at any time before judgment

(2) Where a defendant appears at any time after the time limited by the writ for appearance, he shall not, unless a Court

or Judge in chambers Orders, be entitled to any further time for delivering his defence.

6. (1) A person appearing in an action for the recovery of land is at liberty to limit his defence to only a part of the property

mentioned in the action, and describing the part with reasonable certainty in his memorandum of appearance. (2) The appearance shall be in Form 13, as in the Appendix.

7. A defendant before entering an unconditional appearance is at liberty to take out a summons to set aside the service on him of the writ or other process, or to discharge the Order authorising the service.

8. The provisions of this Order shall not apply in actions commenced before the coming into operation of these Rules.

ORDER 13

DEFAULT OF APPEARANCE

1. (1) Where a writ of summons is specially endorsed for a liquidated demand and the defendant(s) fails, to appear, a Court

may enter final Judgment in favour of a plaintiff, for a sum not exceeding the sum endorsed on the writ, together with interest at a rate specified (if any), or (if - no rate-be specified) at the rate of six per cent annum, to the date of the judgment, and costs.

(2) This Rules, shall not apply to an action by a moneylender or an assignee for the recovery of money lent by a

moneylender, or to an action of the enforcement of any agreement or security related.

2. Where a writ of summons is specially endorsed for a liquidated demand, and there are several defendants, of whom some appear to the writ, and some others fail to appear, a Court may enter Judgment in favour of the plaintiff, against those that have not appeared, and may issue execution upon the judgment without limitation to, his right to proceed, with the action against those who have appeared.

3. (1) Where an action is for recovery of land, with or without a related claim, and no appearance is entered within the

time limited for appearance, the plaintiff is at liberty to have judgment entered for him.

(2) Where an appearance is entered but the defence is limited to a part only, a plaintiff may have judgment entered for

him to the extent of the undefended part of his claim, and the rest of the claim may be proceeded with the normal way.

4. (1) In respective cases where rules 1, 2 and 3 apply, that is where a defendant or all defendants fail, to appear, but in

which by reason of payment, satisfaction, abatement of nuisance, or any other reason it is unnecessary for the plaintiff to proceed with the action, he may, by leave of a Court or Judge in chambers obtain summons, and have judgment entered for costs.

(2) A summons shall be filed and served as if it were a writ of summons or in such other manner as a Court or Judge in Chambers may direct.

5. In an action not specially provided for in this Order, if the defendant fails to enter appearance within the stipulated time, the plaintiff may apply for the case to be set down for hearing, and upon such hearing, the Court may give judgment that the plaintiff is entitled to.

6. Where judgment is entered pursuant to any of the preceding Rules it shall be lawful for a Court or Judge in Chambers to set

aside or vary the judgment on terms as may be just.

7. Where a defendant or a respondent to an originating summons, to which an entry of appearance is required, fails to

appear within a time limited, the plaintiff or applicant may apply to a Court or Judge in Chambers for an appointment for the hearing of the summons and on a certificate that no appearance has been entered, the Court shall appoint a time for hearing of the summons.

8. (1) Where no appearance has been entered to a writ of summons for a defendant who is an infant, or a person of

unsound mind not adjudged a lunatic, a plaintiff shall, before further proceeding in the action against the defendant, apply to the Court or a Judge in Chambers for an order that some proper person be assigned guardian of such defendant, who may appear and defend the action.

(2) Rule (1) shall not apply except -

(a) the application was made after the expiration of the time allowed for appearance; and

(b) at least six clear days before the day named in the notice for hearing the application, it was served upon or left at the

dwelling-house of the person under whose care the defendant was, at the time of serving "the writ of summons; and

(3) In the case of the defendant being an infant, not residing with his father or guardian, it was served on or left at the

dwelling-house of the father or guardian, unless the Court or Judge in Chambers at the time of hearing the application dispenses with service.

9. (1) In an action brought by a moneylender or an assignee for the recovery of money lent by a moneylender or the

enforcement of an agreement or security relating to any such money, an application for leave to enter judgment in default of appearance, shall be made by notice returnable not less than 4 clear days after service of the notice.

(2) The notice shall not be issued until the time limited for entering appearance has expired, and a proper affidavit of

service of the writ has been filed.

(3) The notice shall be in accordance with Form 60, as in the Appendix, with such variations as required, and must be

served personally.

(4) At the hearing of an application, whether the defendant appears or not, a Court or Judge in Chambers may exercise

the relevant powers of the Court under the Moneylenders Act.

10. The provisions of this Order shall not apply in actions commenced before the coming into operation of these Rules.

ORDER 14

ARREST OF ABSCONDING DEFENDANT.

1. In a suit for an amount of one million naira or upwards, where a defendant

(a) appears about to leave the jurisdiction of the Court; or

(b) has or is about to dispose of his property, or any part of it from jurisdiction, the plaintiff may, either at the institution

of the suit or at any time thereafter until final judgment, make an application to the court that security be taken for the appearance of the defendant to answer and satisfy any judgment that may be passed against him in the suit

2. Where the Court, after investigation is of opinion that there is probable cause for believing that sub Rule 1 (a) & (b) may apply, and as such, the execution of any decree which may be made against him is likely to be obstructed, the Court may issue a warrant to bring the defendant before the Court, so that he may show cause why he should not give good and sufficient bail for his appearance.

3. Where a defendant fails to show such cause, the court shall order him to –

(a) give bail for his appearance at any time when called upon while the suit is pending and until execution or satisfaction

of any judgment that may be passed against him in the suit; or

(b) to give bail for the satisfaction of such judgment and the surety(s) 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. Where a defendant offers, in lieu of bail for his appearance to deposit a sum of money, or other valuable property,

sufficient to answer the claim against him with costs of the suit, the Court may accept the deposit.

5. (1) Where a defendant does not furnish security or offer a sufficient deposit, the Court may commit the defendant to

custody until the determination of the suit, or if judgment is given against the defendant, until the execution of the decree.

(2) A Court may at anytime, upon reasonable cause shown, and on terms as to security or as may seem just, release the

defendant.

(3) An application may be made, where the defendant resides in the Federal Capital Territory to the Court, and a Court

may issue a warrant for detaining and bringing a defendant before the Court, where the suit is pending, and the Court may make such further order as shall seem just.

(4) In case a warrant is issued by a different Court from where the-suit is pending, the Court shall, on the request of a party -

(a) transmit the application and the evidence on it to the Court in which the suit is pending; and

(b) take sufficient security for the appearance of the defendant in the Court, or send him there in custody of an officer

of Court, and the Court in which the suit is pending shall then inquire and proceed with the application in accordance with these rules.

6. (1) The expenses for subsistence in prison of a person arrested shall be paid in advance by the plaintiff in the action, and

the amount so disbursed may be recovered by the plaintiff in the suit, unless "the Court otherwise Orders.

(2) A Court may release the person so imprisoned on failure by a plaintiff to pay the subsistence money, or in case of

serious illness, Order his removal to hospital.

ORDER 15

INTERIM ATTACHMENT OF PROPERTY

1. Where –

(a) a defendant in a suit with intent to obstruct the execution of a decree that may be passed against him, is about to

dispose of his property, or any part of it, from jurisdiction; or

(b) in a suit founded on contract or for detinue or trover, in which the cause of action arose within the jurisdiction,

(i) the defendant is absent from jurisdiction, or there is probable cause to believe that he is concealing himself to evade

service; and

(ii) the defendant is entitled to any property in the state under the control of any other person in the state, or such

person is indebted to the defendant, the plaintiff may apply to the Court before final judgment, compelling the defendant to furnish sufficient security in fulfillment of any decree that may be made against him, failing which, or pending the giving of security, to direct that his property movable or immovable be attached until further order of the Court.

2. The application of a plaintiff shall contain –

(a) a specification of the property required to be attached; and

(b) the estimated value of the property as far as plaintiff can reasonably ascertain; and

(c) a declaration that to the best of his Information and belief, the defendant is about to dispose of or remove his

property from jurisdiction.

3. (1) Where a Court after making necessary investigation is satisfied that the defendant is about to dispose of his property

with intent to obstruct the execution of the decree, the Court may Order the defendant, within a time to be fixed by the Court, either -

(a) to furnish security in a sum as may be specified in the Order to produce and place at the disposal of the Court, the

property or the value of it, or such portion of it as may be sufficient to fulfill the decree; or

(b) to appear and show cause why he should not furnish security.

(2) Pending a defendant's compliance with the Order, a 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) Where a defendant fails to show cause, or furnish a 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 of it sufficient to fulfill the decree shall be attached until further order.

(2) Where a defendant shows cause, or furnishes the required security, and the property specified in the application or

any portion of it, has been attached, the Court shall order a withdrawal of the attachment.

5. An attachment shall not affect the rights of persons who are parties to the suit and in the event of a claim being preferred

to the property attached before judgment, the claim shall be investigated in the manner prescribed for the investigation of claims to property attached in execution of a decree.

6. In all cases of attachment before judgment, a Court may at anytime remove the attachment, on a defendant furnishing security as required, together with security for costs of the attachment or on an Order for a non-suit or striking out the cause or matter.

7. (1) An application for attachment may be made to the Court, where the defendant or the property proposed to be

attached is situate in the Federal Capital Territory, and the Court may make an Order as is just.

(2) Where an Order for attachment of a property is issued by a different' Court from that in which the suit is pending,

the different Court shall, on the request of any party, transmit the application and evidence in it to the Court in which the suit is pending, retaining the property in the meantime under the attachment or taking sufficient security for its value and the Court in which the suit is pending shall then inquire and proceed with the application in accordance with the preceding provisions.

ORDER 16

ACCOUNTS AND INQUIRIES

1. (1) Where a writ is endorsed with a claim for an account or which involves taking an account, a plaintiff may, at anytime

after the defendant has entered an appearance or after the time limited for appearing, apply for an Order for an account.

(2) An application under this Rule shall be made by summons supported by affidavit or other evidence.

(3) On hearing of an application, a Court, if satisfied with a deposition by defendant, that there is some preliminary

question to be tried, may order that an account be taken and also order that any amount certified on taking the

account to be due to either party, be paid to him within a specified time.

2. (1) A Court may, on application made by summons at any stage of the proceedings in a matter, direct any necessary

accounts or inquiries to be taken or made.

(2) A direction for the taking of an account or the making of an inquiry, shall be numbered in the Judgment or Order, so

that each distinct account and inquiry is designated by a number.

3. (1) Where a court Orders an account to be taken, it may by the same or a subsequent Order give directions with regard

to the manner in which the account is to be taken or vouched.

(2) A Court may direct that in taking the account, the relevant books of account shall be evidence of the matters

contained in it with liberty to the parties interested to take objections to it as they wish.

4. (1) Where an account has been ordered to be taken, an accounting party shall, make out his account and except the

Court directs, verify it by an affidavit to which the account shall be exhibited.

(2) The items on each side of the account shall be numbered consecutively.

(3) Except an Order for the taking of the account directs, an accounting party shall -

(a) lodge the account with the Court; and

(b) at the same time notify the other parties that he has lodged account with Court, filed a verifying affidavit and any

supporting affidavit.

5. A 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 shall give notice of the amount sought to be charged with brief particulars, backing the grounds of error.

6. In taking any account directed by any judgment or order, all just allowance shall be made without any direction to that effect.

7. (1) Where it appears to a Court that there is undue delay in the prosecution of any accounts or inquiries, or in any other

proceedings under any Judgment or Order, the Court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such Order for staying the proceedings or for expediting them or for its conduct and for costs 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 directions made by an order under this rule and may make such orders as it thinks fit as to the payment of legal practitioner's costs.

8. 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 entitled persons, a Court may order or allow immediate payment of shares to the persons already ascertained, without reserving any part of the shares to meet the subsequent costs of ascertaining those other persons.

ORDER 17

ALTERNATIVE DISPUTE RESOLUTION

1. A Court, or Judge, with the consent of the parties, may encourage settlement of any matter(s) before it, by either -

- (a) Arbitration;
- (b) Conciliation
- (c) Mediation; or
- (d) any other lawfully recognised method of dispute resolution.

ORDER 18

REFERENCE TO REFEREES

1. (1) Where a matter is referred to a referee under the provisions of an applicable High Court Law, the Court shall furnish

the referee with relevant part of the proceedings and detailed instructions 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 transmit the proceedings which may hold on the

inquiry, or also to report his own opinion on the point referred for his investigation.

2. A Court may at any stage of the proceedings direct necessary inquiries or accounts to be taken even where it appears that there is some special or relief sought for, or some special issue to be tried, which makes it proper that the cause or matter should proceed in the ordinary manner.

3. (1) A referee may, subject to the Order of Court, hold the inquiry or adjourn it to any place which he thinks most

expedient, and have any inspection or view which he thinks expedient, for the disposal of the controversy before him. (2) A referee shall, as far as practicable, proceed with the inquiry from day to day.

4. Subject to an Order of Court, evidence shall be taken at an inquiry before a referee and the attendance of witnesses to give evidence before the referee may be enforced by the Court; and every such inquiry shall be conducted as nearly as circumstances will admit, as in trials before a Court, but not as to make the tribunal of the referee, a public Court of Justice.

5. Subject to an Order of Court, a referee shall have the same authority in the conduct of any inquiry as a Court when presiding at any trial.

6. A referee does not have powers to commit a person to prison to enforce an order by attachment, but a Court may, in respect of matters before a referee, make any order of attachment or committal it considers 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 of

it served on the parties to the reference.

(2) A referee may in his report submit any question arising in it, for the decision of the Court or make special statement

of facts from which the Court may draw such inferences as it thinks fit.

(3) On receipt of a referees report, the Court may -

(a) adopt the report in whole or 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) Where the report of the referee has been made, an application to vary the report or remit the whole or any part of an issue originally referred, may be made on a hearing by a Court, or further consideration of the matter, after giving not less than 4 days notice of it, and any other application respecting the report may be made on that hearing without notice.

(5) Where on a reference under this Order, a Court or 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 preceding provisions of this Rule shall have effect subject to such directions.

ORDER 19

RECEIVERS

1. (1) An application for the appointment of a receiver may be made by motion on notice.

(2) An application for injunction ancillary or incidental to an Order appointing a receiver may be joined together.

(3) Where an applicant wishes to apply, for the immediate grant-of an injunction, he may do so ex parte supported by an affidavit.

(4) A Court hearing an application under sub rule (3) may grant an injunction restraining a party beneficially entitled to

any interest in the property 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 the summons, returnable on such, date as the Court may direct, to be issued.

2. (1) Where a Judgment is given, or Order made, directing the appointment of a receiver, then, unless the judgment or

order otherwise directs, such a receiver shall not be appointed, until he has given security.

(2) Where, by virtue of sub rule (1), a person's required to give security, he shall give such security as may be approved

by the Court to account for what he receives as a receiver and to deal with it as the Court directs.

(3) Except a Court directs, a 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 account to the Court at such intervals or on such dates as the Court may direct in order that

they may be passed.

(2) Except a Court directs, each account submitted by a receiver shall be accompanied by an affidavit verifying it.

(3) A receiver's account and affidavit (if any) shall be left at the Registrar's office, and the plaintiff or party having the

conduct of the cause or matter shall then obtain an appointment for the purpose of passing the account.

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

5. A Court shall fix the days on which a receiver shall pay into Court the amount shown by his account as due from him, or

such part of it as the Court may certify as proper to be paid in by him.

(1) Where a receiver fails to attend for the passing of an account of his, or fails to submit any account, make any affidavit

or do any other thing which he is required to do, the receiver and the parties to the matter in which he was appointed may be required to attend Court 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) Subject to sub rule (1), where a receiver fails to attend for the passing of any account, of his or fails to submit any

account, or fails to pay into Court on a date fixed, 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 percent per annum on that sum while in his possession as a receiver.

ORDER 20

COMPUTATION OF TIME

1. Where any written law or Order of Court limits a time within which an event is appointed allowed for, the doing of an act, or the taking of any proceeding and the time is not limited by hours, the following rules shall apply -

- (a) the limited time commences on the day after day or date of the happening of the event;
- (b) the act or proceeding shall be done or taken at the latest on the last day or the time limited;
- (c) where the time limited is less than five days, no reckon shall be had of public holiday, including Saturday or Sunday;
- (d) when the time expires on a' public holiday, Saturday or Sunday the act or proceeding shall be considered done or taken in due time, the next day afterwards not being a public holiday.

2. Parties cannot consent to enlarge any of the times fixed by the provision of these Rules for taking any step, filing any document, or giving any notice.

3. (1) A court may, on such terms as it thinks just, by Order extend or abridge the period within which a person is required or authorized by these provisions, to do any act, or take any proceedings.

(2) A Court may extend any period referred to in sub rule (1), although the application for extension is not made until after the expiration of that period. Except for compelling reasons, the Court shall not grant more than one extension prior to trial.

4. (1) Where a year or more has elapsed since the last proceedings in a cause or matter, the party who desires to proceed shall give to every other party not less than 7 days notice of his intention to proceed.

(2) A summons on which no order was made shall not be reckoned as a proceeding for the purposes of this provision.

5. Application to set aside or remit an award may be made at anytime within 90 days after the award has been made and published to the parties. A Court or Judge in chambers may by Order extend the time either before or after it has elapsed.

ORDER 21

THE UNDEFENDED LIST.

1. (1) Where an application in Form 1, as in the Appendix is made to issue a writ of summons in respect of a claim to

recover a debt or liquidated money demand, supported by an affidavit stating the grounds on which the claim is based, and stating that in the deponent's belief there is no defence to it, the Judge in chambers shall enter the suit for hearing in what shall be called the "undefended list."

(2) A writ of Summons for a suit in the undefended list shall contain the return date of the Writ.

2. A Plaintiff shall deliver to a Registrar on the issue of the writ of summons, as many copies of the supporting affidavit, as there are parties against whom relief is sought, for service.

3. (1) Where a party served with the writ delivers to a Registrar, within 5 days to 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, an 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.

4. Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by Rule 3 (1) or is not given leave to defend by the Court, the suit shall be heard as an undefended suit and Judgment given accordingly.

5. A Court may call for hearing or require oral evidence where it feels so compelled at any stage of the proceedings under Rule 4.

ORDER 22

PROCEEDINGS IN LIEU OF DEMURRER.

1. No demurrer shall be allowed.

(1) A party may raise any point of law by his pleading, which point shall be disposed of by the trial judge at or after the

trial.

(2) On an application of a party, a Judge may set the point of law down for hearing and disposed of at anytime before

trial where the parties consent or the Court so Order.

2. Where, in the opinion of a Court or Judge, the decision of 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 in part, the Court may then dismiss the action or make such other Order as may be just.

3. A Court or Judge may Order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and where a pleading is shown to be frivolous or vexatious, the Court or a Judge may Order the action to be stayed, or dismissed, or judgment to be entered accordingly.

4. No action or proceeding shall be objected to on the ground that a mere declaratory judgment or order is sought, and the

Court may make binding declarations of right whether any consequential relief is claimed or not.

ORDER 23

PLEADINGS

1. Except a Court grants leave to the contrary, a plaintiff shall serve a statement of claim along with the writ of summons on

the defendant, or, where there are two or more defendants, on each defendant.

2. (1) Except a Court grants leave to the contrary, a defendant who enters appearance in, and intends to defend an action

shall, within 14 days after the service of the statement of claim and the writ of summons on him, serve a statement of defence on the plaintiff, along with -

- (a) copies of documents mentioned in the statement of defence to be used in evidence;
- (b) witness(es) statement on oath;
- (c) a certificate of pre action counseling;

(2) Where a summons under Order 21 Rule 1, is served on a defendant, sub rule (1) shall not apply.

3. (1) A plaintiff on whom a defendant serves a defence shall, in turn, within 7 days serve a reply on the defendant and

where no reply is served, rule 10 shall apply.

(2) A plaintiff on whom a defendant serves a counter-claim shall, if he intends to defend it, serve on that defendant a

defence to the counter-claim.

(3) Where a plaintiff serves both reply and defence to counter-claim on any defendant, he shall include them in the same

document.

(4) A reply to any defence shall be served by the plaintiff within 14 days after the service on him of the defence, while a defence to a counter-claim shall be served by the plaintiff within 14 days after the service on him of the counter-claim, which relates.

4. (1) A pleading shall contain a concise statement of material facts on which the party pleading relies for his claim or

defence, as the case may be, but not the evidence by which they are to be proved and shall, when necessary, be divided into paragraphs, numbered consecutively.

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

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

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

5. (1) Where a party pleading relies on a misrepresentation, fraud, breach of trust, willful default, or undue influence,

particulars (with dates and items if necessary) shall be stated in the pleadings.

(2) Where in an action for libel or slander, the plaintiff alleges that the words or matter complained of were used in a

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

6. (1) A party shall plead specifically any matter (for example, performance, release, any relevant statute or limitation,

fraud or any fact showing illegality) which, if not specifically pleaded might take the opposite party by surprise.

(2) A condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly

specified in his pleading by a plaintiff or a defendant, as the case may be. As a result, 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 a pleading.

(3) With no limitation to sub rule (1), 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 shall not be 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 a pleading, notice or written proceeding requiring particulars, may be ordered by a Court, on 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.

(3) The costs of the letter and of any particulars delivered pursuant to it shall be allowable on taxation.

(4) In dealing with the costs of any application for particulars by summons or notice, the provisions of this rule shall be

taken into consideration by the Court or Judge in chambers.

