HIGH COURT (CIVIL PROCEDURE) EDICT 1988

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68. Notice of election by surviving spouse to redeem life interest

69. Issue of copies of original wills and other documents

70. Taxation of costs

71. Power to require application to be made by summons or motion

72. Exercise of powers of Judge

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74. Service of notice of motion and summons

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2. Practice and rules

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4. Petitioner resident outside the state

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7. Affidavit of verification

8. Copies of petition to be filed

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10. Personal service on other respondents

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2. Who may sue or depend in forma pauperis

3. Conditions to be fulfilled

4. Fees and costs

5. Assignment of legal practitioner

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7. Revocation of order; discontinuance, etc.

8. Payment to legal practitioner

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HIGH COURT (CIVIL PROCEDURE) EDICT 1988

THE MILITARY GOVERNOR OF KANO STATE OF NIGERIA hereby makes the following Edict:—

1. This Edict may be cited as the High Court (Civil Procedure) and Edict 1988, and shall come into operation on the 31st day

of October, 1988.

2. (1) The provisions contained in the Rules set out in the Schedule to this Edict and hereinafter called "the Rules" shall

be the Rules of Civil Procedure to be followed in the High Court of

Kano State.

(2) The Rules may be cited as the Kano State High Court (Civil Procedure) Rules.

3. Where a matter arises in respect of which no provisions or no adequate provisions are made in the Rules, the Court shall

adopt such procedure as will in its view do substantial justice between the parties concerned.

4. (1) Any reference in this Edict to anything done under this Construction Edict includes a reference to the thing being

done before the commencement of the Edict under any corresponding law or rule of court ceasing to have effect on the

commencement of this Edict.

(2) Except where the context otherwise requires, any reference in this Edict to any enactment shall be construed as, a

reference to that enactment as amended, extended or modified by or under any other enactment.

5. The Forms in the Appendix shall be used where applicable Forms, with such variations as the circumstances of the

particular case require.

6. In the Schedule to this Edict unless the context otherwise requires:—

"The Court" means the High Court of Kano State.

7. The following enactments are hereby repealed:—

(a) the High Court (Civil Procedure) Rules 1976; and

(b) the High Court (Civil Procedure) Rules 1983.

SCHEDULE

ORDERS

ORDER 1

FORM AND COMMENCEMENT OF ACTION

1.Subject to the provisions of any Act, Civil Proceedings maybe begun by writ, originating summons, originating motion or

petition as hereinafter provided.

2.Subject to any provision of an Act or of these rules by virtue of which any proceedings are expressly required to be begun

otherwise than by writ, the following proceedings shall be begun by writ, that is to say, proceedings—

(a)in which a claim is made by a plaintiff for any relief or remedy for any tort or other civil wrong;

(b)in which a claim made by the plaintiff is based on an allegation of fraud;

(c)in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract

or of a provision made by or under a law or independently of any contract or any such provision) or where the damages claimed

consist of or include damages in respect of death of any person or in respect of personal injuries to any person or in

respect of damage to any property;

(d)in which a claim is made by the plaintiff in respect of the infringement of a patent, trade mark, copy-right, intellectual

or any other proprietory interest of whatever kind;

(e)in which a claim for a declaration is made by an interested person;

Provided that any proceedings except those that are expressly required to be begun otherwise than by writ and which do not

fall under any of the categories listed (a) to (e) above, may also be begun by writ.

(2) Proceedings may be begun by originating summons where—

(a)the sole or principal question at issue is, or is likely to be, one of the construction of a written law or of any

instrument made under any written law, or of any deed, will, contract or other document or some other question of law; or

(b)there is unlikely to be any substantial dispute of fact.

(3)Proceedings may be begun by originating motion or petition whereby these rules or under any written law the proceedings in

question are required or authorized to be so begun, but not otherwise.

ORDER 2

EFFECT OF NON-COMPLIANCE

1.(1) Where in beginning or purporting to begin any proceedings or at any state in the course of or in connection with any

proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these

rules, whether in respect of time, place, manner, form or content or in any other respect, the failure may be treated as an

irregularity and if so treated, will not nullify the proceedings, or any document, judgment or order therein.