(5) 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) A party at whose instance particulars have been filed under a Judge's Order shall, unless the order provides, have the

same length of time for pleading after the service of the particulars on him that he had initially.

(2) An Order for particulars shall not operate as a stay of proceedings or give any extension of time.

9. An allegation of fact in a pleading, not being a petition or summons, if not denied specifically in the pleading of the opposite

party, shall be taken to be admitted, except as against an infant, lunatic or a person of unsound mind not adjudged a

lunatic.

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

(2) Subject to rule (3) -

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

(b) a party may in his pleading expressly join issue on the next 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 shall operate 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 shall operate as a denial of every other such allegation.

11. A pleading, (not being a petition or summons), shall not raise a new ground of claim or contain an allegation of fact

inconsistent with the previous pleadings of the pleader except by way of amendment.

12. (1) Where a plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and

distinct facts, the facts shall be stated separately and distinctly, and the same rule shall apply where the defendant relies on 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. A defendant shall not deny generally the facts alleged in a statement of claim, but he shall specifically admit or deny the truth of each allegation of fact seriatim, as the truth or falsehood of each is within his knowledge, or stating that he does not know whether any given allegation is true or otherwise.

14. (1) Where a party denies an allegation of fact he shall not do so evasively, but shall answer the point of substance.

(2) Where 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.

15. A 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 of it.

16. Where a defendant seeks to rely on a 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 the set off or counter-claim shall be given.

17. 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 -

(a) ought to have been expressly set up by the defence; or

(b) is inconsistent with the statements of defence; or

(c) likely to take the plaintiff by surprise; or

(d) to raise new issues not fairly arising out of the pleadings as they stand, such as the plaintiff ought not be called on to meet.

18. Where a Court considers that the statement of a claim or a defence filed in a suit insufficiently discloses and fixes the real issues between the parties, it may order such further pleadings to be filed as may be necessary to bring the parties to an issue.

19. Where a Court is of opinion that an allegation of fact denied or not admitted by any pleading, ought to have been admitted, the court shall make an Order as may be just regarding costs.

20. A Court may at anytime, on the application of either party, strike out any pleading or any part of it, on the ground that –

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

(b) 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 that pleading or may proceed to give Judgment for the plaintiff or the defendant, or may make such other order on terms and conditions, as may be just.

21. Where a contract, promise, or agreement is alleged in any pleading, a bare denial of it by the opposite party shall be construed only as -

(a) a denial in fact, of the express contract, promise, or agreement alleged or the matters of fact from which it may be

implied by law; and

(b) not a denial of the legality or sufficiency in law, of the contract,; promise or agreement, whether with reference to

any statute or otherwise.

22. Where the content of a document is material, it shall be sufficient in any pleading to state the effect of it as briefly as possible, without setting out the whole or a part of it, unless the precise words of the document or a part of it are material.

23. (1) Where 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 to be inferred.

(2) Despite sub rule (1), where in an action for libel or slander, the defendant pleads that any of the words or matters

complained of -

(a) are fair comment on a matter of public interest; or

(b) were published upon a privileged occasion, the plaintiff shall, if he intends to allege that the defendant was actuated

by express malice, deliver a reply giving particulars of the facts and matters from which that malice is "to be inferred.

(3) Where in an action for libel or slander, the defendant alleges that in so far as the words complained of -

(a) consist of statements of fact, they are true in substance and in fact;

(b) consist of expressions of opinion, they are fair comment on a matter of public interest, he shall give particulars

stating which of the words complained of he alleges as statements of fact, and of the facts and matters, he relies on in support of the allegation that the words are true.

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

25. (1) Whenever any contract or relation between any persons is to be implied from series of letters or conversations, or 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) Further to sub rule (1), where a person 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 as such.

26. There is no need for a party in pleading to allege a matter of fact which the law presumes in his favour or which the burden of proof lies upon the other side, unless it has first been specifically denied (for example 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).

27. (1) In a probate action, the defence pleadings shall contain –

(a) the substance of the case on which it intends to and further,

(b) where it is pleaded that the testator was not of sound mind, memory and understanding -

(i) particulars of any specific instances of delusion shall be delivered, before the case is set down for trial, and except to

leave of the Court or a Judge in chambers, no evidence shall be given of any other instances at the trial.

(2) In a probate action, a party opposing a Will may, in defence, give notice to the party setting up the Will that he

merely insists on the Will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the Will and he from then on, is at liberty to do so and shall not in any event be liable to pay the costs of the other side unless the Judge is of opinion that there was no reasonable ground for opposing the Will.

28. No technical objection shall be raised to a pleading on the ground of want of form.

29. (1) The foregoing rules shall not apply in actions where a summons has been issued before the date of commencement

of these Rules.

(2) In such cases, a former High Court Rules shall be applied as if they were still in force.

30. Whenever a statement of claim is filed, the plaintiff may alter or modify or extend his claim without any amendment of the endorsement of the writ, provided that -

(a) this rule shall not apply where the writ has been specially endorsed;

(b) the plaintiff may not completely change the cause of action endorsed on the writ without amending the writ.

31. Where a cause of action is a stated or settled account, it shall be alleged with particulars, but in a case where a statement of

account is relied on by way of evidence or admission of another cause of action which is pleaded, it need not be alleged in the pleadings.

32. Where a defence of tender before action is pleaded, the defendant shall pay into Court in accordance with Order 29 Rule 1,

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.

33. Where a claim by a defendant to a sum of money (whether ascertained amount or not) is relied on as defence to the whole 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.

34. (1) Where in an action, a set-off or counter-claim is established as a defence against the plaintiff's claim, a Court may, if

the balance is in favour of the defendant, give judgment to defendant for the balance or give to the defendant such relief as he may be entitled to. (2) Sub rule (1) shall apply mutatis mutandis where the balance is in favour of the plaintiff.

35. (1) Pleadings in an action shall close-

(a) at the expiration of 14 days after service of the Reply or if there is no reply but only a defence to counter-claim, after

service of the Defence; or

(b) if neither a Reply nor a Defence to Counter-Claim is served, at the expiration of 14 days after service of the Defence.

(2) Pleadings in an action shall close as provided in sub rule (1), even where any request or Order for particulars has been made but has not been complied with at that time.

ORDER 24

AMENDMENT.

1. A Court or Judge in chambers may, at anytime and on such terms as to costs or as may be just, amend any defect or, error in any proceedings and all necessary amendments shall be made for the purpose of determining the real questions or issues raised in the proceedings.

2. The Court or a Judge in chambers may, at any stage of the proceedings allow a party to alter or amend his endorsement or pleadings in such manner and on terms as may be just and all such amendments shall be, as may be necessary for the purpose of determining the real questions in controversy between the parties.

3. Application for leave to amend may be made by a party to a Judge in chambers or to the Court at the trial of the action and the amendment may be allowed upon terms as to costs or as may be just.

4. Where a party who has obtained an Order for leave to amend does not amend accordingly within the time limited for that purpose, or if no time is limited, then within 7 days from the date of the order, the order to amend shall, become ipso facto void unless the time is extended further by the Court.

5. Where an indorsement or pleading is amended, the Court or a Judge in chambers, may Order that a copy of the document as amended shall be filed in the Registry and served on all parties to the action.

6. Where an indorsement or pleading is amended, the endorsement or pleading when amended shall be marked, with the date of the Order, if any, under which it is so amended and of the day on which the amendment is made, in manner following, -

"Amended day of Pursuant to order of.....Dated the.....of "

7. Clerical mistakes in Judgments or Orders, or errors arising from any accidental slip or omission, may at anytime be corrected by the Court or a Judge in chambers on motion or summons "s without an appeal.

ORDER 25

DEFAULT OF PLEADINGS

1. (1) Where a plaintiff's claim is only for a debt or liquidated demand and the defendant does not, within the mode and time allowed by these Rules file a defense, the plaintiff may, at the expiration of such time, apply for final Judgment for the amount claimed, with costs.

(2) In an action by a moneylender or an assignee for the recovery of money lent by a moneylender or the enforcement of any agreement or security relating to any such money, Judgment shall not be entered in default of defense except in accordance with the provisions of Order 13 Rule 9.

2. Where in an action for a debt or liquidated demand there are several defendants and one of them default as in Rule 1, the plaintiff may, subject to sub rule (2), have final judgment entered against the defendant so making default, and issue execution upon that Judgment without prejudice to his right to proceed with his action against the other defendants.

3. Where a plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant defaults in pleading, the plaintiff may, after the expiration of the period fixed for service of the defence, have judgment entered against that defendant for damages and costs to be assessed by the Court and may proceed with the action against the other defendants, if any.

4. Where the plaintiff's claim against the defendant relates to the detention of goods only, then, if the defendant defaults in pleading, the plaintiff may, after the expiration of the period fixed for service of the defence, have judgment entered -

(a) against the defendant for the delivery of the goods or their value to be assessed by the Court and costs; or

(b) for the value of the goods to be assessed by the Court and costs, and in either case he may proceed with the action against the other defendants, if any.

(1) Where a plaintiff's claim against a defendant is for the possession of land only, then, if the defendant defaults in pleading, the plaintiff may, after the expiration of the period fixed for service of the defence, and on producing -

(a) a certificate by his legal practitioner; or

(b) if he sues in person, an affidavit, stating that he is not claiming any relief in the action of the nature of mortgage, have Judgment entered for possession of the land as against the defendant and for costs and proceed with the action against the other defendants, if any.

(2) Where there are more than one defendant, judgment entered under sub rule (1) shall not be enforced against any defendant unless and until judgment for the possession of the land has been entered against all the defendants.

5. Where the plaintiff's claim against a defendant are two or more as in Rules 2 to 5, and no other, and the defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed for service of the defence, have entered against the defendant such judgment in respect of such claim as he would be entitled to under these Rules if that were the only claim made and proceed with the action against the other defendants, if any.

(1) Where the plaintiff's claim against a defendant or defendants is not described nor mentioned in Rules 2 to 5 and the defendant or all defendants (where there are more than one) fails to serve a

defence on the plaintiff, the plaintiff may, after the expiration of the period fixed for service of the defence, apply to a Court for judgment and on the hearing of the application, the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.

(2) Where a plaintiff's claim falls under sub rule (1), against more than one defendant, and one of the defendants defaults in serving defence, the plaintiff may -

(a) if his claim against the defendant in default is severable from his claim against the other defendant apply under that sub rule for judgment against the defendant and proceed with the action against the other defendants; or (b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment against the other defendants.

(3) An application under sub rule (1) shall be by summons or motion on notice.

8. A defendant who counter-claims against a plaintiff, shall be treated for the purposes of Rules 2 to 7, as if he were a plaintiff who had made a claim against a defendant and accordingly, where the plaintiff or any other person against whom the counter-claim is made, fails to serve a defence to the counter-claim, Rules 2 to 7 shall apply as if -

(a) the counter-claim were a statement of claim;

(b) the defence to the counter-claim a defence;

(c) the parties making the counter-claim and against whom it is made were plaintiffs and defendants respectively; and

(d) references to the period fixed under these Rules for service of the defence were references to the period so fixed for

service of the defence to the counter-claim.

9. A Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

10. In this Order, a party defaults in pleading, who fails to file and serve his statement of claim or defence, as the case may be, on the opposite party within the time fixed for doing so by these Rules or by Order of a Court.

ORDER 26

INTERPLEADER

1. (1) Where -

(a) a person is under liability in respect of a debt or money or goods and he expects to be sued in respect of that debt or

money or goods by two or more persons making adverse claims to it; or

(b) a claim is made to any money or goods taken or intended to be taken by a sheriff in execution under a process or to

proceeds or value of any such goods by a person other than the person against whom the process is issued, the person under liability as in sub rule (1) (a) or, as the case may be, the sheriff, may apply to the Court for relief by way of interpleader.

(2) A reference in this Order to a Sheriff shall be construed as including a reference to any other officer charged with the

execution of process by or under the authority of the Court.

2. (1) A person making a claim to any money, goods taken or intended to be taken under process of the Court or to the

proceeds or value of any such goods, 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 which shall be his address for service.

(2) On receipt of a claim made under this rule, a sheriff shall give notice of the execution creditor, who shall, within 7

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) a Sheriff receives a notice from an execution creditor under sub rule (2), disputing a claim or the execution creditor

fails, within the period allowed to give the required notice; and

(b) the claim 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), admitting a claim shall withdraw from

possession of the money or goods claimed and may apply to the Court for 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.

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.

(2) Where the applicant is a sheriff who has withdrawn from possession of the money or goods taken in execution and

who is applying for relief under rule 2 (5), the summons shall be served on any person who made a claim under rule 2 (1), in respect of that money or goods and that person may attend the hearing of the application.

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

An applicant shall satisfy a Court or Judge in chambers by affidavit that -

(a) the applicant claim no interest in the subject-matter in dispute other than for changes 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 the Court or to dispose of it as may be directed.

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

6. Where an application is made by a defendant, a Court or Judge In chambers may stay all-further proceedings in the action.

7. Where the claimants appear in pursuance of a summons, a Court or Judge in chambers may order that -

(a) either claimant be made a defendant in an action already commenced in respect of the matter in dispute in lieu of or

in addition to the applicant; or

(b) an issue between the claimants be stated and tried, and in the latter case may direct which claimant shall be plaintiff

or defendant.

8. Where a claimant duly served with a summons calling on him to appear and maintain, or relinquish his claim, does not appear or having appeared; neglects or refuses to comply with an Order made after his appearance, a 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.

9. A Court or Judge in chambers may, for the purpose of an interpleader proceedings, make all such Orders as to costs and all other matters as may be just and reasonable.

ORDER 27

WITHDRAWAL AND DISCONTINUANCE

1. A party who enters an appearance in an action may withdraw the appearance at anytime with leave of the Court.

2. (1) A plaintiff in an action may, without the leave of the Court, discontinue the action, or withdraw any particular claim made by him against any or all

of the defendants at any time not later than 14 days after service of the defence on him or if there are two or more defendants, or the defence last served, by serving a notice to that effect on the defendants concerned.

(2) A defendant may; without leave of the Court -

(a) withdraw his defence or any part of it at anytime;

(b) discontinue a counter-claim or withdraw any particular claim made by him against any or all of the parties against whom it is made, at anytime not later than 14 days after service on him of a defence to the counter-claim or if the counter-claim is made against two or more parties of the defence to the counter-claim last served, by serving a notice to that effect on the plaintiff or other party concerned.

(3) Where there are two or more defendants to an action, not all of whom serve a defence on the plaintiff and the period fixed for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, sub rule (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period.

(4) Sub rule (3) shall apply in relation to a counter-claim as it applies in relation to an action with the substitution for reference to a defence, to the plaintiff and to paragraph (1) of this rule, of references to a defence to counter-claim, to the defendant and to sub rule (2) of this rule respectively.

(5) Where all parties to an action consent, the action may be withdrawn without leave of the Court at anytime before trial by producing to the Registrar a written consent to the action being withdrawn, signed by all the parties and the action shall then be struck out.

(1) Except as provided by Rule 2, a party may not discontinue an action or counter-claim or withdraw any particular claim made by him without leave of the Court and the Court hearing an application for leave may order the action or counter-claim to be discontinued or that any particular claim made in it be struck out, against any or many or all of the parties against whom it is brought on such terms as to costs or the bringing of a subsequent action or otherwise as it thinks just.

(2) An application for the grant of leave under this Rule may be made by summons or motion on notice.

4. Subject to any terms of Court in granting leave under Rule 3, the fact that a party had discontinued an action or counter-claim or withdrawn a particular claim made by him in it, shall not be a defence to a subsequent action for the same, or substantially the same, cause of action.

5. (1) Where a party has discontinued an action or counter-claim or withdrawn any particular claim made by him and he is

liable to pay costs to any other party in the action or counter-claim or the costs occasioned to any other party by the claim withdrawn, but before payment of those costs, he brings another action for the same or substantially the same cause of action, the Court may Order the proceedings in the action to be stayed until those costs are paid.

6. A party who has taken out a summons or filed a motion in a pending matter may not withdraw it without leave of the Court.

ORDER 28

ADMISSIONS

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

2. (1) A party may, by leave of Court obtained in a motion on notice, call on any other party to admit any document or fact,

saving just exceptions.

(2) A notice containing a list and where possible true copies of the documents or as the case may be, a clear statement of each fact, to be admitted shall be filed with the motion papers and served on the party being called upon to admit the same.

(3) Where a Court grants leave, it shall fix the terms and conditions of it, including the time within which the admission is

to be made.

(4) Where a party on whom a notice under sub rule (2) is served, desires to deny the existence or the authenticity of any fact or document specified, he shall, before the day fixed for hearing the motion, serve on the party by whom it was given, a notice stating that he does not admit the facts or the authenticity of the documents and that he requires that they be proved at trial.

(5) A party who fails to give a notice of non-admission in accordance with sub rule (4), to any fact or document shall be taken to have admitted that fact or the authenticity of that document unless the Court otherwise Orders.

(6) Subject to Rule 4 (3), a party to a matter may serve on any other party a notice requiring him to produce the documents specified in the notice at the trial of the matter.

(1) Where admissions of fact are made by a party either by his pleadings or otherwise, any other party may apply to the Court for such Judgment or Order upon those admissions as he may be entitled

to, without waiting for the determination of any other question between the parties and the Court may give such Judgment, or make such Order, as it thinks just.

(2) An application for an order under this Rule may be made by motion or summons.

(1) Subject to sub rule (3), and no limitation to the right of a party to object to the admission in evidence of any document, a party on whom a list of documents is served in pursuance of Order 31, shall, unless the Court otherwise Orders, be deemed to admit that document -

(a) described as an original document which was printed, written, signed or executed; and

(b) described in it as a true copy.

(2) The provisions of sub rule (1), shall not apply to a document the authenticity of which a party has denied in his pleading.

(3) Where within 14 days after inspection of the documents specified in a list of documents or after the time limited for inspection expires, whichever is the later, the party on whom the list is served, serves on the party whose list it is, a notice stating that he does not admit the authenticity of a document in the list, and requires it to be proved at the trial, he shall not be taken to make any admissions in relation to that document under sub rule (1).

(4) A party by whom a list of document is served on another party in pursuance of any provision of Order 30, shall be deemed to have been served by that other party with a notice requiring him to produce at the trial of the cause or matter such of the documents specified in the list as are in his possession, custody or power.

(5) The preceding Rules shall apply in relation to an affidavit made in compliance with Order 30, as they apply in relation to a list of documents served in pursuance to any provision of that Order.

ORDER 29

PAYMENT INTO AND OUT OF COURT

1. (1) In an action for a debt or damages the defendant may, at anytime after he has entered appearance, pay into Court a

sum of money in satisfaction of the cause of action which the plaintiff claims or where two or more causes of action are joined in the action, a sum or sums of money in satisfaction of any or all causes of action. (2) Where a defendant makes a payment into Court under this Rule or increases on such payment the defendant shall give notice of it, in Form 26, as in the Appendix, to the plaintiff and every other defendant (if any) and within 7 days after receiving the notice the plaintiff shall send the defendant a written acknowledgment of its receipt.

2. (1) Payment into Court, whether made in total or partial satisfaction of the plaintiffs claim, shall operate unless the

defendant in his defence denies liability, as an admission of liability to the extent of the amount paid in, and no more, and for no other purpose. (2) When money is paid into Court with a defence denying liability, it shall be subject to the provisions of Rule 5.

3. Where a defendant pays money into Court, and the liability of the defendants in the claim or cause of action is not denied in the defence, the plaintiff shall be at liberty to accept it in full satisfaction and discharge of the claim or cause of action in which it is paid in and in that case, the plaintiff may forthwith apply by motion for payment of the money to him and, on hearing the motion, a Court shall make such Order as to stay of further proceedings in the suit, in whole or in part and as to costs and other matters as seems just.

4. Where a plaintiff does not apply, as in Rule 3, he shall be considered as insisting that he has sustained damage to a greater amount or (as the case may be) the defendant was and is indebted to him in a greater amount than the sum paid in, and in that case the Court, in disposing of costs at the hearing shall have regard to the fact of the payment into Court having been made and not accepted.

Where the liability of a defendant in the claim, the satisfaction of which the payment into Court has been made, is denied in the pleading, the following rules shall apply -

(a) where a plaintiff accepts, in satisfaction of the claim, the sum so paid in, (in which case all further proceedings in the claim except as to costs, shall be stayed), the plaintiff is entitled to seek leave of Court, to have the money paid out to him; or

(b) where a plaintiff does not accept the money in satisfaction, but proceeds with the action in respect of the claim or any part of it, the money shall remain in Court;

(c) where a plaintiff proceeds with the action in the claim or any part of it and succeeds, the amount paid in, shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim and the balance, if any, shall, by Court Order be repaid to the defendant;

(d) where a defendant succeeds in the claim, the whole amount shall, by Court Order be repaid to him.

(1) Where any money is required to be paid into or deposited in Court, the Court may, if it thinks it expedient, order that the money be paid into a savings account at a reputable commercial bank.

(2) The payment shall be done by the Registrar and any interest payable by the bank shall accrue pro tanto to the benefit of the party who, at the end of the action, is entitled to the money originally paid into Court.

A plaintiff may, in answer to a counter-claim, pay money into Court in satisfaction of it, subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant Money paid into Court pursuant to Rules 1 or 7, or under an Order of a Court shall not be paid out except in pursuance of an Order of the Court.

(1) Where a person entitled to a fund in Court, or a share of that fund, dies intestate and the Court is satisfied that no grant of administration has been made and that the assets of his estate do not exceed fifty thousand naira in value including the value of the fund or share, it may order that the fund or share shall be paid, transferred or delivered to the person who, being a widower, widow, child, father, mother,

brother or sister of the deceased, would have the prior right to a grant of administration of the estate of the deceased.

(2) "Fund in Court" in this Rule, includes money paid into a bank account under Rule 6.

ORDER 30

DISCOVERY AND INSPECTION DOCUMENTS

1. After the close of pleadings in a matter, a party may by leave of a Court or Judge in chambers deliver interrogatories in writing anytime within trial for the examination of any other party or parties and such interrogatories when delivered shall state clearly which of such interrogatories each party is required to answer. Interrogatories which do not relate to any question in the matter shall be deemed irrelevant, even where admissible on the oral cross-examination of a witness.

2. (1) A copy of the interrogatories proposed to be delivered shall be filed and served with the summons or notice of application for leave to deliver them, at least two clear days before the hearing of it, unless a Court or Judge in chambers thinks it fit to dispense with this requirement. (2) In deciding on the application, a Court or Judge in chambers shall take into account any offer which may be made by the party sought to be interrogated to deliver particulars or to make admissions or to produce documents relating to any matter in question, and leave shall only be given to interrogatories as shall be considered necessary either for disposing fairly of the action or for saving costs.

3. Interrogatories shall be in Form 30, as in the Appendix variations as circumstances may require.

4. Where a party to an action is –

(a) a body corporate or a joint stock company whether incorporated or not; or

(b) any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of an officer or other persons, any opposite party may apply for an Order allowing him to deliver interrogatories to any member or officer of that corporation, company or body, and the Court may make such an Order accordingly.

5. (1) Interrogatories shall be answered by affidavit to be filed within 5 days or within such other time as a Court or Judge in chambers may allow.

(2) Two (2) copies of an affidavit shall be supplied to the Registrar.

6. An affidavit in answer to interrogatories shall be in Form 31 with such variations as circumstances may require.

7. Any objections to answering any interrogatory on the ground that it is scandalous or irrelevant or not bona fide for the purpose of the cause or matter or that the matters inquired into are not sufficiently material at that stage or on any other ground, may be taken in the affidavit in answer.

8. (1) Where a person interrogated omits to answer or answers insufficiently, the party interrogating may apply to the Court or a Judge in chambers for an Order requiring him to answer or to answer further, as the case may be. An order may be made requiring the person interrogated to answer or answers insufficiently, the party interrogating may apply to the Court or a Judge in chambers for an Order requiring him to answer or to answer further, as the case may to.

(1) A party may, without filing any affidavit, apply to the Court or a Judge in chambers, for an Order directing another party to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in issue.

(2) On the hearing of an application, a Court or Judge in chambers may either -

(a) refuse or adjourn the application, if satisfied that the discovery is not necessary; or

(b) make such Order, either generally or limited to certain classes of documents, as may seem reasonable; or

(c) refuse to make the Order, where the Court is of the opinion that it is not necessary either for disposing fairly of the action

or for saving costs.

10. (1) Where in an action arising on a marine insurance policy an application for discovery of documents is made by the insurer, the following provisions shall apply -

(a) at hearing, the Court or Judge in chambers may, subject as provided in the next paragraph, make an order in accordance

with Rule 9;

(b) where in any case a Court or Judge in chambers is satisfied, either on the original application or a subsequent application, that it is necessary or expedient, having regard to the production of the ship's papers, a Court or Judge in chambers may make an Order as in Form 68 in the Appendix to these Rules;

(c) in making an order under this rule the Court or Judge in chambers may impose such terms and condition as to staying proceedings or otherwise as the Court or Judge in chambers in its or his absolute discretion thinks just. (2) Rule 13 shall not apply to any application made under this rule.

11. An affidavit to be made by a person against whom an order for discovery of documents has been made under Rule 9, or under paragraph (a) or (b) of Rule 10 (1), shall specify which of the documents in the list he objects to produce, and it shall, except in the case of an order made under paragraph.

(b) or Rule 10 (1), be in Form 32, as in the Appendix with variations as circumstances may require.

12. (1) On the hearing of an application for discovery of document, a Court or Judge in chambers in lieu of ordering an

affidavit of document to be filed may Order that the party from whom discovery is sought shall deliver to the opposite party a list of the documents which are or have been in his possession, custody or power relating to the matters in question.

(2) The list shall as nearly as possible be as in FORM 32, as in the Appendix.

(3) The ordering of the list shall not preclude a Court or Judge in chambers from further, ordering the party to make and

file an affidavit of documents.

13. A Court or Judge in chambers may, at anytime during the action, order the production by any party, on oath, of such of the documents in his possession or power, relating to any matter in question as a Court or Judge in chambers thinks right, and the Court may deal with such documents, when produced, in such manner as appear just.

14. (1) A party to a cause or matter is entitled, at anytime, by notice in writing, to give notice to another party in whose

pleadings or affidavits, reference is made to any document, to produce that document for inspection of the inspecting party or of his legal practitioner, and to permit him or them to take copies of the document.

(2) A party who defaults in giving notice shall not be at liberty to put any such document in evidence on his behalf in the

action, unless he satisfies the Court of Judge in chambers that the document relates only to his own title, he being a defendant to the matter or, that he had some other cause or excuse which a Court or Judge in chambers may consider sufficient for not complying with the notice, in which case, the Court or Judge in chambers may allow it to be put in evidence on such terms as to costs, as it may think fit,

15. Notice to a party to produce any documents referred to in his pleadings or affidavit shall be in Form 33, as in the Appendix with variations as circumstances may require.

16. (1) A party to whom notice is given under rule 14 shall -

(a) within 2 days from the receipt of the notice, if all the documents referred to in it have been stated by him; or

(b) within 4 days from the receipt of the notice, if any of the documents referred to in it have not been stated by him, in

an affidavit referred to in Rule 11, deliver to the party giving it a notice stating a time within 7 days of its delivery, 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 books 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, as in the Appendix with variations as circumstances may require.

17. (1) Where a party served with notice under Rule 14 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 may think fit.

(2) The Order referred to in sub rule (1) shall not be made where a 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) An application to inspect documents not 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.

18. (1) Where inspection of any business books is applied for, the Court may, if it believes reasonable, instead of ordering

inspection of the original books, Order a copy of any entries in it to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, with such affidavit further stating whether or not there are any kind or erasures, interlineations, or alterations in the original.

(2) Even where such copy has been supplied, a 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 any document, the Court may inspect the document for the purpose of deciding the validity of the claim of privilege.

(4) A Court may, at any time, on the application of a party to an action, whether an affidavit of documents have or have not already been ordered, make an order requiring another party to state by affidavit -

(a) whether any particular document or documents, or any class or classes of documents specified in the application, is or has at any time been in his possessions, custody, or power; and

(b) when he parted with the document(s); and

(c) what has become of the document(s).

(5) An application for statement by affidavit shall be made on an affidavit stating that in the belief of the deponent the

party against whom the application is made, has at sometime in his possession, custody or power the particular document or documents or the class or classes of documents specified in the application and that they relate to the matters in question in that action.

19. If a party from whom discovery of any kind or inspection is sought objects to it or any part of it, a Court or Judge in chambers may, if compelled to determine any issue or question in dispute in the action, before deciding upon the right to the discovery or inspection, Order that that issue or question be determined first, and reserve the question as to the discovery or inspection.

20. (1) Where a party fails to comply with an order to answer interrogatories or for discovery or inspection of documents,

he shall be liable to committal.

(2) Where the party in sub rule (1) is a plaintiff, he shall be liable to have his action dismissed for want of prosecution and if a defendant, he will have his defence, if any struck out and to be placed in 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.

21. (1) Service of an order for interrogatories or discovery or service on party inspection made against a party or his legal

practitioner deemed shall be sufficient to found an application for an attachment for disobedience to the order.

(2) A party against whom the application for attachment is made may show in answer to the application that he had no

notice nor knowledge of the order.

22. A legal practitioner on whom an order against any party for interrogatories or discovery or inspection is served under the last preceding rule, who neglects without reasonable excuses to give notice of it, to his client, shall be liable to pay the costs occasioned.

23. A party may, at the trial of a 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, as long as the Judge looks at the whole of the answers and if he is of opinion that any of others are so connected with those put in, that those put in ought not to be used without the others, he may direct them to be put in.

24. In 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 a 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.

25. This Order shall apply to infant plaintiffs and defendants and to their next friends and guardians ad litem.

26. An 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 31

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 or after the trial of the action, whether or not a claim for injunction was included in that party's action.

(2) Where an applicant is the plaintiff and the case is one of urgency, the application may be made ex parte on affidavit but, except such urgency prevails, the application shall be made by motion on notice or summons.

(3) A plaintiff may not make an application for the grant of an injunction before the filing of the process by which the action is to be commenced.

(4) On the application of a party to an action, a 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 question may arise for the inspection of such property in the possession of a party to the action.

(5) For purposes of carrying out an Order under sub rule (1), a Court may by the Order authorize any person to enter upon any land or building in the possession of any party in the action.

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

(7) An Order under this rule may be made on terms the Court thinks just.

(8) An application for an Order under this Rule shall be made by summons or motion on notice.

(9) Except a Court directs, an application by the defendant for such an order may not be made before he enters an appearance.

(1) Where a Court considers it necessary or expedient for the purpose of obtaining full information or evidence in an action, it may, on the application of a party and on such terms, if any, as it thinks just, by order authorize or require any sample to be taken of any property which is the subject-matter of the action or -

- (a) as to which question may arise in it; or
- (b) any observation to be made on such property; or
- (c) any experiment to be tried on or with such property.

(2) For purposes of carrying out an Order under sub rule (1), the Court may by Order authorize any person to enter any land or building in the possession of any party.

(3) Rule 2, sub rules (5) & (6), shall apply in relation to an application for an Order under this Rule.

(1) A Court may, on the application of a party, make an order for the sale by such person, in a manner and on terms (if any) as may be specified in the order, of any property (other than land) which is the subject-matter of the action or as to -

- (a) which question arises in it; and
 - (b) which is of a perishable nature or likely to deteriorate if kept; or
 - (c) which for any other reason it is desirable to sell immediately.
- (2) Rule 2, sub rules (5) & (6), shall apply in relation to an application for an Order under this Rule.

(1) Where -

(a) on the hearing of an application made before the trial of a matter, for an injunction or appointment of a receiver or an

Order under Rules 2, 3 or 4; or

(b) 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 of the application, a Court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires.

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

Where a plaintiff or a 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, a Court, at any time after the claim to be entitled appears from the pleadings (if any) 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 which the security is claimed and such further sum if any for interests and costs as the Court may direct and that, upon such payment made, the property claimed be given up to the party claiming it, being but subject to the provisions of the Exchange Control Act.

7. Where an application is made under Rules 1 - 7, the Court may give directions as to the further proceedings in the action.

8. Where any real or personal property forms the subject-matter of any proceedings and the Court is satisfied that it will be more than sufficient to answer all the claims 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 in it, or may direct, that any part of the personal property be transferred or delivered to any or all such parties.

ORDER 32

TRANSFER AND CONSOLIDATION

Transfers

1. Subject to the provisions of any enactment, a Judge shall have powers to transfer any matter pending in -
 - (a) his Court; or
 - (b) any lower Court of the Federal Capital Territory; or
 - (c) to any Court or tribunal of competent jurisdiction.
2. Where a Judge has -
 - (a) ordered the transfer of an action from a lower Court to the High Court or to another Court; or
 - (b) ordered the transfer of an action before him to a Court, a copy of the Order duly certified by a Registrar shall immediately be sent to a Registrar of the initial Court who shall transmit to the latter Court, as the case may be, the process and proceedings in such action, and an attested copy of all entries in the books of that Court relating to it, and from then, all proceedings in the action or matter shall be taken in the latter Court, as if the action had been commenced there.
 - (1) On receipt by a Court of the documents mentioned in payment of fees Rule 2, a Registrar shall –
 - (a) notify the party who applied for the transfer; or
 - (b) where the transfer was not made on application of any party, notify the plaintiff, to attend at the Registry of the Court and pay the fees for filing the documents, if any and the payment shall consider the question of how the costs shall ultimately be borne.
 - (2) The notification shall be effected by serving a notice personally on the party concerned or where an address for service has been given by the party in the Magistrate's Court, serving may be effected by leaving the notice with an adult person resident or employed at the address for service given in the Magistrate's Court.
 - (1) A Registrar shall, on payment of the prescribed fees, if any, file the document received from the Magistrate's Court Registrar, and make an entry of the filing in the Cause Book.
 - (2) A Registrar shall then serve notice on the parties to attend in person or by their legal practitioners before the Court on the day and at the time specified in the notice.
 - (3) The fees for the service of a notice shall be defrayed in the first instance by the party who has paid the fees for filing as provided by Rule 2 (1).
 - (1) Where a plaintiff fails to attend in compliance with the notice given under Rule 3 (2), the Court shall record his attend default and the defendant may apply by summons for an order dismissing the

action, and the provisions of Rule 2 sub rule (2) shall apply to the service of the summons on the plaintiff.

(2) On an application by a defendant to dismiss the action, the Court may either dismiss the action upon such terms as may be just or make such other order on such terms as it thinks just.

(3) Where a defendant(s) fails to attend in compliance with a notice given under Rule 3 (2), the plaintiff, after having caused an address for service to be entered in the Cause Book may, by leave of the Court to be obtained on summons, have judgment entered for him with costs or obtain the order prayed for in the transferred proceedings.

(4) The provisions of Rule 2, sub rule (2) shall apply to the service of a summons on the defendant(s).

6. The references in Rule 4, to the plaintiff and the defendant shall, be construed as references to the applicant and the respondent.

7. Consolidation

(1) Actions pending in the High Court may be consolidated by an Order of the Court or of a Judge in chambers where it appears that the issues are the same in all the actions and can therefore be properly tried and determined at the same time.

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

(3) Where actions are brought by the same plaintiff against all parties unless the issues to be tried are precisely similar.

(4) Application for consolidation may be made by summons or notice for directions in chambers or by motion in Court on notice.

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

(6) In the application of these provisions to proceedings not commenced by a writ of summons, references to the plaintiff and the defendant shall be construed as references to the applicant and the respondent.

7. "lower Court" in this Order includes the District Court, Magistrate and Area Courts.

ORDER 33

SETTLEMENT AND TRIAL OF ISSUES

1. On conclusion of pleadings, the parties shall within 14 days of it submit in writing to the Registrar the material questions in controversy between them in the form of issues, which shall be noted by the court and set down for trial.
2. Where a party fails to comply with Rule 1, the court may proceed to set down the matter for hearing upon the issues submitted by the other party.
3. Where neither Rule 1 or 2 is involved by any of the parties, the Court shall give notice to the parties to attend the settlement of issues.
4. Issues may be settled without any previous notice at any stage of the proceedings, at which all the parties are actually present or at the hearing.
5. At any time before judgment, and where it appears necessary to the Court, for the purpose of determining the real question or controversy between the parties, the Court may amend the issues or frame additional issues on such terms as it seems fit.

Trial of Questions and Issues

6. The Court may direct the parties to settle all documentary evidence which the parties intend to rely on at the trial.
7. Where it appears to the Court, that the decision of any question or issues arising in a matter when tried separately from the matter substantially disposes of the cause or matter or renders the trial of the matter unnecessary, it may dismiss the matter, or make such other order, or give such judgment as may be just.
8. The provisions of this Order shall be subject to these Rules and any written law in force in the Federal Capital Territory, Abuja, regarding transfer of cases.

ORDER 34

APPLICATIONS AND PROCEEDINGS IN CHAMBERS

1. The business which may be disposed of in chambers by a Judge shall consist of the following matters, in addition to the matters under any other written law, that is to say -(a) application -

- (i) to serve a writ or other process out of the jurisdiction;
 - (ii) for substituted service of a writ or other process;
 - (iii) to have cases heard during vacations;
 - (iv) for enlargement of time;
 - (v) for a writ of attachment or for a garnishee order;
 - (vi) for payment or transfer to any person of any cash or securities standing to his credit in a cause or matter where there has been a judgment or order declaring the rights or where the title depends only upon proof of the identity of the birth, marriage or death of any person;
 - (vii) as to the guardianship and maintenance of advancement of infants;
 - (viii) connected with the management of property; or
- (b) any matter relating to the adoption of children; and
 - (c) such other matters of an interlocutory nature as the Judge may think fit to dispose of in chambers.
2. "The provisions of Order 8, with regards to interlocutory application by way of motion in Court shall apply mutates mutandis to applications to a Judge in chambers.
3. Any order or direction made or given by a Judge in chambers shall have the same effect as if that order or direction had been made or given in court.

ORDER 35

TRIAL PROCEEDINGS IN GENERAL

Setting Down for Hearing

1. The Registrar shall within 7 days of settlement of issues set down the matter for hearing.

Attendance of Parties at Hearing

2. Where the trial of an action is called on, and neither party appears, the action may be struck out of the list, without limitation, to its restoration, on the direction of a Judge.

3. Where a trial is called on, a plaintiff appears and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies on him, but except for any compelling reason, adjournment sought on behalf of a party in a cause may not exceed two through out the duration of the trial.

4. Where a trial is called on, a defendant appears and the plaintiff does not appear, the defendant -

(a) if he has no counter-claim, shall be entitled to judgment dismissing the action;

(b) he has a counter-claim, may prove the counter-claim, so far as the burden of proof lies on him;

(c) where he admits the cause of action to the full amount claimed the Court may, if it thinks fit, give judgment as if the plaintiff

had appeared.

5. A judgment obtained where one party does not appear at the trial may be set aside by the Court upon such terms as may seem just, upon an application made within six days after the trial or within such longer period as the Court may allow for good cause shown upon such terms as the court may deem fit to make in the circumstances.

6. A Judge may, in the interests of justice, postpone or adjourn a trial for such time and on terms, as he may think fit.

Proceedings at the Hearing

7. In actions for libel or slander, in which a defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with view to mitigation of damages, as to the circumstances under which the libel or slander was published or as to the character of the plaintiff, without leave of a Court, unless 7 days at least before the trial he furnishes particulars to the plaintiff of the matters to which he intends to give evidence.

8. A trial Judge shall, at or after trial, direct judgment to be entered as he thinks right and no motion for Judgment shall be necessary to obtain such Judgment.

9. A Registrar or other officer of Court present at a trial or hearing, shall make a note of times at which the trial or hearing commences and terminate respectively and the time actually occupied each day on which the trial or hearing takes place for communication to the Taxing Officer, if required.

10. Trial with assessors shall, where permitted under a written law, take place in such a manner and upon such terms as the Court shall decide.

11. The order of proceeding at the trial of a case where pleadings have been filed shall be as prescribed in the following rules.

12. A party on whom the burden of proof is thrown by the nature of the material issues or questions between the parties, according as the Court may determine, shall begin.

- (1) A party beginning shall then produce his evidence and examine his witnesses.
- (2) When a party beginning has concluded his evidence, he shall ask the other party if he intends to call evidence (which term includes evidence taken by affidavit or deposition, or under commission, and documentary evidence not already read or taken as read); and if answered in the negative, he shall be entitled to submit his written address, but if answered in the affirmative, he shall wait for his general reply.
14. When a party beginning has concluded his case, the other party shall be at liberty to state his case and to call evidence, and to sum up and comment on it.
15. Where no evidence is called or read by the latter party, the party beginning shall have no right to reply, unless he has been prevented from summing up his case by statement of the other party of his intention to call evidence.
16. The case on both sides shall then be considered closed.
17. Where a party opposed to the party beginning calls or reads evidence, the party beginning shall be at liberty to reply generally on the whole case, or he may by leave of the Court, call fresh evidence in reply to the evidence given on the other side, on points material to the determination of the issues, or any of them, but not on collateral matters.
18. Where evidence in reply is tendered and allowed to be given, the party against whom the evidence has been adduced shall thereon, be at liberty to file a written address in accordance with Order 36 and the party beginning shall be entitled to a general reply in like manner.
19. Documentary evidence shall be put in and read or taken as read by consent.
20. (1) A Court Clerk shall take charge of every document or object put in as an 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) A Court Clerk shall cause a list of all the exhibits in the action to be made.
 - (3) The list of exhibits when completed shall be attached to the pleadings and shall form part of the record of the action.
 - (4) For purposes of this Rule, a bundle of documents may be treated and counted as one exhibit.
 - (5) In this Rule, a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.
21. (1) Where a document or object is tendered as an exhibit and is rejected by the Court, it shall be marked "Rejected," and shall be retained along with accepted exhibits.
 - (2) Where more exhibits than one are rejected in the same action, they shall be numbered serially.
 - (3) Where a case goes on appeal, a list of such exhibits shall be transmitted to the appeal court.

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

(a) that there will be no appeal;

(b) that the exhibit will be kept duly marked and labeled and will be produced, if required, at the hearing of an appeal in the

Court of Appeal (if any such appeal is lodged): or

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

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

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

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

24. (1) Where written pleadings have not been filed or the parties or either of them are incapable of understanding their effect with sufficient accuracy, the proceeding at the hearing shall be varied by the Court so far as may be necessary.

(2) In particular, the statement of the defendant in defence where he does not admit the whole cause of action, shall be heard immediately after the plaintiff has concluded the statement of his claim and of the grounds thereof and before any witness is examined, unless in any case the Court directs otherwise.

25. A Judge may in all cases -disallow any question put in cross- examination which appears to him to be vexatious and not relevant to any matter to be inquired into in the action.

ORDER 36

WRITTEN ADDRESS

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

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

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

address.

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

5. Oral argument of not more than 30 minutes shall be allowed for each party to adopt and emphasize and clarify the written address already filed.

6. A written address shall be printed on white opaque A4 paper of good quality, and set out in paragraphs numbered serially and shall contain: -

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

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

(c) the issues arising from the evidence; and

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

7. Each party shall file two copies of his written address in court and serve a copy of it on every other party.

ORDER 37

ORIGINATING SUMMONS PROCEEDINGS

1. A person claiming to be interested under a deed, will 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.

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

3. A Court or Judge in Chambers, may direct every interested person to be served with the summons as it thinks fit.

4. An Application under this Order shall be supported by such evidence as a Court or Judge in chambers may require.

5. A Court shall not be bound to determine any such question of construction if in its opinion it ought not to be determined by

originating summons.

6. A Court who hears an originating summons may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but where the Court makes an order under this rule against a defendant who does not appear at the hearing, the order may be varied or revoked by subsequent order of the Court on just terms.

7. Where an action commences by originating summons and an application is made to a Court for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied that the party was served, and is in default of appearance.

8. (1) A defendant to an action commenced by originating summons, who has entered an appearance and who alleges that he has any claim or is entitled to any relief against the plaintiff in respect of a matter, (however arising) may make a Counter-claim in the action instead of bringing a separate action.

(2) A defendant who wishes to make a counter-claim under this Rule, shall at the first or earliest hearing of the originating summons, inform the Court of the nature of his claim and without limitation to the powers of the Court under sub rule (3), the claim shall be made as the Court may direct

(3) Where it appears on the application of a plaintiff against whom a counter-claim is made, that its subject matter ought for any reason to be disposed of by a separate action, a Court may Order the counter-claim to be struck out or may Order it to be tried separately or make such other Order as may be expedient.

ORDER 38

PROCEDURE RELATING TO EVIDENCE.

1. Subject to provisions of the Evidence Act, evidence in any proceeding may be recorded in writing by mechanical, electronic,

or any other scientific means.

2. Subject to the provisions of any enactment relating to evidence, any fact required to be proved at the trial of an action commenced by writ, by the evidence of witness shall be proved by the examination of the witness orally and in open Court.

3. (1) A Court or Judge in chambers may, at or before the trial of an action, Order or direct that any evidence in it shall be given by affidavit.

(2) An Order or direction under this rule, may be made on such terms as to the filing and giving of copies of the affidavits or

proposed affidavits and as to the production of the deponents for cross-examination, otherwise the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.

4. (1) Without limitation to Rule 2, a Court or Judge in chambers may, at or before the trial of an action, Order or direct that

evidence of a particular fact shall be given at the trial in a specified manner.

(2) The power conferred by sub rule (1) shall extend to -

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

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

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

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

5. A Court or Judge in chambers may, at or before the trial of an action order or direct that the number of medical or expert witnesses who may be called specifically limited.

6. Except, at or before¹ a trial, a Court or Judge in chambers for special reasons orders or directs, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least ten days before the commencement of the trial, the parties, other than the party producing it, have been given an opportunity to inspect it and have agreed to its admission without further proof.

7. In an action arising out of an accident on land due to a collision or apprehended collision -

(a) no plan of the place where the accident happened other than a sketch plan, shall be received in evidence unless, at or before the trial, the Court or Judge in chambers authorizes its reception;

(b) Unless, at or before the trial the Court or Judge in chambers Orders or directs the oral expert evidence of an engineer

sought to be called on account of his skill and knowledge as respects motor vehicles shall not be receivable unless a copy of a report from him containing the substance of his evidence has been made available to all parties for inspection.

8. An Order or direction under Rules 2, 3, 4, 5 and 6, may, on sufficient cause being shown, be revoked or varied by a subsequent Order or direction of a Court or Judge in chambers, made or given at or before the trial.

9. Rules 2, 3, 4, 5, 6 and 7, shall apply to trials of issues, Extension to an references,' inquiries and assessments of damages as they proceedings. apply to the trial of actions.

10. Office copies of all documents filed in a Court shall be admissible evidence in all causes and matters and between all person or parties, to the same extent as the original would be admissible.

11. (1) A Court or Judge in chambers may, in an action, for the purpose of justice, make an Order for the examination upon

oath, before it or any officer of the Court and at any place, a witness or person and may empower a party to such action to give on deposition any evidence in it.

(2) An Order under sub rule (1) may be made on such terms (including, in particular terms as to the giving of discovery before the examination takes place) as the Court or Judge in chambers may think fit.

(3) A Court or Judge in chambers may order the party who has applied for the appointment of an examiner to pay the fees and expenses of the examiner (without prejudice to the question as to which party should eventually bear it), but where the examiner is a Government servant not entitled to receive fees, such fees shall be paid into revenue.

12. An order for a commission to examine witnesses shall be in Form 62, as in the Appendix and the writ of commission shall be

in Form 43, as in the Appendix, with such variations as circumstances may require.

13. (1) Where in a matter, a Court or Judge in chambers so Orders, there shall be issued a request to examine witnesses in lieu of a commission.

(2) Forms 63 and 64, as in the Appendix shall be used for the order and request respectively with such variations as circumstances may require.

14. Where an Order is made for the issue of a request to examine a witness or witnesses in a convention country, the following procedure shall be adopted -

(a) the party obtaining the order shall file in the Registry an undertaking in Form 65, as in the Appendix with variations necessary to meet the circumstances of a particular case;

(b) the undertaking shall be accompanied by -

(i) a request in Form 66, as in the Appendix with variations as may be directed in the order for its issue, together with a translation of the request in the language of the country in which the order is to be executed;

(ii) a copy of the interrogatories (if any) to accompany the request, and a translation of it; and

(iii) a copy of the cross-interrogatories (if any), and a translation of it.

15. Where an Order is made for the examination of a witness or witnesses before the Nigerian Diplomatic Agent in a convention country, the Order shall be in Form 67, as in the Appendix with such variations necessary to meet the circumstances of a particular case.

16. A Court or Judge in chambers may at any stage of proceedings in an action, Order the attendance of a person for the purpose of producing any writing or other documents named in the Order, but no person shall be compelled to produce any writing or other document which he could not be compelled to produce at a hearing or trial.

17. A person who willfully disobeys an Order requiring his attendance for the purpose of being examined or producing a

document is guilty of contempt of court, and may be dealt with accordingly.

18. A person required to attend for the purpose of being examined or of producing a document is entitled to payment for expenses and loss of time at a trial in court as may be determined by the Court.

19. Where a witness or person is Ordered to be examined before an officer of the Court or any person appointed for the purpose, the person taking the examination shall be furnished by the applicant with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions in issue between the parties.

20. The examinations shall take place in the presence of the parties their legal practitioners or agents and the witnesses shall be subject to cross-examination and re-examination but where the parties, their legal practitioners or agents fail to attend, without good cause, the examination may proceed in their absence.

(1) The deposition taken before an officer of the Court or before any other person, appointed to take the examination, shall be taken down in writing by or in the presence of the examiner, not ordinarily by question and answer, but so as to represent as nearly as may be, the statement of a witness and when completed shall be read over to the witness and signed by him in the presence of the parties or such of them as may think fit to attend.

(2) Where a witness refuses to sign the depositions, the examiner shall sign them.

(3) An examiner may put down any particular question or answer if there should appear any special reason for doing so and may put any question to the witness as to the meaning of any answer or as to any matter arising in the course of the examination.

(4) A question which may be objected to shall be taken down by the examiner in the depositions and he shall state his opinion on it to the legal practitioners or parties and shall refer to that statement in the deposition, but he shall not have power to decide upon the materiality or relevancy of any question.

22. Where a person duly summoned by subpoena to attend for examinations refuses to attend or if, having attended, he refuses to be sworn or to answer any lawful question, a certificate of the refusal, signed by the examiner, shall be filed at the Registry and then the party requiring the attendance of the witness may apply to the Court or a Judge in chambers ex parte or on notice for an order directing the witness to attend, or to be sworn or to answer any question, as the case may be.

23. Where a witness objects to any question put to him before an examiner, the question put and the objection of the witness to it; shall be taken down by the examiner and transmitted by him to the registrar to be filed and the validity of the objection shall be decided by the Court or a Judge in chambers.

24. Where Rules 21 and 22 apply, a Court or Judge in chambers may Order the witness to pay any costs occasioned by his refusal or objection.

25. Where the examination of a witness before any examiner has been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the Registry, for filing.

26. The person taking the examination of a witness under Rule 24, may, and if need be shall, make a special report to the Court touching that examination and the conduct or absence of any witness or other person and a Court or Judge in chambers may direct such proceedings and make such Order on the report as it may think just.

27. Except where these Rules provide, or a Court or Judge in chambers directs, no deposition shall be given in evidence at the hearing or trial of the action without the consent of the party against whom the deposition may be offered, unless the Court is satisfied that the deponent is dead or beyond the jurisdiction of Court or unable from sickness or other infirmity to attend the hearing or trial, in any or which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence, saving all just exceptions, without proof of the signature to such certificate.
28. An officer of Court or other person directed to take the examination of a witness or person or any person nominated or appointed to take the examination of a witness or person pursuant to the provisions of a Convention with a foreign country, may administer oaths.
29. A party in an action may by subpoena ad testificandum or duces tecum require the attendance of any witness before an officer of the Court or other person appointed to take the examination, for the purpose of using his evidence on 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 or which shall be used on any proceeding in the action shall be bound on being served with such subpoena to attend before such officer or person for cross-examination.
30. The practice with reference to the examination, cross-examination, and re-examination of witness, at trial, shall extend and be applicable to evidence taken in an action at any stage.
31. The practice of Court with respect of evidence at a trial when applied to evidence to be taken before an officer of the Court or other person in any action after the hearing of trial, shall be subject to any special directions which may be given in any action.
32. No affidavit or deposition filed, or made before issue is joined in an action shall, without special leave of a Court or Judge in chambers, be received at its hearing or trial, unless within one month after issue is joined or within such longer time as may be allowed by special leave of the Court or a Judge notice in writing is given by the party intending to use the same to the opposite party of his intention in that behalf.
33. All evidence taken at the hearing or trial of a matter may be used in any subsequent proceedings in the same matter.
34. (1) Where it is intended to issue out a subpoena, a praecipe for that purpose, in Form 86, as in the Appendix, containing the name or firm and the place of business or residence of the legal practitioner intending to issue out the subpoena and where the legal practitioner is an agent only, then also the name or firm and place of business or residence of the principal legal practitioner, shall in all cases be delivered and filed at the Registry.
- (2) No subpoena shall be issued unless all court fees have been paid (including fee for service) and unless sufficient conduct money on the prescribed scale is deposited to cover the first day's attendance.
35. A writ of subpoena shall be as in one of Forms 40, 41 or 42 in the Appendix, with such variations as circumstances may require.
36. Where a subpoena is required for the attendance of a witness for proceedings in chambers, that subpoena shall issue from the Registry upon a note from the Judge.

37. In the interval between the issuing out and service of a subpoena, the party issuing out a subpoena may correct any error in the names of parties or witnesses and may have the writ re-sealed upon leaving a corrected praecipe of the subpoena marked with the words "altered and re-sealed", and signed with the name and address of the legal practitioner issuing out the same.

38. (1) A subpoena shall be served personally unless substituted

service has been Ordered by the Court or a Judge in chambers in cases where a person evades service.

(2) Order 12 shall so far as possible, apply to service and proof of service of a subpoena.

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

40. (1) A party desiring to give in evidence any deed or other instrument which shows upon the face of it that it has been duly executed, may deliver to the opposite party not less than four clear days before the return-day a notice in writing specifying the date, nature and party to that deed or instrument, and requiring the opposite party to admit that it was executed as it purports to have been, saving all just exceptions as to its admissibility, validity and contents.

(2) Where at the hearing of a suit the party notified neglects or refuses to give the admission, the Court may adjourn the hearing in order to enable the party tendering the deed or instrument to obtain proof of the due execution of it, and on production of the proof the Court may Order the costs of proof to be paid by the party so neglecting or refusing, whether he be the successful party or not.

41. Where a civil or criminal matter is pending before a court or tribunal of foreign country and it is made to appear to the Court by commission rogatoire, or letter of request or other sufficient evidence that the court or tribunal is desirous of obtaining the testimony in relation to the matter of any witness or witnesses within the jurisdiction, the Court may, on the ex parte application of a person shown to be duly authorized to make the application, make such Order(s) necessary to give effect to the intention of the commission rogatoire, or letter of request.

42. (1) On the application of a party to a legal proceeding, the Court may Order that the applicant be at liberty to inspect and take copies of any entries in a banker's book, computer or in any other scientific device for purposes of the proceeding. (2) 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 it is to be obeyed, unless the Court otherwise directs.

ORDER 39

JUDGMENTS AND ORDERS

1. The decision or judgment in a suit shall be delivered in open Court, unless the Court otherwise directs for sufficient cause,

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

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

(1) A minute of every Judgment, whether final or interlocutory, shall be made and every such minute shall be a decree of the Court and shall have the effect of a formal decree.

(2) A formal decree or order may be drawn up on the application of either party.

5. (1) Where a defendant has been allowed to set off any demand or counter-claim against the claim of the plaintiff, the

judgment shall state what amount is due to the plaintiff and what amount, if any, is due to the defendant and shall be for recovery of any sum which appears to be due to either party. (2) The judgment of a Court, with respect to any sum awarded to the defendant, shall have the same effect and be subject to the same Rules, as if that sum had been claimed by the defendant in a separate suit against the plaintiff.

6. A person directed by a Decree or Order to pay money or do any other act is bound to obey it, without any demand for payments or performance and if no time is expressed he shall be bound to do so immediately after the Decree or Order has been made (except as to costs the amount which may be required to be ascertained by taxation), unless the Court enlarges the time by any subsequent Order.

7. The Court at the time of making any Judgment or Order, or at any time afterwards, may direct the time within which the payment or other act is to be made or done, reckoned from the date of the Judgment or Order, or from some other point of time, as the Court thinks fit and may order interest at a rate not exceeding 10% per annum to be paid on any Judgment, commencing from the date of it or afterwards, as the case may be.

8.(1) Where a Judgment or Order directs the payment of money, the Court may, for any sufficient reason, Order that the amount shall be paid by installments, with or without interest

(2) The Order may be made at the time of giving Judgment, or at any time afterwards and may be rescinded upon sufficient

cause at any time.

9. An Order, where drawn up, shall be dated the day of the week, month, and year on which it is made, unless a Court or Judge in chambers otherwise directs and shall take effect accordingly.

10. (1) Where an Order has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave for -(a) the issue of any writ other than a writ of attachment;

11.

(b) the amendment of any writ or pleadings;

(c) the filing of any document; or

(d) any act to be done by an officer of the court other than a legal practitioner, it shall not be necessary to draw up that Order unless a Court or Judge in chambers otherwise directs but the production of a note or memorandum of that Order signed by a Judge shall be sufficient authority for the enlargement of time, issue, amendment, filing or other act. (2) A direction that the costs of the Order shall be costs in any cause or matter shall not be taken as a special direction within the meaning of the sub rule.

(1) Orders, other than final Orders, shall not be entered after being drawn up but shall be filed and a note of the filing shall be made in a book kept for the purpose.

(2) An order filed shall be taken as duly entered and the date of the filing shall be deemed the date of entry.

(3) In the case of procedure Orders drawn up in chambers, no entry of that shall be necessary before an attachment can be issued for its disobedience.

ORDER 40

HABEAS CORPUS PROCEEDINGS

Where a person is alleged to be wrongfully detained, an application may be made for an Order that he be produced in Court for the purpose of being released from detention.

(1) An application under Rule 1, shall not be made unless leave for it has been granted.

(2) Application for leave shall be made ex parte to the Court, supported by, a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought; and an affidavit verifying the facts relied on.

(3) An affidavit verifying the facts relied on in making the application shall be made by the person detained; but where the person detained is unable owing to the detention to make the affidavit, the application shall be accompanied by an affidavit to the like effect made by some person, which shall also state that the person detained is unable to make the affidavit himself.

(4) An applicant shall file, in Court, the application for leave not later than the day preceding the date of hearing and shall at the same time lodge in the Court enough copies of the statement and affidavit for service on any party or parties as the Court may Order.

(5) A Court or Judge may, in granting leave, impose such terms as to giving security for costs as it thinks fit.

(6) A Court or Judge may -

- (a) make an Order for the immediate release of a person being detained under the provision of sub rule (1);
 - (b) direct that an originating summons be issued in Form of the Fundamental Rights (Enforcement) Rules or that the application be made by notice of motion in Form 3 of the Fundamental Rights (Enforcement) Rules; or
 - (c) adjourn the ex parte application so that notice thereof may be given to the person against whom the Order for the release of the person detained is sought.
- (7) The summons or notice of motion shall be served on a person against whom the Order for the release of the person detained is sought and on such other persons as a Court or Judge may direct and, unless a Court or Judge directs, there shall be at least five clear days between the service of the summons or motion and the date named for the hearing of the application.
- (8) A party to an application under Rule 1, shall supply to every other party copies of the affidavits he proposes to use at the hearing of the application.
3. (1) Without limitation to Rule 2 (6), a Court or Judge hearing the application may, in its or his discretion, order that the person detained be produced in Court
- (2) An Order under sub rule (1), shall be a sufficient warrant to any Superintendent of a person, Police Officer in charge of a police station, Police Officer or Constable in charge of the person detained or any other person responsible for his detention, for the production in Court of the person detained.
- (3) Where an Order is made for the production of a person detained, the Court or Judge by whom the Order is made shall give directions as to the Court or Judge before whom, and the date on which, the Order is returnable.
4. (1) Subject to sub rules (2) and (3), an Order for production of a person detained shall be served personally on the person whom it is directed.
- (2) Where it is not possible to serve the Order personally or if it is directed to a Police Officer or a Superintendent of prison or other public official, it shall be served by leaving it with any other person or official working in the office of the Police Officer or the prison or office of the Superintendent or the office of the public official to whom the Order is directed.
- (3) Where an Order is made against more than one person, the Order shall be served in the manner provided by the Rule on the person first named in the Order and copies shall be served on each of the other persons.
- (4) There shall be served with the Order (in Form 4 in the Fundamental Rights (Enforcement) Rules) for the production of the person detained, a notice (in Form 5 in the Fundamental Rights (Enforcement) Rules) stating the Court or Judge before whom and the date on which the person detained is to be brought.
5. (1) A return to an order for the release of a person detained shall be endorsed on or annexed to the order and shall state all the causes or justifications of the detainer of the person detained.

(2) A return may be amended, or another return substituted for it by leave of the Court or Judge before whom the Order is returnable.

6. (1) When a return to an Order has been made, the return shall first be read in open court and an oral application then made for discharging or remanding the person detained or amending or quashing the return, and where that person is brought up in court in accordance with the Order, his legal representative shall be heard first, then the legal representative for the Federal Capital Territory, Abuja or for any other official or person detaining him. (2) The legal representative for the person detained shall then be heard in reply.

7. An order for the release of a person detained shall be made in clear and simple terms having regard to all the circumstances.

(1) An application for a writ of habeas corpus ad testificandum or of habeas corpus ad respondendum shall be made on affidavit.

(2) An application for an Order to bring up a prisoner, otherwise than by writ of habeas corpus, to give evidence in any cause of matter, civil or criminal, before any court, tribunal or Justice, shall be made on affidavit.

9. A writ of habeas corpus shall be in Forms 94,95 or 96, as in the Appendix, whichever be appropriate.

ORDER 41

COMMITTAL FOR CONTEMPT OF COURT

1. (1) The power of a Court to punish for contempt may be exercised by an Order of committal.

(2) An Order of committal may be made -

(a) in connection with -

(i) any proceedings before the Court;

(ii) criminal proceedings;

(iii) proceedings in an inferior courts; or

(b) 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.

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 Rules 1 and 2 shall be taken as affecting the power against a person guilty of contempt of court.

4. (1) Subject to sub rule (2), a Court hearing an application for an Order of committal may sit in private in the following to

cases, that is to say where -

(a) the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody maintenance or upbringing of an infant or right of access to an infant;

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

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

(d) it appears to the Court that in the interest of the administration of justice or for reasons of national security the application

should be heard in private, but in all other cases, the application shall be heard in open court of the Court to make an Order of committal of its own motion

(2) Where a Court hearing an application in private by virtue of sub rule (1), decides to make an Order of committal against a 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 a Court hearing an application for an Order of committal, no grounds shall be relied on at the hearing except the grounds set out in the statement under Rule 2.

(4) Where at the hearing of an 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 preceding provisions are without limitation to the powers committed for contempt committed in the face of the Court.

(1) Where a Court makes an Order of committal, it may 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 the execution of an Order of committal is suspended by an Order under sub rule (1), 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 paragraph.

(1) A 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 to deposit it in court or else where, 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 limitation to the generality of sub rule (1), 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 preceding provisions of this Order shall be taken as affecting power of a Court to make an Order requiring a person guilty of contempt of court, or a person punishable by virtue of an enactment, 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, where 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. Every writ of attachment issued in a case to which this Order applies shall be made returnable before the Court; and if a return of non est inventus is made, one or more writs may be issued on the return of the previous writ.

ORDER 42

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 an office in which he is not entitled to act, shall be made by way of an application for judicial review in accordance with this Order.

(2) An application for a declaration or injunction (not an injunction mentioned in sub rule (1) (b));-may be made by way of an application for Judicial review, and the Court may grant the declaration or injunction claimed if it considers -

(a) the nature of the matters in respect of which relief may be granted;

(b) the nature of the persons and bodies against whom relief may be granted; and

(c) all the circumstances of the case, it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

2. On an application for judicial review, any review, any relief mentioned in Rules 1 (1) or (2), may be claimed as an alternative or in addition to any other relief mentioned if it is connected with the same matter.

3. (1) An application for judicial review shall not 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 Court, except in vacation when it may be made to a Judge in

chambers, and shall be supported -

(a) by a statement, setting out the name and description of the applicant, the relief sought and the grounds on which it is

sought; and

(b) by affidavit, to be filed with the application, verifying the facts relied on.

(3) An applicant shall file the application not later than the day before the motion is heard and shall at the same time lodge copies of the statement and every affidavit in support

(4) A Court hearing an applicant for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise on such terms, if any, as it thinks fit.

(5) A Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

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

(7) Where a Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(8) Where an application for leave is refused by a judge in chambers, the applicant may make a fresh application to another Judge in Court.

(9) An application to a Judge in Court under sub rule (8), shall be made within 10 days after the Judge's refusal to give leave.

(10) Where leave to apply for judicial reviews is granted, then -

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

(b) Where any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action commenced by writ.

4. (1) Where in any case the Court considers that there has been undue delay in making an application for judicial review or,

in a case to which sub rule (2) applies, the application for leave under Rule 3 is made after the relevant period has expired, the Court may refuse to grant -

(a) leave for the making of the application; or

(b) any relief sought on the application, if in the opinion of the Court the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

(2) In the case of an application for an Order of certiorari to remove any judgment; Order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of sub rule (1), is three months after the date of the proceeding.

(3) Sub rule (1) is without limitation to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

5. (1) Subject to sub rule (2), when leave has been granted to an application for judicial review, the application shall be made

by originating motion, except in vacation when it may be made by originating summons to a Judge in chambers.

(2) Where leave has been granted and the Judge or Court so directs, the application may be made by motion to a Judge sitting in open court or, by originating summons to a Judge in chambers.

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

(4) Unless the Court granting leave has otherwise directed, there shall be at least 10 days between the service of the notice of motion or summons and the day named therein for the hearing.

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

(6) An affidavit giving the names and address of, and the places and dates of service on, all persons who have been served with the notice of motion or summons shall be filed by the bailiff 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 Court on the hearing of the motion or summons.

(7) Where on the hearing of a motion or summons the Court is of opinion that any person who ought, whether under this Rule or otherwise, to have been served has not been served, and Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person.

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

(2) A Court 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 it thinks 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 an 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 every other party on demand, and on payment of the proper court charges copies 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 Court may, subject to sub rule (2), award damages to the applicant where -

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

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

8. Unless a Court directs, an interlocutory application in proceedings on an application for judicial review may be made to any judge even where the application for judicial review has been made by motion and is to be heard by the Court.

9. (1) On the hearing of a motion or summons under Rule 5, a person who desires to be heard in opposition to the motion or summons, and appears to the Court to be a proper person to be heard, shall be heard, even where the person 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 of it, verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the motion or summons.

(3) Where an Order of certiorari is made in a case as is referred to in sub rule (2), the Order shall, subject to sub rule (4), direct that the proceedings shall be quashed immediately on their removal into the court

(4) Where the relief sought is an order of certiorari and the court is satisfied that there are grounds for quashing the decision to which the application relates, the Court 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 Court.

(5) Where the relief sought is a declaration, an injunction or damages and the Court 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 commenced by writ, taken out by the applicant at the time of making his application,

the Court may, instead of refusing the application, order the proceedings to continue as if they had been commenced by writ.

10. No action or proceeding shall be commenced 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 Court may Order the applications to be consolidated.

ORDER 43

APPEALS FROM DISTRICT COURTS, ETC.

1. Except for interlocutory appeals which shall be brought within 15 days, every appeal shall be brought by notice of appeal lodged in the lower court within 30 days of the decision appealed from and served on all other parties affected by the appeal.

2. (1) The notice of appeal shall set out the reference number of the proceedings in which the decision complained of was, the names of the parties, the date of the decision and the grounds for appeal in full.

(2) Where the appellant complains only of a part of the decision, the notice of appeal shall specify the part complained of; otherwise the appeal shall be taken to be against the decision as a whole.

(3) The notice of appeal shall give an address within the Federal Capital Territory, Abuja, where the lower court appealed from is situated, to which notices may be sent from the appellant by registered post.

(4) The notice of appeal shall be in Form 97, as in the Appendix and may be varied to suit the circumstances of the case but so that no variation of substance shall be made.

3. (1) A Registrar of the lower court shall, within three months of decision appealed from, prepare as many certified copies of the Proceedings required for the consideration of the appeal as there are parties on record.

(2) Except where the fees for preparing the certified copies are remitted, a deposit decided on by the Registrar as likely to cover the fees, shall be made by the appellant before the preparation of the copies.

4. A Registrar of the lower court shall within 7 days of preparing the certified copies send them to the Registrar of the High Court, and the appeal shall be decided by a Judge of that

5. When notifying a party of the day fixed for the hearing of an appeal, a Registrar of Court shall send to the party a copy of the proceedings.

6. The times prescribed in Rules 1 to 4, may be enlarged at any time by the Court on such terms (if any) as may seem fit, after notice is given to the respondent by the appellant of his application for enlargement of time.

7. Where the time available to the appellant for the taking of any step has expired before such step has been taken or completed, the respondent may, on notice to the appellant, apply to the Court to strike out the appeal, and the Court may strike out, or enlarge the time for sufficient reason shown.

8. All civil appeals from lower courts shall be heard by one Judge of Court

9. The appeal shall come on for hearing at such time and at such place as the Registrar of the Court shall notify to the parties.

Unless the court gives leave to the contrary -

(a) all appeals from courts below shall be heard and determined on briefs of argument filed and exchanged between the parties;

(b) the Appellant shall file an Appellants brief within 21 days of the receipt of the record of proceedings from the court below;

(c) the Respondent shall file and serve a Respondents brief within 14 days of service on him of the Appellants' brief; within 7 days of the receipt of the Respondents brief, the Appellant may file a reply brief which shall deal with any new issues raised in the respondents brief; every brief shall clearly

(d) Identify the issues distilled from the grounds of appeal on the basis of which parties desire the court to determine the appeal;

(e) any issue which is not covered by any ground of appeal shall not be considered by the court in its judgment.

10. A Court may direct a departure from these Rules in respect of compilation of records from the lower court upon the application of any party to an appeal.

(1) Where on the day of hearing or at an appointed day of the case, the appellant does not appear, the appeal shall be struck out and the decision shall be affirmed, unless the Court thinks fit, for sufficient cause to order otherwise.

(2) Where a respondent appears, the judgment shall be with costs of the appeal against the appellant, unless the Court expressly orders, but if the respondent does not appear, the costs of the appeal shall be at the discretion of the Court

11. Where on the day of hearing and at any appointed day of the case, the appellant appears, the Court shall, whether the respondent appears or not, proceed to the hearing or further hearing and determination of the appeal and shall give judgment according to the merits of the case without regarding any imperfection or defect of form; but if it appears or is proved to the Court that the appellant has not complied with the requirements precedent to the hearing of an appeal, the Court shall dismiss the appeal and affirm the decision, with or without costs of appeal against the appellant

12. At a hearing, an appellant shall not go into any other reasons for appeal than those stated in his notice of grounds for appeal; but where, in the opinion of the Court, other grounds for appeal than

those stated in the memorandum of grounds or appeal should have been given, or the statement of grounds of appeal. is defective, the Court, in its discretion may allow such amendments of the memorandum of ground for appeal upon such conditions as to service upon the respondent and as to costs as it may think fit.

(1) A respondent may give notice that he intends at the hearing to ask the Court to confirm the judgment of the lower court on grounds other than those stated by that court.

(2) The notice shall be accompanied by a clear statement of the grounds on which the respondent intends to ask the Court to confirm the judgment of the lower court.

(3) Such notice and grounds shall be filed in Court within 14 days of service on the respondent of the notice and grounds for appeal, and shall be served on the appellant or his legal practitioner.

(1) A respondent may file grounds for appeal against any part of the judgment of the lower court.

(2) The grounds shall be filed by the respondent within 14 days of service on him of the appellant's notice and grounds for appeal, and shall be served on the appellant or his legal practitioner before the hearing.

(1) No objection on account of any defect in the form of stating any ground for appeal shall be allowed, unless the Court is of opinion that the ground for appeal is so imperfectly or incorrectly stated as to be insufficient to enable the respondent to enquire into the subject-matter or to prepare for the hearing.

(2) Where a Court is of opinion that an objection to any reason for appeal ought to prevail, the Court may, if it thinks fit, cause the reason for appeal to be amended upon such terms and conditions, if any, as the Court may think just.

18. (1) On an appeal from a decision of a lower court, no objection shall be taken or allowed to any proceeding in such court for a defect or error which might have been amended by that court, or to any complaints, summons, warrant, or other process to or of such court for any alleged defect in substance or in form, or for any variance between any complaint or summons and the evidence adduced in support in such court.

(2) Where an error, defect, or variance mentioned in this Rule appears to the Court at the hearing of any appeal to be such that the appellant has been thereby deceived or misled, it shall be lawful for the Court either to refer the case back to the lower court with directions to re-hear and determine it or to reverse the decision appealed from, or to make such other Order for disposing of the case as justice may require.

19. No objection shall be taken or allowed, on an appeal, to a notice of appeal which is in writing or to any recognizance entered into under this Order for the due prosecution of the appeal for any alleged error or defect, but if the error or defect appears to the Court to be such that the respondent on the appeal has been thereby deceived or misled, it shall be lawful for the Court to amend it and, if it is expedient to do so, also to adjourn the further hearing of the appeal, the amendment and the adjournment, if any, being made on such terms as the Court may think just.

20. A Court may, where it considers it necessary that evidence should be adduced, either -

- (a) order such evidence to be adduced before the Court on some day to be fixed; or
- (b) refer the case back to the lower court to take such evidence, and may in such case either direct the lower court to

adjudicate afresh after taking such evidence and subject to such directions in law, if any, as the Court may think fit to give, or direct it, after taking such evidence, to report specific findings of fact for the information of the Court, and on any such reference the case shall, so far as may be practicable and necessary, be dealt with as if it were being heard in the first instance.

21. (1) Where additional evidence is to be taken by a lower court and specific findings of fact reported, it shall certify the to the Court which shall then proceed to dispose (of the appeal).

(2) The appellant or his legal practitioner shall be present when the additional evidence is taken.

(3) Evidence taken in pursuance of rule 18 of this Order shall be taken as if it were evidence taken at the trial before the lower court. -

(4) When forwarding to a Court any additional evidence taken by a lower court in pursuance of Rule 20, the lower court may express its opinion on the demeanour of the witnesses and of the value of their evidence and may also, if it is the same court against whose decision the appeal has been made, state whether or not it would have come to a different decision had the additional evidence been brought forward at the trial.

22. The fees in the First Schedule shall be chargeable in civil appeals save where they would have to be paid by a Government officer acting in his official capacity or where the lower court or the court waives or remits the fees on the ground of the poverty of the person chargeable therewith where it appears that there are substantial grounds of appeal.

23. Allowances may be made to witnesses in accordance with the Provisions of the Second Schedule.

24. (1) On an application made for stay of execution under any enactment establishing the lower court, the lower court the Court may impose one or more of the following conditions -

(a) that the appellant shall deposit a sum fixed by the Court not exceeding the amount of the money or the value of the property affected by the decision or judgment appealed from, or give security to the satisfaction of the Court for the said sum;

(b) that the appellant shall deposit a sum equal to the amount of the costs allowed against him or give security to the satisfaction of the Court for the said sum;

(c) that the appellant shall, where the decision or judgment appealed from relates to possession of lands or houses, give security to the satisfaction of the Court for the performance of the decision or judgment in the event of the appeal being dismissed;

(d) that the appellant's property shall be seized and attached pending the making of a deposit or the giving of security, including a deposit or security for expenses incidental to the seizure and attachment;

(e) that the appellant's property shall be seized, and attached and sold and the net proceeds deposited in court pending determination of the appeal.

(2) An Order made on an application shall limit the time (not being more than 30 days) for the performance of the conditions imposed, and direct that in default of the performance within the time so limited execution may issue or proceed.

(3) An application for stay of execution under the enactment establishing the lower court may be made at any time after lodgment of the notice of appeal and shall in the first instance be made on the lower court; but where execution has been ordered by the Court the application shall not be made to the lower court but to the Court

(4) The application may be ex parte but the Court may direct notice of it be given to the other party to the appeal; and where an order is made ex parte the registrar of the Court shall notify the other party of the order made.

(5) Where an appellant proposes to give security instead of making a deposit, the application shall state the nature of the security and the name of the surety proposed (if any).

(6) A party dissatisfied with an order made by the lower court may apply to the Court by motion (original or interlocutory, as the case may require) with notice to the other party for a review of the order, and the Court may then make such order as may seem just.

(7) An appeal shall not operate as a stay of execution under the decision or judgment appeal from except as the lower court the Court may order; and no intermediate act or proceeding shall be invalidated except so far as either court may direct

25. A court may make such Order as to the payment of costs by or to the appellant as it may consider to be just and the Order may be made also in any case where an appeal has not been entered into or prosecuted.

26. (1) A Court may, in special circumstances, on an application on notice (original or interlocutory as the case may require)

supported by an affidavit, Order the appellant to deposit such sum or give such security as may seem fit for respondent's costs of appeal including the costs incidental to the application.

(2) The order shall limit the time (not exceeding 30 days) within which the deposit or security shall be made, and may direct that in default of its being made or given within the time so limited the appeal shall without further order stand dismissed.

(3) Where an appeal stands dismissed the respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such, costs may be stated in the order in anticipation or may be assessed from time by the Court of its own motion or on application made ex parte or on notice, as the court may see fit.

(4) Where an appeal stands dismissed the appellant shall take no further step or proceeding except by leave of the Court for reinstatement of the appeal, which may be granted on such terms (if any) as may seem fit upon application by motion on notice given within a month of such dismissal.

(5) Subject to the discretion of the Court to grant costs where it seems proper on an application made under sub rule (1), costs shall not normally be granted to the applicant except where the net

proceeds of execution levied on the appellant's goods are sufficient to satisfy the amount payable under the judgment or decision appealed from.

27. (1) Where a case is decided on appeal the Court shall certify its judgment or order to the lower court in which the decision appealed against was pronounced.

(2) The lower court to which the Court certifies its Judgment or Order shall then make such orders as are conformable to the Judgment or Order of the Court, and if necessary, the records shall be amended in accordingly.

28. After the pronouncement of the Judgment of the Court, the lower court from which the appeal came shall have the same jurisdiction and power to enforce, and shall enforce, any decision which may have been affirmed, modified, amended, or substituted by the Court or any judgment which may have been pronounced by the Court, in the same manner in all respects as if such decision or Judgment had been pronounced by itself.

29. Any Order given or made by the Court may be enforced by the Court or by the lower courts as may be most expedient.

30. A Court may, if it thinks fit, enlarge any period of time prescribed by this Order.

31. In this Order-

"the lower court" means District Court and Area Court "Judgment" includes an Order or a Ruling.

ORDER 44

APPEALS TO THE HIGH COURT FROM DECISION OF AUDITORS

This Order shall apply to an appeal to the Court from a decision. Application of an auditor made under the provisions of any written law which confers the right to appeal to the High Court against any such decision.

2. An appeal to the Court from a decision of an auditor shall be by notice of motion

3. The evidence upon the hearing of the appeal shall be by affidavit except 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 6 weeks after the date of the decision to which it-relates, on the Auditor in charge of the audit in which the decision has been made and also upon the local government or other body in relation to whose accounts or to the accounts of whose officer the decision was given, if that local government or other body is not the appellant.

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 28 days after the service of the notice.

6. (1) An appellant shall within 7 days after service on the auditor of the notice of motion, file with the Registrar a copy of such notice and an affidavit or affidavits setting out the reasons stated by the auditor for his decision and the facts upon which the appellant intends to rely at the hearing and then the motion shall be set down for hearing.

(2) Where a notice of motion is not set down accordingly, either the local government or other body or the Auditor 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. An appellant shall deliver forthwith to the local government or other body and to the auditor a copy of any affidavit filed under Rule 6 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 an affidavit intended to be filed by him in opposition to the motion.

8. Where under Rule 4, a notice of motion is served on an Auditor other than that Auditor who gave the decision, that Auditor may appear in opposition in all respects, as if he were the Auditor by whom the decision was given, and these provisions shall apply accordingly.

ORDER 45

STAY OF EXECUTION PENDING APPEAL TO THE COURT OF APPEAL.

1. Where an application is made to the Court for a stay of execution or of proceedings under any judgment or decision appeal from the 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. (1) A Court may make or refuse an order for a stay of execution or proceedings.

(2) An Order for stay may be made subject to such conditions, as shall appear just, including the deposit in Court of any money adjudged due to any party in the judgment appealed from.

3. Where an 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 on which the Order is made.

ORDER 46

MISCELLANEOUS PROVISIONS

1. Subject to particular rules, the Court may in all causes and matters make an Order which it considers necessary for doing justice, whether or not, the Order has been expressly asked for by the person entitled to the benefit.
2. All fines, forfeitures, pecuniary penalties and costs Ordered to be paid may be levied by distress, seizure and sale of the movable and immovable property of the person making default in payment.
3. In all cases in which the publication of any notice is required, it Notices may be made by advertisement in the Federal Gazette, or any National Daily, except provided in any particular case by any Rule of Order of Court.
4. The several offices of the Court shall be open at such times as the Chief Judge shall direct.
5. 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 filing, shall be initialed by a Registrar.

The fees set out in the Third Schedule may be charged in respect of the duties of a notary public or notarial act

ORDER 47

SITTINGS OF THE COURT 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 court.
3. The several offices of the Court shall be open at such times as the Chief Judge shall direct.
4. (1) Subject to the directions of the Chief Judge, sittings of the Court for the dispatch of civil matters shall be held on every week-day, except -
 - (a) on any public holiday;
 - (b) during the week beginning with Easter Monday;
 - (c) during the period beginning on Christmas Eve and ending on 2nd January next following.(2) There shall be an annual vacation of the Court to commence on such date in August and of such duration, not exceeding six weeks, as the Chief Judge may by notification in the Federal 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 (2), 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 in chambers, and the decision of the Judge on the application shall be final.
6. The time for filing and service of pleadings shall not run during the annual vacation unless otherwise directed by a Court or Judge in chambers.
7. No business shall be transacted in chambers on Sundays and public holidays.

ORDER 48

PROBATE AND ADMINISTRATION

Grant of Probate or Administration in General

(1) Subject to the provisions of Rules 39 and 40, where a person subject to the jurisdiction of the Court dies, all petitions for the granting of any letters of administration of the estate of the deceased person, with or without a Will attached, and all applications on other matters connected, shall be made to the Probate Registrar of the Court.

(2) In such an application, the Chief Judge may request any Court of the Territory, to take measures and make Orders necessary or expedient for the interim preservation of the property of the deceased within the Territory, for the discovery or preservation of the Will of the deceased or for other purposes connected with the duties of the Court under this Order and every Court shall carry out any such request as far as practicable and report to the Chief Judge.

(3) No grant of administration with the Will annexed shall issue within 7 days of the death of the deceased; and no grant of administration (not with the Will annexed) shall issue within fourteen days of the death.

2. A Court shall, where the circumstances of a case require, on the death of a deceased person, or as soon after as may be, appoint and authorize an officer of Court, or some other fit person, to take possession of his property within jurisdiction, or put it under seal, and so keep it until it can be dealt with according to law.

3. Where a person other than the person named executor or administrator, or an officer of the Court or person authorized by the Court, takes possession of and administers or deals with, the property of a deceased person, he shall, besides the other liabilities he may incur, be liable to such fine not exceeding Five thousand Naira as the Court, having regard to the condition of the person so interfering with the property and that other circumstances of the case, may think fit to impose.

4. (1) A person having in his possession or under his control a paper or writing of a deceased, being or purporting to be testamentary, shall- promptly deliver its original to the Probate Registrar of the Court.

(2) Where a person fails to deliver within 14 days after having knowledge of the death of the deceased, he shall be liable to a fine not exceeding Five thousand Naira, as a Court having regard to the condition of the person so in default and the other circumstances 'of the case, thinks fit to impose.

5. Where it appears that a document of the deceased, being or purporting to be testamentary, \% in the possession of, or under the control of any person, a Court may in a summary way, whether a suit or proceeding respecting probate or administration is pending or not, Order him to produce the paper and bring it into Court.

6. Where it appears that there are reasonable grounds for believing that a person has knowledge of any document being or purporting to be testamentary (although it is not shown that the document is in his possession or under his control), a Court may in a summary way, whether a proceeding for probate or administration is pending or not, Order that the person be, examined respecting the document in Court, or on interrogatories, that he attends for that purpose, and after examination that he produces the document, and bring it into Court.

7. A Court may of its own motion, or on the application of a person claiming an interest under a Will, give notice to the executors (if any) named in it, to come and prove the Will, or to renounce probate, and they, or some or one for them, shall, within 14 days after notice, come in and prove or renounce accordingly.

8. Where a person named executor in the Will of a deceased takes possession and deals with any part of the deceased's property and does not apply for probate within one month after the death, or after the termination of any suit or dispute respecting probate or administration, he may, independently of any other, liability, be charged with contempt of court, and shall be liable to such fine, not exceeding Five Thousand Naira, as the Court thinks fit to impose.

9. A Court shall require evidence, in addition to that offered by the applicant, where additional evidence in that regard seems to the Court necessary or desirable, respecting -

(a) the identity of the deceased or of the applicant; or

(b) the relationship of the applicant to the deceased; or

(c) any person or persons in existence with a right equal or prior to that of the applicant to the grant of probate or administration sought by the applicant; or

(d) any other matter which may be considered by the Court relevant to the question whether the applicant is the proper to whom the grant should be made, but the Court may refuse the grant unless the applicant produces the required evidence on these points or any of them as required by the Court.

(1) Where it appears to a Court that some person(s) other than the applicant may have at least an equal right with the applicant to the grant sought, the Court may refuse the grant until due notice of the application has been given to such other person(s) and an opportunity given for such person(s) to be heard in regard to the application.

(2) A Court may in its discretion refuse the grant unless and until all persons entitled to the grant in priority to the applicant have expressly renounced their prior right.

11. An applicant for a grant of letters of administration shall file in the Court a true declaration of all the personal property of the deceased and the value of it, but for the purpose of the fees payable on letters of administration, the value of the property in respect of which the grant is made shall not include -

(a) any gratuity payable by the Government of the Federation of Nigeria, or the Government of a State or the Federal Capital Territory, Abuja to the estate of any person for merely employed by either of such Governments or by a statutory corporation; or

(b) any sum of money payable to an estate from a Provident Fund, or Pension Fund established under the provisions of any written law.

2. (1) In no circumstances shall a Court issue letters of administration until all inquiries which the Court sees fit to institute have been answered to its satisfaction.

(2) A Court shall, however, afford reasonable facility for the obtaining of letters of administration as is consistent with due regard to the prevention of error and fraud.

3. A notice to prohibit a grant of administration may be filed in the Court.

4. (1) A notice shall remain in force three months only from the day of filing, but it may be renewed from time to time. (2) A notice shall not affect a grant made on the day on which the notice is filed.

(3) A person filing a notice shall, be warned by a warning in writing delivered at the place mentioned in the notice as his address.

(4) Notices in the nature of citations shall be given as a Court directs.

15. Suits respecting administration shall be instituted and carried on, subject to the same rules of procedure as suits in respect of ordinary claims.

16. A person may, in his lifetime, deposit for safe custody in the Court at Abuja his own Will, under his own seal and that of the Court.

17. (1) Every original Will, of which probate or administration with Will annexed is granted, shall be filed and kept in the Probate Registry, to secure at once the due preservation and convenient inspection of the same. (2) A copy of every such Will; and of the probate or administration shall be preserved in a book kept for the purpose in the Registry.

18. (1) An original Will shall not be delivered out for any purpose without the direction in writing of the Court where the Will is filed. (2) A certified transcript, under the seal of the Court of the probate or administration with the Will annexed may be obtained from the Court.

19. (1) On receiving an application for administration with Will annexed, the Court shall inspect the Will, and see whether it appears to be signed by the testator or by some other person in his presence[^] and by his direction, and to be subscribed by two witnesses according to the enactments and shall not proceed further if the Will does not appear to be so signed and subscribed. (2) where a Will appears to be signed and subscribed, the Court shall then refer to the attestation clause (if any) and consider

whether the wording of it states the Will to have been, in fact, executed in accordance with those enactments.

20. (1) Where there is no attestation clause or the attestation clause is insufficient, the Court shall require an affidavit from -- at least one of the subscribing witnesses, if either of them is living, to prove that the Will was, in fact, executed in accordance with those enactments.

(2) An affidavit shall be engrossed and form part of the probate, so that the probate may be a complete document on the face of it.

21. Where on a perusal of an affidavit, it appears that the will was not, in fact, executed in accordance with those enactments, the Court shall refuse probate.

22. Where both subscribing witnesses are dead or if from other circumstances such an affidavit cannot be obtained from either of them, resort to such an affidavit shall be had to other persons (if any) present at the execution of the Will but if no such affidavit can be obtained, proof shall be required of that fact and of the handwriting of the deceased and of the subscribing witnesses and also of any circumstances raising a presumption in favour of a due execution of the Will.

23. Where the testator was blind or illiterate, a Court shall not grant administration with the Will annexed, unless the Court is satisfied, by proof or by what appears on the face of the Will, that the Will was read over to the deceased before its execution or that he had at that time knowledge of its contents.

24. (1) A Court, on being satisfied that a Will was duly executed, shall carefully inspect it to see whether there are any interlineations or alterations or erasures or obliterations appearing in it and requiring to be accounted for.

(2) Interlineations, alterations, erasures and obliterations shall be invalid unless they existed in the Will at the time of its execution or unless, if made afterwards, they have been executed and attested in the mode required by the enactments or unless they have been made valid by the re-execution of the Will or by the subsequent execution of some codicil.

(3) Where any interlineations, alterations, erasures or obliterations appear in the Will (unless duly executed or recited in or identified by the attestation clause), an affidavit in proof of an existence in the Will before its execution shall be filed.

(4) Where no satisfactory evidence is adduced respecting the time when an erasure or obliteration was made and the words erased or obliterated are not entirely effaced and can, on inspection of the Will be ascertained, they shall form part of the probate.

(5) Where any words have been erased which might have been of importance an affidavit shall be required.

25. (1) Where a Will contains a reference to a document of such a nature as to raise the question whether it ought or ought not to form a constituent part of the Will, the Court shall require the production of the document, with a view to ascertaining whether or not it is entitled to Probate and if it is not produced, a satisfactory account of its non-production shall be proved.

(2)A document shall not form part of a Will unless it was in existence at the time when the Will was executed.

(3)Where there are vestiges of sealing wax or wafers or other marks, on a Will, leading to the inference that some document has been at sometime annexed or attached to it, a satisfactory account of those shall be proved, or the production of the document shall be required, and if it is not produced, a satisfactory account of its non-production shall be proved.

26. Where a person appointed executor in a Will survives the testator but either dies without having taken probate or having been called on by the Court to take probate does not appear, his right in respect of the executorship wholly ceases and with out further renunciation, the representation to the testator and the administration of his property may go and be committed as if that person had not been appointed executor.

27. (1) A Will or a copy of it, to which an executor or an administrator with the Will annexed is sworn shall be marked by the executor or administrator and by the person before whom he is sworn. (2) The provisions respecting Wills shall apply equally to codicils.

28. (1) Where evidence is directed or allowed to be given by affidavit, a Court may require the personal attendance of the deponent, if within the jurisdiction, before the Court, to be examined viva voce respecting the matter of his affidavit (2) The examination may take place before an affidavit has been sworn or prepared, where a Court thinks fit.

(Administration not with Will)

29. (1) A Court in granting letter of administration shall proceed as far possible, as in cases of probate.

(2) A Court shall ascertain the time and place of the deceased's death and the value of the property to be covered by the

administration.

30. (1) A person to whom administration is granted shall give a bond, with two or more responsible sureties, to the Probate Registrar of the Court, conditioned for duly collecting, getting in and administering the personal property of the deceased, such sureties to be to the satisfaction of the Probate Registrar.

(2)A Court may, if it thinks fit, take one surety only.

(3)The bond shall be in a penalty of double the amount under which the personal estate of the deceased is sworn, unless the Court in any case thinks it expedient to reduce the amount.

(4)A Court may also in any case direct that more bonds than one shall be given, so as to limit the liability of a surety to such amount as the Court thinks reasonable.

31. The Probate Registrar may, on being satisfied that the condition of a bond has been broken, assign it to some person and that person may then sue on the bond in his own name, as if it had been

originally given to him instead of the Probate Registrar and may recover then, as trustee for persons interested, the full amount recoverable in respect of any breach of the bond.

Administration of Property

32. A person claiming to be a creditor or legatee, or the next of kin, or one of the next of kin, of a deceased, may apply for and obtain a summons from Court requiring the executor or administrator, of the deceased to attend before the Court and show cause why an order for the administration of the property of the deceased should not be made.

33. (1) On proof of service of the summons or on appearance of the executor or administrator and on proof of all such other things as the Court may direct, a Court may, make an order for the administration of the property of the deceased.

(2) A Court may make or refuse the Order, or to give any special directions respecting the carriage or execution of it, and in the case of applications for the Order by two or more different persons or classes of persons, may grant it to such, as the Court thinks fit.

(3) Where a Court thinks fit, the carriage of the Order may subsequently be given to such person and on such terms, as it thinks fit.

34. On making of an Order, or at anytime afterwards, a Court may; if it thinks fit, make any other Order which appear requisite to secure the proper collection, recovery for safe-keeping and disposal of the property or any part of it.

35. In case of intestacy, where the special circumstances of the case appear to the Court so to require, a Court may, if it thinks fit, on the application of any person having interest in the estate of the deceased or of its own motion, grant letters of administration to an officer of the Court, to a Consular Officer or to a person in the service of the Government.

36. (1) The officer or person so appointed shall act under the direction of the Court and shall be indemnified.

(2) A Court shall require and compel him to file in the Court accounts of his administration at intervals not exceeding three months.

37. Where a person died intestate as to his personal estate or leaving a Will affecting personal estate, but without having appointed an executor willing and competent to take probate, or where the executor, at the time of the death of that person, is resident out of the jurisdiction, a Court, where it appears necessary or convenient may appoint some person to be the administrator of the personal estate of the deceased upon his giving security, if any, as a Court shall direct, and every such administration may be limited as the Court thinks fit.

38. (1) A Court may direct that any administrator (with or without the Will annexed) shall receive out of the personal and real estate of the deceased such reasonable remuneration as the Court thinks fit, not exceeding a fee of Ten Thousand Naira and in addition, a sum not exceeding five per centum on the

amount of the realized property or when not converted into money, on the value of the property duly administered and accounted for by him:

(2) Where a Court is satisfied that by reason of exceptional circumstances the administration of the property has required an extraordinary amount of labour to be bestowed on it, the Court may allow in respect of that property a higher rate of remuneration.

Administration of Estate of Foreign Citizens

39. (1) Where a foreign citizen dies within the jurisdiction without leaving within the jurisdiction a widow or next of kin, or, if such person dies within a Government institution or had his usual place of residence there, the Magistrate having jurisdiction within that institution, or if he does not die within a Government station or had not his usual place of residence there, then the Secretary of the Local Government in charge of the institution in which he died, shall collect and secure all moneys and other property belonging to the deceased and shall then request the Secretary to the Government to inform the nearest consular officer of that country of the death of the deceased and transmit to him a list of the money and property of the deceased.

(2) Where sub rule (1) applies, the Local Government Secretary may appoint any Administrative Officer attached to his Local Government or with his consent, any Magistrate or any Administrative officer attached to any other Local Government may act in his place.

40. (1) An application may be made to a Court by a consular officer or by any person authorized by him in writing and under the consular seal, for leave to administer the estate of the deceased and the Court may make or vary such Order as to security for payment of debts and the method of administration as the Court shall think fit

(2) An executor or administrator who fails within any such period to file his accounts as specified shall be liable to such penalty not exceeding One Thousand Naira as a Court may think fit to impose, and every such fine shall on non-payment be enforceable by distress, and failing sufficient distress, by imprisonment for a term not exceeding six months.

(3) Where an account is filed in Court under this Rule, a Court shall scrutinize the account and if it appears to the Court that by reason of improper or unjustifiable entries or that the account is not a full and proper account, the Court may give written notice to the person filing the account to remedy such defects within such time as the Court may seem reasonable for the purpose, and on failure, to remedy such defects within such time, the person who filed such defective account shall be taken to have failed to file an account within the meaning of this Rule, and proceedings may be taken against that person accordingly.

(4) A Court may, on the motion of an interested party, or of its own motion, summon any executor or administrator failing to file account, to show cause why he should not be punished.

(5) A Court may for good cause shown extend the time for such filing- of accounts.

(6) An executor or administrator who has been granted an extension of time to file such accounts and who fails within such extended time to file such accounts, shall be liable to the penalty stated above and the procedure for bringing him before the Court shall be invoked.

(7) It shall lie the duty of the Probate Registrar to bring to the notice of the Court the fact that any executor or administrator has failed to file his accounts as required by this Rule.

(8) Such accounts shall be open free of charge to the inspection of all persons satisfying the Probate Registrar that they are interested in the administration.

(9) In this rule, the word "accounts" includes an inventory, an account of the administration, the vouchers in hands of the executor or administrator, and an affidavit in verification.

41. The duties and powers of a Court by Rules 5, 6, 7, 9, 10, 11, 12, 14, 17, 18, 19, 20, 21, 22, 28, 31, 38, 40, and 41 U), (3), (5), (7) and (8), shall be undertaken by the Probate Registrar on behalf of the Court subject to any directions which the Chief Judge may give, but a Court shall have power, either of its own motion or on the application of an interested person, to review any undertaken by the Probate Registrar and on such review a Court shall have power to cancel anything which may have been done by the Probate Registrar or make such order as may be just in the circumstances.

42. A Court may refuse to entertain an application under Rule 42, where it considers that there is an unreasonable delay by the applicant in making his application.

43. The grant of letters of administration under this Order shall be signed by the Probate Registrar, on behalf of the Court.

ORDER 49

PROBATE (NON-CONTENTIOUS) PROCEDURE.

1. (1) A person having in his possession or under his control, any testamentary document of a deceased person, shall promptly deliver the original to the Probate Registrar of a Court

(2) A person who fails to deliver within 14 days after having knowledge of the death of a deceased, shall be liable to a fine not exceeding five thousand naira, as a Court having regard to the condition of the person in default-and the other circumstances of the case, thinks fit to impose.

2. Where it appears that any testamentary document of the deceased, is in the possession or under the control of a person whether a proceeding respecting probate or administration is pending or not, a Court may summarily order him to produce the document, and bring it into Court.

3. Where there are reasonable grounds for believing that a person has knowledge of a testamentary document (although it is not shown that the document is in his possession or under his control), whether a proceeding for probate or administration is pending or not, a Court may summarily order that the person be examined respecting the document in Court, or attend interrogatories, and after examination, to produce the document and bring it into Court.

4. A Court may of its own motion or on the application of a person claiming an interest under a Will, give notice to the executors (if any) named in it, to come in and prove the will or to renounce probate, and such person(s), shall, within 14 days after notice, come in and prove or renounce accordingly.

5. Where a person named as executor in the Will of a deceased takes possession and deals with any part of the property of the deceased and does not apply for probate within one month after the death, or after the termination of any suit or dispute respecting probate or administration, he may independently of any other liability, be charged with a contempt of court and shall be liable to a fine, not exceeding Five Thousand Naira, as a Court thinks fit to impose.

6. (1) Where a person subject to the jurisdiction of the Court dies, all applications or petitions connected with the grant of

probate of his Will shall be made to the Probate Registrar of the Court

(2) On such an application, the Chief Judge may request any Court to take measures and make an Order necessary or

expedient for the -

(a) interim preservation of the property of the deceased within the Federal Capital Territory, Abuja;

(b) discovery or preservation of the Will of the deceased;

(c) or for any other purposes connected with the duties of the Court under this Order, and a Court shall carry out such request as far as practicable and report to the Chief Judge.

7. (1) An applicant for a grant through a legal practitioner may apply directly at the Probate Registry.

(2) A legal practitioner through whom an application for a grant is made shall give the address of his place of business

within jurisdiction.

8. (1) A personal applicant may apply for a grant directly at the Probate Registry.

(2) A personal applicant may not apply through an agent, whether paid or unpaid and may not be attended by any person acting or appearing to act as his adviser.

(3) No personal application shall be received or proceeded with where -

(a) it becomes necessary to bring the matter before the Court on motion or by action;

(b) an application has already been made by a legal practitioner on behalf of the applicant and has not been withdrawn;

or

(c) the Registrar directs otherwise.

(4) After a Will has been deposited in the Registry by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the Registrar so direct

(5) A personal applicant shall produce the death certificate of the deceased or such other evidence of the death as the Registrar may approve.

(6) A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared in the Registry or may himself prepare such papers and lodge them unsworn.

(7) Except a Registrar directs, every oath, affidavit or guarantee required of a personal applicant shall be sworn or executed by all the deponents or sureties before an authorized officer of Court..

9. (1) A Registrar shall not allow any grant to issue until all inquiries which he may see fit to make have been answered to his

Satisfaction.

(2) A Registrar may require proof of identity of the deceased or of the applicant for the grant beyond that contained in the

oath.

(3) No grant of probate or of administration with the Will attached shall issue within seven days of the death of the deceased.

(1) An application for a grant shall be supported by an affidavit sworn by the applicant, and by such other papers as a Registrar may require.

(2) Unless otherwise directed by a Registrar, the oath shall state where the deceased died domiciled.

11. Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the affidavit the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name or as to any other reason that there may be for the inclusion of the other name in the grant.

12. A Will in which an application for grant is made shall be marked by the signatures of the applicant and the person before whom the oath is sworn and shall be exhibited to an affidavit which may be required under this Order, as to the validity, terms condition or date of execution of the Will, but where a Registrar is satisfied that compliance with this Rule might result in the loss of a Will, he may allow a photocopy of it to be marked or exhibited in lieu of the original document.

13 (1) Where the Registrar considers in a particular case a photocopy of the original Will would not be satisfactory for purposes of record he may require an engrossment suitable for photocopy.

(2)Where a Will contains alterations which are not admissible to proof, there shall be lodged an engrossment of the Will in the form in which it is to be proved.

(3) An engrossment lodged under this Rule shall reproduce the punctuation, spacing and division into paragraphs of the Will and if it is one to which sub rule (2) applies, it shall be made bookwise, on durable paper following continuously from page to page.

(4) Where any pencil writing appears on a Will, there shall be lodged a copy of the Will or of the pages or sheets containing the pencil writing, in which there shall be underlined in red ink those portions which appear in pencil in the original.

14. (1) Where a Will contains no attestation clause or the attestation clause is insufficient or where it appears to a Registrar that there is some doubt about the due execution of the Will, the Registrar shall before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or if no attesting witness is conveniently available, from any other person who was present at the time the Will was executed.

(2) Where an affidavit cannot be obtained in accordance with sub rule (1), the Registrar may, if he thinks fit having regard to the desirability of protecting the interest of a person who may be affected by the Will, accept evidence on affidavit from any person he thinks fit to show that the signature on the Will is the handwriting of the deceased or of any other matter which may raise a presumption in favour of the due execution of a Will.

(3) Where a Registrar, after considering evidence -

(a) is satisfied that the Will was not duly executed, he shall refuse probate and shall mark the Will accordingly;

(b) is doubtful whether the Will was duly executed, he may refer the matter to the Court on motion.

15. Before admitting to proof, a Will which appears to have been signed by a blind or illiterate testator or by another person by direction of a testator, or which for any reason gives rise to doubt as to the testator having had knowledge of the contents of the Will at the time of its execution, the registrar shall satisfy himself that the testator had such knowledge.

16. (1) Where there appears in a Will any obliteration, interlineations, or other alteration which is not authenticated in the manner prescribed by law or by the re-execution of the Will or by the execution of a codicil, the Registrar shall require evidence to show whether the alteration was present at the time the will was executed and shall give directions as to the form in which the Will is to be proved, but this sub rule shall not apply to an alteration which appears to the Registrar to be of no practical importance.

(2) Where from a mark on a Will, it appears to a Registrar that some other document has been attached to the will or if a will contains any reference to another document in such terms as to suggest that it ought to be incorporated in " the Will, .the Registrar may require the document to be produced and call for evidence regarding the attachments) or incorporation.

(3) Where there is doubt as to the date on which a Will was executed, a Registrar may require such evidence as he thinks

necessary to establish the date.

17. Any appearance of attempted revocation of a Will by burning, tearing or other circumstance leading to a presumption of revocation by the testator, shall be accounted for to a Registrar's satisfaction.

18. A Registrar may require an affidavit from a person he thinks fit for purposes of satisfying himself as to any of the matters referred to in rules 15, 16 and 17, and where an affidavit is sworn to, by an attesting witness or other person present at the time of the execution of a Will, the deponent shall depose to the manner in which the Will was executed.

19. Where it appears to a Registrar that there is prima facie evidence that a Will is one to which section 9 of the Wills Act, 1837, or an equivalent enactment in force in the Territory, applies, the Will may be admitted to proof if a Registrar is satisfied that it was made by the testator in accordance with the provisions of that enactment.

20. Where evidence as to the law of a country or territory outside the Federal Capital Territory, Abuja, is required on an application for a grant, the Registrar may accept an affidavit from a person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably qualified to give expert evidence of the law in question.

(1) Where a deceased dies, the person(s) entitled to a grant of probate or administration with the Will-annexed shall be determined in the following order of priority -

- (a) the executor;
- (b) any residuary legatee or devisee holding in trust for any other persons;
- (c) a residuary legatee or devisee for life;
- (d) a residuary legatee or devisee whose legacy is vested in interest;
- (e) the ultimate residuary legatee or devisee, including one entitled on the happening of a contingency or, where the residue is not wholly disposed of by the Will,
 - (i) a person entitled to share in the residue not disposed of by Will, or his personal representative;
 - (ii) a legatee or devisee entitled to a share in the estate disposed of;
- (f) a special legatee or devisee or creditor or subject to Rule 44 (3), a personal representative of any such person or, where the estate is not wholly disposed of by Will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest in it, may have a beneficial interest in the event of an accretion to it;
- (g) a specific legatee or devisee entitled on the happening of a contingency, or a person having no interest under the Will of the deceased who would have been entitled to a grant if the deceased had died wholly intestate.

(2) Where the residue is not in terms wholly disposed of, the Registrar may, if satisfied that the testator has disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made (subject to Rule 53) to any legatee or devisee-entitled to, or to a share in the estate so disposed of, without regard to the persons entitled to share in a residue not disposed of by the Will.

22. Where a gift to a person fails because he is an attesting witness or the spouse of an attesting witness, that person shall not have a right to a grant as a beneficiary named in the Will, but shall have his right to a grant in any other capacity preserved.

23. (1) An applicant for a grant of probate or letters of administration with the Will attached shall file in the Court a true declaration of all the personal property of the deceased and its value.

(2) For purposes of the fees payable on probate and such letters of administration, the value of the property in respect of which the grant is made shall be deemed not to include -

(a) gratuity payable by the Federal or State Government of a State, or the Federal Capital Territory, Abuja, to the estate of a person formerly employed by it or a Statutory Corporation;

(b) a sum of money payable to an estate from a Provident Fund or Pension Fund established under any written law.

24.(1) A Court shall not issue probate or letters of administration with the Will attached until all inquiries which the Court

sees necessary to institute have been answered to its satisfaction,

(3) Where there is doubt as to the date on which a Will was executed, a Registrar may require such evidence as he thinks

necessary to establish the date.

17. Any appearance of attempted revocation of a Will by burning, tearing or other circumstance leading to a presumption of revocation by the testator, shall be accounted for to a Registrar's satisfaction.

18. A Registrar may require an affidavit from a person he thinks fit for purposes of satisfying himself as to any of the matters referred to in rules 15, 16 and 17, and where an affidavit is sworn to, by an attesting witness or other person present at the time of the execution of a Will, the deponent shall depose to the manner in which the Will was executed.

19. Where it appears to a Registrar that there is prima facie evidence that a Will is one to which section 9 of the Wills Act, 1837, or an equivalent enactment in force in the Territory, applies, the Will may be admitted to proof if a Registrar is satisfied that it was made by the testator in accordance with the provisions of that enactment.

20. Where evidence as to the law of a country or territory outside the Federal Capital Territory, Abuja, is required on an application for a grant, the Registrar may accept an affidavit from a person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably qualified to give expert evidence of the law in question.

21. (1) Where a deceased dies, the person(s) entitled to a grant of probate or administration with the Will-annexed shall be determined in the following order of priority -

(a) the executor;

- (b) any residuary legatee or devisee holding in trust for any other persons;
- (c) a residuary legatee or devisee for life;
- (d) a residuary legatee or devisee whose legacy is vested in interest;
- (e) the ultimate residuary legatee or devisee, including one entitled on the happening of a contingency or, where the residue is not wholly disposed of by the Will,
 - (i) a person entitled to share in the residue not disposed of by Will, or his personal representative;
 - (ii) a legatee or devisee entitled to a share in the estate disposed of;
- (f) a special legatee or devisee or creditor or subject to Rule 44 (3), a personal representative of any such person or, where the estate is not wholly disposed of by Will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest in it, may have a beneficial interest in the event of an accretion to it;
- (g) a specific legatee or devisee entitled on the happening of a contingency, or a person having no interest under the Will of the deceased who would have been entitled to a grant if the deceased had died wholly intestate.

(2) Where the residue is not in terms wholly disposed of, the Registrar may, if satisfied that the testator has disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made (subject to Rule 53) to any legatee or devisee entitled to, or to a share in the estate so disposed of, without regard to the persons entitled to share in a residue not disposed of by the Will.

22. Where a gift to a person fails because he is an attesting witness or the spouse of an attesting witness, that person shall not have a right to a grant as a beneficiary named in the Will, but shall have his right to a grant in any other capacity preserved.

23.(1) An applicant for a grant of probate or letters of administration with the Will attached shall file in the Court a true declaration of all the personal property of the deceased and its value.

(2) For purposes of the fees payable on probate and such letters of administration, the value of the property in respect of which the grant is made shall be deemed not to include -

- (a) gratuity payable by the Federal or State Government of a State, or the Federal Capital Territory, Abuja, to the estate of a person formerly employed by it or a Statutory Corporation;
- (b) a sum of money payable to an estate from a Provident Fund or Pension Fund established under any written law.

24.(1) A Court shall not issue probate or letters of administration with the Will attached until all inquiries which the Court sees necessary to institute have been answered to its satisfaction.

(2) A Court shall, however, afford as great a facility for the obtaining of probate or such letters of administration consistent with the prevention of error and fraud.

25. A notice to prohibit a grant of probate or administration with the Will attached may be filed in the Court

A notice shall remain in force three months only from the Effect or day of filing, but may be renewed from time to time and the notice shall not affect a grant made on a day the notice is filed.

(1) A person filing a notice shall be warned by warning in writing delivered at the place mentioned in the notice as his

address.

(2) Notices In the nature of citations shall be given in such manner as the Court directs.

Suits respecting probate or administration shall be instituted and carried on subject to the same Rules of procedure

regarding of ordinary claims.

Custody of Wills

28. A person may, in his lifetime, deposit for safe custody in the Court at Abuja his own Will, under his own seal and that of the

Court

(1) An original Will, of which probate or administration with Will annexed is granted, shall be filed and kept in the Probate Registry, in such manner as to secure at once the due preservation and convenient inspection of it

(2) A copy of every such Will and of the probate or administration, shall be preserved in a book kept for the purpose in

the Registry.

(1) An original Will shall not be delivered out for any purpose without the direction in writing of the Court where the

Will is filed.

(2) A certified transcript, under the seal of Court, of the probate or administration with the Will annexed may be

obtained from the Court.

Probate or Administration with Will annexed

(1) On receipt of an application for probate or for administration with Will annexed, a Court shall inspect the Will and see whether it appears to be, signed by the testator or by some other person in his presence and by his direction, and subscribed by two witnesses, according to the enactments, and shall not proceed further if the Will does not appear to be so signed and subscribed.

(2) Where a Will appears to be signed and subscribed, the Court shall then refer to the attestation clause (if any) and consider whether the wording thereof states the Will to have been, in fact, executed in accordance with those enactments.

32. (1) Where there is no attestation clause, or if the attestation clause is insufficient, the Court shall require an affidavit from at least one of the subscribing witnesses, if either of them is living, to prove that the will was, in fact, executed in accordance with those enactments.

(2) An affidavit shall be engrossed and form part of the probate, so that the probate may be a complete document on the

face of it

33. Where, on perusal of an affidavit it appears, that a Will was not in fact, executed in accordance with those enactments, the

Court shall refuse probate.

34. Where both subscribing witnesses are dead or if from other circumstances an affidavit cannot be obtained from either of them, resort to an affidavit shall be had to other persons (if any) present at the execution of the Will but if no affidavit can be obtained, proof shall be required of that fact and of the handwriting of the deceased and of the subscribing witnesses and also of any circumstances raising a presumption in favour of the due execution of the Will.

35. Where a testator was blind or illiterate, a Court shall not grant probate of the Will, or administration with the Will annexed, unless the court is satisfied, by proof on the face of the Will, that the Will was read over to the deceased before its execution or that he had at that time knowledge of its contents.

36. (1) The Court, where satisfied that the Will was duly executed, shall carefully inspect it to see whether there are any interlineations or alterations or erasures or obliterations appearing in it which requires to be accounted for.

(2) Interlineations, alterations, erasures and obliterations shall be invalid unless they existed in the Will at the time of its execution or unless, if made afterwards, they have been executed and attested according to the enactments, or unless they have been made valid by the re-execution of the will, or by the subsequent execution of some codicil.

(3) Where interlineations, alterations, erasures, or obliterations appear in the Will (unless duly executed or recited in or identified by the attestation clause), an affidavit in proof of its existence in the Will before its execution shall, be filed.

(4) Where no satisfactory evidence is adduced respecting the time an erasure or obliteration was made and the word "erased" or "obliterated" are not entirely effaced, and can, on inspection of the Will, be ascertained/they shall form part of the probate.

(5) Where any words have been erased which might have been of importance, an affidavit shall be required.

37. (1) Where a Will contains a reference to an document of a nature as to raise a question whether it ought or ought not to form a constituent part of a Will, the Court shall require the production of the probate and if it is not produced, a satisfactory account of its non-production shall be proved.

(2) A document cannot form part of a Will unless it was in existence at the time when the Will was executed.

(3) If there are vestiges of sealing wax or wafers or other marks on the Will, leading to an inference that some documents have been at sometime annexed or attached to it, a satisfactory account of those shall be proved or the production of the documents shall be required and if not produced, a satisfactory account of their non-production shall be proved.

38. Where a person appointed executor in a Will survives the testator, but either dies without having taken probate or having been called on by a Court to take probate does not appear his right to respect of the executorship wholly ceases, and without further renunciation, the representation to the testator and the administration of his property may go on and be committed as if that person had not been appointed executor.

(1) A Will or a copy of it to which an executor or an administrator with the Will annexed is sworn shall be marked by the executor or administrator and by the person before whom he is sworn.

(2) The provisions respecting Wills shall apply to codicils.

(1) Where evidence is directed or allowed to be given by affidavit, the Court may require the personal attendance of the deponent, if within the jurisdiction, to be examined viva voce respecting his affidavit.

(2) An examination may take place before any affidavit has been sworn or prepared, if the Court thinks fit.

41. (1) Where all persons entitled to the estate of a deceased under a Will have assigned their whole interest in the estate to one

or more persons, the assignee or assignees shall replace in order of priority for a grant of probate, the assignor, or if there are two or more assignors, the assignors with the highest priority, in the absence of a proving executor.

(2) Where there are two or more assignees, probate may be granted with the consent of the others to any one or more

(not exceeding four) of them.

(3) Where probate is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the Registry.

42. (1) Where there is no proving executor, an application to join with a person entitled to a grant of administration with the Will

attached another person -

(a) in a lower degree shall, in default of renunciation by all persons entitled in priority to him; or

(b) having no right to it, may, be made to a Registrar, supported by an affidavit of a person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Registrar may require.

(2) The following may without an application be joined with a person entitled to administration with the Will attached -

(i) any kin of the deceased having no beneficial interest in the estate, on the renunciation of all persons entitled to join in the grant,

(ii) unless a Registrar directs, a person nominated for that purpose, by the infant's guardian,

(iii) a trust corporation.

43. (1) An application to add a personal representative shall be made to a Registrar and shall be supported by an affidavit by the applicant, with the consent of the person proposed to be added as personal Representative and such other evidence as the Registrar may require.

(2) On an application, the Registrar may direct that; a note shall be made on the original grant of the addition of a further personal representative, or he may impound or revoke the grant or make an Order as the circumstances require.

44.(1) A grant may be made to a person entitled without notice to other persons entitled in the same degree.

(2) A dispute between persons entitled to a grant in the same degree shall be brought by application before the Registrar.

(3) Where an application under this rule is brought before the Registrar, he shall not allow any grant to be sealed until the

application is finally disposed of.

(4) Except a Registrar directs, probate or administration with the Will attached, shall be granted to a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same degree and to a person not under disability in preference to an infant entitled in the same degree.

45. (1) Rules 21, 42 or 44, shall not operate to prevent making of a grant to a person to whom a grant may require to be made

under any enactment.

(2) The Rules mentioned in sub rule (1), shall not apply where the deceased died domiciled outside jurisdiction, but shall apply

to a case in which Rule 47 apply.

46. Where the beneficial interest in the whole estate of a deceased is vested absolutely in one person who has renounced his right to a grant of administration with the Will attached and has consented to

such administration being granted to a person(s) who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or more (not exceeding four) of such persons, but a surviving spouse shall not be regarded as a person in whom the estate has vested absolutely, unless he would be entitled to the whole of the estate, whatever its value may be.

47. Where a deceased died domiciled outside jurisdiction, the Registrar may Order that a grant be issued to -

(a) a person entrusted with the administration of the estate by the Court having jurisdiction at the place where the

deceased died;

(b) a person entitled to administer the estate by the law of ; the place where the deceased died domiciled;

(c) any other person as the Registrar may direct where paragraphs (a) and (b) do not apply;

(d) any other person jointly with a person referred to in paragraphs (a) and (b), or at least 2 administrators where the Registrar directs, but where the Registrar does not make this Order -

(i) probate or any Will which is admissible to proof may be granted where -

(aa) the Will is in English or in the local vernacular, to the executor named therein;

(bb) the Will describes the duties of a named person in terms sufficient to constitute him executor according to the tenor of

the Will;

(cc) where the whole of the estate in the jurisdiction, consists of immovable property, a grant limited to it may be made in accordance with law applicable in the Federal Capital Territory..

48, (1) Where a person entitled To a grant resides outside jurisdiction, a grant may be made to his lawfully constituted attorney for his use and benefit, though limited, until that person obtains a grant, but where the person entitled is an executor, administration shall not be granted to his attorney without notice to other executors, if any.

(2) Where a Registrar is satisfied by an affidavit that it is desirable for a grant to be made to the lawfully constituted attorney of a person entitled to a grant and resident within jurisdiction, he may direct that a grant be made to the attorney for the use and benefit of that person, though limited, until that person obtains a grant

49.(1) Where a person to whom a grant ought be made is an infant, a grant for his use and benefit until he attains the age of eighteen years shall, subject to sub rules (3) and (5), be granted -

(a) to both parents of the infant jointly or to any guardian appointed by a court of competent jurisdiction; or

(b) if there is no guardian able and willing to act and the infant has attained the age of sixteen years, to any next of kin nominated by the infant or where the infant is a married woman, to any such next of kin or to her husband if nominated by her.

(2) A person, nominated under sub rule (1) (b), may represent any other infant whose next of kin he is, being an infant below the age of sixteen years entitled in the same degree as the infant who made the nomination.

(3) Administration for the use and benefit of the infant until he attains the age of eighteen years may be granted to any person assigned as guardian by Order of a court in default of, or jointly with or to the exclusion of, a person mentioned in sub rule (1), and such an Order may be made on an application by the intended guardian, who shall file an affidavit in support of the application and if required by the Court, an affidavit of fitness sworn by a responsible person.

(4) Where a grant is required to be made to not less than two persons and there is only one person competent and willing to take a grant under the preceding provisions of this rule, a grant, unless the Registrar directs, may be made to such person jointly with any other person nominated by him as a fit and proper person to take a grant.

(5) Where an infant who is sole executor has no interest in the residuary estate of a deceased administration with the Will attached, for the use and benefit of the infant child until he attains the age of eighteen years shall, unless the Registrar directs, be granted to the person entitled to the residuary estate.

50. (1) Where one of two, or more executors is an infant, probate may be granted to the other executor or executors not under disability, with power reserved for making a similar grant to the infant on his attaining the age of eighteen years, and administration for the use and benefit of the infant until he attains the age of eighteen years may be granted under Rule 49, if the executors who are not under disability renounce or on being cited to accept or refuse a grant, fail to make an effective application accordingly.

(2) An infant executor's right to probate on attaining the age of eighteen years may not be renounced by any person on his behalf.

51. (1) Where a Registrar is satisfied that a person entitled to a grant is by reason of mental or physical incapacity incapable of managing his affairs, a grant for his use and benefit, limited during his incapacity or in such other way as the registrar may direct, may be made -

(a) in the case of mental incapacity, to the person authorized by the Court to apply for the grant; or

(b) where no person is authorized or in the case of physical incapacity, if the person incapable is entitled -

(i) as executor and has no interest in the residuary estate of the deceased, to the person entitled to such residuary estate;

(ii) as an executor having an interest in residuary estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate or to such other person.

(2) Except a Registrar directs, no grant shall be made under this rule unless all persons entitled in the same degree as the person incapable have been cleared off.

(3) In the case of mental incapacity, notice of intended application for a grant under this rule shall, except the Registrar directs, be given to the person alleged to be so incapable.

52. (1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to a grant of administration in some other capacity unless he expressly renounces such right.

(2) Except a Registrar directs, no person who has renounced a grant in one capacity may obtain a grant in some other capacity.

(3) A renunciation of probate or administration may be retracted at anytime on the Order of the Registrar, but only in exceptional circumstances, may leave be given to an executor to retract a renunciation of probate after a grant has been made to some other person entitled in a lower degree.

53. Where it appears that the Federal Capital Territory, Abuja, is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Attorney-General of the Federation, and the Registrar may direct that no grant shall issue within a specified time after the notice has been given.

54. (1) A registrar shall not require a guarantee as a condition of

(b) making a grant except where it is proposed to make it -(a) under Rule 21 (5), to a creditor or the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;

(c) under Rule 46, to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate, be entitled to his estate;

(d) under Rule 48, to the attorney of a person entitled to a grant;

(e) under Rule 49, for the use and benefit of a minor; under Rule 51, for the use and benefit of a person who is by reason of mental or physical incapacity incapable of managing his affairs;

(f) to an applicant who appears to the Registrar to be resident elsewhere than in the Federal Capital Territory, Abuja; or

(g) where the Registrar considers that there are special circumstances making it desirable to require a guarantee.

(2) Despite a proposal to make a grant as above, a guarantee shall not be required, except in special circumstances, on an application for administration where the applicant or one of the applicants is the Administrator-General or a trust corporation.

(3) Every guarantee entered into by a surety for the purposes of this Order, shall be in Form 187, as in the Appendix.

(4) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an authorized officer, commissioner for oaths or other person authorized by law to administer an oath.

(5) Except as the Registrar directs -

(a) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed One thousand Naira or a corporation is a proposed surety and in these cases one will suffice;

(b) no person shall be accepted as a surety unless he is resident in the Federal Capital Territory, Abuja;

(c) no officer of the judiciary shall become a surety;

(d) the limit of the liability of the surety or sureties under a guarantee shall be the gross amount or the estate as sworn on the application for the grant;

(e) every surety, other than a corporation, shall justify.

(6) Where a proposed surety is a corporation, there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed a guarantee as prescribed by its constitution, containing sufficient information as to the financial position of the corporation to

satisfy the Registrar that its assets are sufficient to satisfy all claims which may be made against it under any guarantee which it has given or is likely to give.

55. (1) An application for the resealing of probate or administration with the Will attached granted by the Court of a place not within the Federal Capital Territory, Abuja, shall be made by the person to whom the grant was made or by any person authorized in writing to apply on his behalf.

(2) On any such application -

(a) an Inland Revenue affidavit shall be lodged as if the application were one for a grant in the Federal Capital Territory,

Abuja;

(b) the application shall be advertised in such manner as a Registrar may direct and shall be supported by an oath sworn by the person making the application.

(3) On an application for the resealing of such a grant -

(a) a Registrar shall not require sureties except where it appears to him that the grant is made to a person or for a purpose mentioned in Rule 54(1) (a) to (f), or except where he considers that there are special circumstances making it desirable to require sureties; -

(b) Rules 8 (4), and 54 (2), (4), (5) and (6), shall apply with any necessary modifications; and

(c) a guarantee entered into by a surety shall be in Form 188, as in the Appendix.

(4) Except by leave of a Registrar, no grant shall be resealed unless it was made to such a person mentioned in Rule 47 (a) or (b), or to a person to whom a grant could be made under that rule.

(5) No limited or temporary grant shall be resealed except by leave of the Registrar.

(6) A grant lodge for resealing shall include a copy of any Will to which the grant relates or shall be accompanied by a copy of it certified as correct by or under the authority of the Court by which the grant was made.

(7) A Registrar shall send notice of the resealing to the Court which made the grant.

(8) Where notice is received in the Registry from outside the Federal Capital Territory, Abuja, of the resealing of a grant made in the Federal Capital Territory, Abuja, notice of any amendment or revocation of the grant shall be sent to the Court by which it was resealed.

56. Where a Registrar is satisfied that a grant should be amended or revoked, he may make an Order accordingly, but in special circumstances, no grant shall be amended or revoked under this rule except on the application or with the consent of the person to whom the grant was made.

57. (1) A person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat in the Registry.

(2) A person who wishes to enter a caveat (called "the caveator") may complete Form 189, as in the Appendix, in the appropriate book at the Registry and obtain an acknowledgment of entry from the proper officer, or by sending through the post at his own risk, a notice in Form 189 to the Registry in which he wishes the caveat to be entered.

(3) Where a caveat is entered by a legal practitioner on the caveator's behalf, the name of the caveator shall be stated in Form

189, as in the Appendix.

(4) A caveat shall remain in force for six months from the date on which it is entered and shall then cease to have effect, without limitation to the entry of a further caveat or caveats.

(5) A Registrar shall maintain an index of caveats entered in the registry and on receiving an application for a grant in the Registry he shall cause the index to be searched and shall notify the applicant in the event of a caveat having been entered against the sealing of a grant for which application has been made.

(6) A Registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat respecting it, but no caveat shall operate to prevent the sealing of a grant on the day on which the caveat is entered.

(7) A caveator may be warned by the issue from the Registry of warning in Form 190, as in the Appendix, at the instance of a person interested (in this rule called the person warning") which shall state his interest and if he claims under a Will, the date of the Will and shall require the caveator to give

particulars of any contrary interest which he may have in the estate of the deceased and every warning or a copy of it shall be served on the caveator.

(8) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the Registry and the caveat shall then cease to have effect, and if he has been warned, the caveator shall promptly give notice of withdrawal of the caveat to the person warning.

(9) A caveator who has an interest contrary to that of the person warning, may, within eight days of service of the warning

upon him inclusive of the day of such service, or at anytime after if no affidavit has been filed under sub rule (11), enter an appearance in the Registry by filing Form 191, as in the Appendix, and making an entry in the appropriate book and promptly serve on the person warning, a copy of Form 191, sealed with the seal of the registry.

(10) A caveator who has no interest contrary to that of the person warning, but wishing to show cause against the sealing of a grant to that person, may, within eight days of service of the warning upon him inclusive of the day of such service, or at anytime after if no affidavit has been filed under sub rule (11), issue and serve a summons for directions, which shall be returnable before the Registrar.

(11) Where a time limited for appearance has expired and the caveator has not entered an appearance, the person warning may file in the Registry an affidavit showing that the warning was duly served and that he has not received a summons for directions under sub rule (10), and then the caveat shall cease to have effect.

(12) On the commencement of a probate action, the Probate Registrar shall, in respect of each caveat then in force (other than a caveat entered by the plaintiff), give to the caveator notice of the commencement of the action, and on subsequent entry of a caveat at anytime when the action is pending, shall likewise notify the caveator of the existence of the action.

(13) Except as the Registrar directs -

(a) A caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to sub rule (8), remain in force until an application for a grant is made by the person shown to be entitled to it by the decision of the Court in such proceedings and on such application, a caveat entered by a party who had notice of the proceedings shall cease to have effect;

(b) any caveat in respect of which an appearance to a warning has been entered shall remain in force until the

commencement of a probate action;

(c) the commencement of a probate action shall, whether or not any caveat has been entered, operate to prevent the sealing of a grant until application for a grant is made by the person shown to be entitled to it, by the decision of the Court in such action and on such application any caveat entered by a party who had notice of the action, or by a caveator who was given notice under sub rule (12), shall cease to have effect.

(14) Except with the leave of a Registrar, no further caveat may be entered by or on behalf of any caveator whose caveat

has ceased to have effect under sub rule (11) or (13).

58. (1) A citation shall be settled by the Registrar before it is issued, citation.

(2) An averment in a citation, and such other information as a Registrar may require, shall be verified by an affidavit sworn to, by the person issuing the citation (in this Order called "thecitor") or if there are two or more citors, by one of them, but the Registrar may, in special circumstances, accept an affidavit sworn by the citor's legal practitioner.

(3) The citor shall enter a caveat before issuing a citation.

(4) Every citation shall be served personally on the person cited unless the Registrar, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

(5) A Will referred to in a citation shall be lodged in the Registry before the citation is issued, except where the Will is not in the citor's possession and the Registrar is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within eight days of service-of the citation upon him inclusive of the day of such service or at any time thereafter if no application has been made by the citor under Rule 59 (5) and Rule 60 (2), enter an appearance in the Registry by filing Form 191, as in the Appendix and making an entry in the appropriate book, and shall promptly serve on the citor a copy of Form 191 sealed with the seal of the Registry.

59. (1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right to it

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or the executors of the last survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased, but no citation to take a grant shall issue while proceedings as to the validity of the will are pending.

(4) A person cited who is willing to accept or take a grant may apply ex parte to a Registrar for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant himself.

(5) Where a time limited for appearance has expired and the person cited has not entered an appearance, the citor may in the case of a citation under -

(a) sub rule (1), apply to the Registrar for an Order for a grant to himself;

(b) sub rule (2), apply to the Registrar for an Order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;

(c) sub rule (3), apply to the Registrar by summons (which shall be served on the person cited) for an Order requiring that person to take a grant within a specified time or for a grant to himself or some other persons specified in the summons.

(6) An application under sub rule (5) shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) Where a person cited has entered an appearance but has not applied for a grant under sub rule (4) or has failed to prosecute his application with reasonable diligence, the citor may in the case of a citation under -

(a) sub rule (1), apply by summons to a registrar for an Order for a grant to himself;

(b) sub rule (2), apply by summons to a registrar for an Order striking out the appearance and for the endorsement on the grant of such a note mentioned in sub rule (5) (b);

(c) sub rule (3), apply by summons to a registrar for an Order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons, and the summons shall be served on the person cited in each case.

60. (1) A citation to propound a Will shall be directed to the executors named in the Will and to all persons interested in it, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons. (2) Where a time limited for appearance has expired, the citor may, in the case -

(a) where a person cited has not entered an appearance, apply to a Registrar for an Order for a grant as if the Will were

invalid;

(b) of a citation under Rule 59 (2), apply by summons to a Registrar for an Order striking out the appearance and for the endorsement on the grant of a note mentioned in rule 59 (5);

(c) of a citation under Rule 59 (3), apply by summons to a Registrar for an Order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons, and the summons shall be served on the persons cited in each case.

61. All caveats, citations, warnings and appearances shall contain an address for service within jurisdiction.

62. (1) All application for an Order requiring a person to bring in a Will or to attend for examination may, unless a probate action has been commenced, be made to the Court by summons, which shall be served on such person.

(2) An application to a Registrar for the issue of a subpoena to bring in a Will, shall be supported by an affidavit setting out the grounds of the application and if any person served with the subpoena denies that the Will is in his possession or control, he may file an affidavit to that effect.

63. An application for an order for a grant limited to part of an estate may be made to a Registrar and shall be supported by an

affidavit stating -

(a) whether the application concerns the real estate only or any part of it, or real estate together with personal estate or

of a trust estate only;

(b) whether the estate of the deceased is known to be insolvent;

(c) that the persons entitled to a grant of the whole estate in priority to the applicant have been cleared off.

64. An application for an order for grant of administration ad colligenda bona may be made to a Registrar and shall be supported by an affidavit setting out the grounds of the application.

65. An application for leave to swear to the death of a person in whose estate a grant is sought may be made to a Registrar and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance effected on the life of the presumed deceased.

66.(1) An application for an Order admitting to proof a codicil or a Will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original Will is not available, may be made to a Registrar, but where a Will is not available owing to its being retained in the custody of a foreign court or official, a duly authenticated copy of the Will may be admitted to proof without an Order.

(2) The application in sub rule (1) shall be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to -

(a) the due execution of the Will;

(b) its existence after the death of the testator; and

(c) the accuracy of the copy or other evidence of the contents of the Will, together with any contents in writing to the application given by any person not under disability who would be affected by the grant.

67. An application for an Order for a grant of special administration where a personal representative is residing outside the Federal Capital Territory, Abuja, shall be made to a Court on motion.

68. (1) Where a surviving spouse who is the sole personal representative of a* deceased is entitled to a life interest in a part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to a Registrar by filing a notice in Form 192, as in the Appendix, in the Registry.

(2) A notice filed under this Rule shall be noted on the grant and the Record and shall be open to inspection.

69.(1) Where copies are required of original Wills or other documents deposited under the provisions of a written law, such copies may be under the seal of Registry and issued as office copies and where such office copies are not available, copies certified under the hand of a Registrar to be true copies, shall be issued only if it is required that the seal of the Court be affixed to it.

(2) Copies, not being Photocopies, of original Wills or other documents deposited, shall be examined against the documents of which they purport to be copies, if required by the person demanding the copy and in such case the copy shall be certified under the hand of a Registrar to be a true copy and may, in addition, be under seal of Court.

70. (1) A bill of costs (other than a bill delivered by a legal practitioner to his client which falls to be taxed under the Legal Practitioners Act) shall be referred to a Registrar for taxation and may be taxed by him or such other taxing officer as the Chief Judge may appoint

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

(3) Where a party entitled to be heard on the taxation does not attend within a reasonable time after the time appointed, the taxing officer may proceed to tax the bill upon being satisfied that such party had due notice of the time appointed.

(4) The fees payable on taxation shall be paid by the party on whose application the bill is taxed and shall be allowed as

part of the bill.

71. A Registrar may require any application to be made by motion or by summons.

72. All powers exercisable under this Order by a Judge in chambers may be exercised by a Registrar.

73. (1) A person aggrieved by a decision or requirement of a Registrar may appeal by summons to a Judge. (2) Where in an appeal under sub rule (1), any person besides the appellant appeared or was represented before a Registrar from whose decision or requirement the appeal is brought, the summons shall be issued within 7 days for hearing on the first available day and shall be served on every such person concerned.

74.(1) A Judge or Registrar may direct that a notice of motion or summons for the service of which no other provision is made in this Order shall be served on such person or persons.

(2) Where by the provision of this Order or by a direction given under sub rule (1), a notice of motion or summons is required to be served on a person, it shall be served not less than 5 days before the hearing of the motion or summons.

75. Except a Registrar directs otherwise or this Order provides, a notice or other document required to be given or served on a person may be given or served by leaving it at or by sending it by prepaid registered post to, that person's address for service or if he has no address for service, his last known address.

76. An affidavit used in non-contentious probate business shall satisfy the requirements of Order 8.

77. Order 21 shall apply to the computation, enlargement and abridgement of time under this Order.

78. Subject to a direction given by a Judge, this Order shall apply to a proceeding which is pending on the date on which these Rules come into operation as well as to any proceeding commenced on or after that date, but where the deceased died before the commencement of these Rules, the right to a grant

shall, subject to the provisions of any enactment, be determined by the principles and rules in accordance with which the Court would have acted at the date of the death.

79. Suits respecting probate shall be instituted and carried on, contentious subject to the same Rules of procedure in respect of

ordinary civil claims.

80. (1) The Interpretation Act shall apply to the interpretation of this Order..

(2) In this Order -

"authorized officer" means an officer of a Registry authorized by law to administer an oath or to take an affidavit required for any purpose connected with his duties;

"gross value" in relation to an estate means the value of the estate without deduction for debts, encumbrances, funeral

expenses or estate duty;

"oath" means the oath required by this Order to be sworn by every applicant for grant;

"personal applicant" means a person other than a trust corporation who seeks to obtain a grant without employing a legal practitioner and "personal application" has a corresponding meaning;

"Registrar" means the Probate Registrar, being the Chief Registrar;

"registry" or "probate registry" means the probate registry at the High Court of the Federal Capital Territory, Abuja.

"Will" includes a codicil and any testamentary document or copy or reconstruction of it.

(3) A reference in this Order to a Rule or enactment shall be construed as amended, extended or applied by any other Rule or

enactment.

ORDER 50

PROCEEDINGS UNDER THE LEGITIMACY LAW

1. In this Order, "petitioner" means a person applying for a legitimacy declaration.

2. The practice and rules of Court shall govern all proceedings under the Legitimacy Law, subject to particular provisions of this

Order.

3. (1) A petition shall be headed "In the matter of the Legitimacy Matters to be Act" and "In the matter of - (the person to be declared legitimate)" in the prescribed form, with variations as circumstances may require and shall state among other matters -(a) the place and date of the marriage concerned;

(b) the status and residence of each parent and the occupation and domicile of the father of the person whose legitimacy

the Court is asked to declare -

(i) at the date of his birth; and

(ii) at the date of the marriage:

(c) whether there are other living issues of the parents of such person and the respective names and dates of birth of all

such issues;

(d) a person (if any) affected by the legitimacy and the known value of any property involved;

(e) whether any previous proceedings under the Legitimacy Act, regarding the paternity of the person or the validity of the marriage leading to his legitimacy have been taken in any court; and

(f) that there is no collusion.

(2) A petition shall also include an undertaking by the petitioner (if not an infant or person of unsound mind) to pay the cost of the respondents if the Court directs.

(3) Where a petitioner is an infant or person of unsound mind, he shall petition by a next friend and the full names, occupation or description and residence or place of business, of the next friend shall be stated in the petition, accompanied by an undertaking to be responsible for costs.

4. Where a petitioner resides outside jurisdiction, the petition shall state an address within the jurisdiction, at which the petitioner may be served with a summons, notice, Order of Court or other process.

5. Where it appears that a petitioner does not reside within jurisdiction, the petition shall not be filed until security for costs, has been given to the satisfaction of the Registrar, but where the petition is filed through a legal practitioner, an undertaking by him, in a form to be approved by the Registrar, to be responsible for the costs shall be sufficient.

6. The respondents to a petition shall be the Attorney-General of the Federation and all persons whose interest may be affected by the legitimacy declaration asked for and a Court may, at anytime direct any persons not made respondents to be made respondents and to be served with the petition and affidavit and may adjourn the hearing of the petition for the purpose on such terms as to costs or otherwise as may be just.

7. A petition shall be accompanied by an affidavit, made and filed by the petitioner or his next friend (if any), verifying the facts of which he has personal knowledge and deposing to his belief in the truth of the other facts alleged in the petition.

8. (1) There shall be filed with a petition as many copies of the petition and affidavit as there are respondents to be served and also 2 copies for the use of the Court.

(2) There shall be lodged with a petition every birth, death or marriage certificate intended to be relied on at the hearing.

9. (1) A copy of a petition and accompanying affidavit shall be delivered or sent by registered post by the petitioner to the Attorney-General of the Federation at least two months before the petition is presented or filed.

(2) A document or notice addressed to the Attorney-General of the Federation shall be addressed to him at Attorney-General's Chambers, Federal Ministry of Justice, Abuja.

10.(1) A sealed copy of a petition and affidavit shall, unless a Court otherwise directs, be served by a bailiff or by a Police Constable 56 days at least before the hearing on every respondent (other than the Attorney-General of the Federation) personally, and the petition and every copy to be served on a respondent (other than the Attorney-General of the Federation) shall be endorsed with a notice in the prescribed form.

(2) A Registrar shall give at least 56 days' notice to the Attorney-General of the Federation before a petition is first heard.

11.(1) A respondent may within 28 days after service of a petition on him, file an answer to the petition.

(2) An answer containing other matters than a simple denial of the facts stated in a petition shall be accompanied by an affidavit made by the respondent verifying the matter within his personal knowledge and deposing to his belief in the truth of the rest of the matter.

(3) There shall be filed an answer with affidavit (if any) of as many copies, as there are other parties to be served and also two copies for the use of the Court.

(4) A Registrar shall within 48 hours of receiving an answer, send by post one sealed copy of the answer with affidavit (if any), to the petitioner, the Attorney- General of the Federation and any other respondents.

12. Evidence on the hearing of a petition shall be given orally, but a court or Judge in chambers may, on an application made

before or at the hearing, for good cause shown, direct that any particular fact(s) alleged in the petition or answer, be proved by affidavit.

13. A Court may make such orders as to costs as it thinks just.

14. A copy of an Order made on the hearing of a petition, under seal of a Court shall be supplied by a Registrar to a party to the proceedings, on payment of the prescribed fee.

ORDER 51

PROCEEDINGS IN FORMA PAUPERIS

The provisions of this Order shall remain in force until statutory provisions are made for legal aid regarding civil proceedings to be supplied before a Court.

A Court or Judge in chambers 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.

(1) An application shall, where a Court or Judge in chambers so direct, be accompanied by an affidavit signed and sworn by the

applicant himself stating -

(a) that the applicant satisfies the requirements of rule 2, as to his means; and

(b) 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

(c) the sources of his information and belief where the facts are based on such.

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

(3) 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 Court or Judge in chambers may seem right and a person so admitted to sue or defend shall not, unless the Court orders, be liable to pay or be entitled to receive any costs.

(4) On granting an application, a Court or Judge in chambers may assign to the applicant any legal practitioner willing to be assigned, and any legal practitioner assigned shall not be discharged by the applicant except with leave of the Court or Judge in chambers.

(1) Neither -

(a) the legal practitioner whose opinion is sought; nor

(b) the legal practitioner assigned to the applicant;

(c) nor any other person, shall, except by leave of a Court or Judge in chambers, take or agree to take any payment whatsoever from the applicant or any other person in connection with the application or the action taken or defended under it.

(2) Where an applicant pays or agrees to pay money to a person in connection with his application or the action taken or defended under it, his application shall be refused or if already granted, the order shall be rescinded.

(3) Where a 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) A Court or Judge in chambers may at anytime revoke the order granting an application, and then the applicant shall not be entitled to benefit from this provision in any proceedings related to the application relates unless ordered. (2) Neither the applicant nor the legal practitioner assigned to him shall discontinue, settle or compromise the action without the leave of a Court or Judge in chambers.

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

9. 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.

10. No person shall be permitted to appeal in forma pauperis except by leave of the trial or appellate Court, and then only on ground of law, but if permitted, the provisions of this Order shall apply mutatis mutandis to all proceedings on the appeal.

ORDER 52

COSTS

Security for Costs

1. (1) Where, on the application of a defendant in a proceedings, it appears to a Court that the plaintiff -

(a) is ordinarily resident out of jurisdiction; or

(b) (not suing in a representative capacity), is a nominal plaintiff 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), has no address stated in the writ or other originating process or is incorrectly stated in it; or

(d) has changed his address during the course of the proceedings with a view to evade the consequences of the litigation, the Court may Order the plaintiff to give such security for the defendant's costs of the action or proceeding as it thinks just

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

(3) The references in sub rule (2), to a plaintiff and a defendant shall be construed as references to a person, who is in the position of plaintiff or defendant, as the case may be, including a proceeding on a counter-claim.

2. Where an Order is made requiring a party to give security for costs, the security shall be given in such manner, at such time and terms, as the Court may direct. Costs between Party and Party
3. In a suit, the costs of the whole suit and of each particular proceeding in Court shall, be in the discretion of a Court as regards the person by whom they are to be paid.
4. A Court shall not Order the successful party in a suit to pay to the unsuccessful party the costs of the whole suit, although the Court may Order the successful party, despite his success in the suit to pay the costs of any particular proceeding in it.
5. A court may Order costs to be paid out of any fund or property to which a suit or proceeding relates.
6. When a Court adjudges or Orders costs to be paid, the amount of such costs shall be, if practicable, summarily determined by the Court at the time of making the Judgment or Order.
7. In fixing the amount of costs, the principles to be observed shall be that the party who is in the right shall be indemnified for the expenses to which he has been put in establishing his claim, defence or counter-claim, but the Court may take into account all the circumstances of the case.
8. Where a cause or matter is delayed due to the fault of a counsel, the Court shall award cost as it may deem fit and any cost so awarded shall be paid by the counsel.
9. (1) A Court may Order payment to be made to a counsel, assigned out of any money recovered by the applicant, or may charge in favour of the counsel, assigned on any property recovered by the applicant, such sum as circumstances may require.
(2) Where a Court Orders cost to be paid, or security to be given for costs by a party, the Court may, if it thinks fit, order proceedings on behalf of that partying the suit, to be stayed until the costs are paid or security given accordingly, but such order shall not supercede the use of any other lawful method of enforcing payment.
10. Where a court considers it impracticable to determine summarily the amount of any costs which it has adjudged or Ordered to be paid, all questions relating to the costs may either be determined on taxation by the Court itself or may be referred by the Court to a taxing master to ascertain subject to approval by the Court.
11. On a taxation of costs, the taxing master may, in determining the remuneration to be allowed, have regard to the skill,
labour and responsibility involved.
12. In taxation of costs between party and party, nothing shall be allowed in respect of fees paid to the Court beyond what was necessary having regard to the amount recovered on Judgment.
13. Where on the taxation of a bill of costs, more than one-sixth is deducted from the amount claimed, the Court may either make no order as to the costs of the taxation or may Order the party who filed the bill of costs to pay to the other party or parties the costs of taxation.
14. Where a plaintiff is successful in an action which might have been brought by him in an inferior tribunal, the Court may take into account the smaller costs which would have been evolved to the

parties, if it had been taken in the inferior tribunal, and may, grant to the successful plaintiff modified costs or no costs, and may grant to any other party such extra costs as the Court thinks such other party has incurred by reason of the action being taken in the Court instead of in the inferior tribunal unless the Court is of opinion that the action was one which for some special reason it was proper to bring in the court.

ORDER 53

FEES AND ALLOWANCES.

1. Subject to the provisions of any written law and of the preceding Orders -
 - (a) the fees set out in the First, Second, Third, Fourth and Fifth Schedules, are payable by a person commencing the respective proceedings or desiring the respective services specified in those Schedules;
 - (b) the allowances set out in Part II of the First Schedule are payable to the various categories of witnesses mentioned in it, by a person at whose instance they testify, but a witness who testifies at the instance of the Court acting on its own motion shall be paid out of public revenue.
2. The Regulations set out in the Fifth Schedule shall be observed by all officers of Court concerned with the rendering of services, and or collection of fees payable, under the provisions of the preceding Orders.