(2) The court may on the ground that there has been such a failure as mentioned in paragraph (1), and on such terms as to

costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any

step taken in those proceedings or any document, judgment or order therein, or it may exercise its powers under these rules

to allow such (if any) to be made and make such order (if any) dealing with the proceedings generally as it thinks fit.

2.(1)An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document,

judgment or Order therein shall not be allowed unless it is made within a reasonable time.

(2)Any application under the foregoing paragraph may be made by summons or motion on notice, and the grounds of objection

shall be stated in the summons or notice of motion.

ORDER 3

PARTICULARS OF CLAIM

1.The Court may, on the application of the defendant, or on its own motion, order further or better particulars to be

supplied by the plaintiff.

2.Subject to any amendment granted by the Court, the plaintiff shall not at the hearing, obtain a judgment for any sum

exceeding that stated in the particulars, except for subsequent interest and the costs of suit notwithstanding that the sum

claimed in the writ for debt or damages exceeds the sum stated in the particulars.

3.(1) Where a party seeks (in addition to or without any order for the payment of money) to obtain as against any person any

general or special declaration of his rights under any contract or instrument, or to set aside any contract or to have any

bond, bill, note, or instrument in writing delivered up to be cancelled or to restrain any defendant by injunction, or to

have an account taken between himself and any other party, and in such other cases as the nature of the circumstances makes

it necessary or expedient, the plaintiff or defendant may, in the writ of summons or in any pleading, refer to and briefly

describe any documents on the contents of which he intends to rely, and annex copies of such documents to the writ or

pleading, or may state any reason for not annexing copies which he may have to allege.

(2) Such party shall allow the opposite party to inspect any such documents as are in his possession or power.

4.Particulars of claim shall not be amended except by leave of the court, and the court may, on any application for leave to

amend, grant the same on its appearing that the defendant will not be prejudiced by the amendment. Otherwise the Court may

refuse leave to grant the same. Leave to amend shall be granted, where appropriate, on such terms as to notice, postponement

of trial or costs as justice requires.

5. Any variance between the items contained in the particulars, and the items proved at the hearing, may be amended at the

hearing, either at once or on such terms as to notice, adjournment or costs, as justice requires.

ORDER 4

CAUSES OF ACTION

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

causes of action-

(a)if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of

action; or

(b)if the plaintiff claims, or 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 other or others; or

(c)with leave of the court.

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

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

2.(1) Subject to rule 2 (2), a defendant in any action who alleges that he has any claim or is entitled to any relief or

remedy against the plaintiff in the action in respect of any matter (whenever and however arising), may, instead of bringing

a separate action, make a counter-claim in respect of that matter; and where he does so he shall add the counter-claim to his

defence.

(2)Rule 1 shall apply in relation to a counter-claim as if the counter-claim were a separate action and as if the person

making the counter-claim were a plaintiff and the person against whom it is made a defendant.

(3) A counter-claim may be proceeded with notwithstanding that judgment is given for the plaintiff in his action, or that the

action is stayed, discontinued or dismissed.

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

in a counter-claim or if two or more plaintiffs or defendants are parties to the same action and it appears to the Court that

the joinder of such causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise

inconvenient, the Court may order separate trials or make such other order as may be expedient.

(2) If it appears on the application of any party against whom a counter-claim is made that the subject matter of the

counter-claim ought for any reason to be disposed of by a separate action, the court may order it to be tried separately or

make such other order as may be expedient.

ORDER 5

WRIT OF SUMMONS

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

application. The application shall ordinarily be made in writing by the plaintiff's Solicitor by completing Form 1 in the

Appendix to these rules; but the Registrar or other officer as aforesaid, where the applicant for a writ of summons is

illiterate, or has no solicitor,

may dispense with a written application and instead himself record full particulars of an oral application made and on that

record a writ of summons may be prepared, signed and issued.

2.The writ of summons shall contain the name and place or abode of the plaintiff and of the defendant so far as they can be

ascertained; it shall state briefly and clearly the subject matter of the claim, and the relief sought for, and the date of

the writ, and place (called the return-place) of hearing.

3.Any alteration of a writ without leave of the court shall render the writ void.

4.A plaintiff may unite in the same suit several causes of action, but the court if it thinks that such causes of action, or

some of them cannot be conveniently tried together, may order separate trials or may make such other order as to adjournment

and costs as justice requires.

5.Causes or matters pending in the same Court may by order of the court be consolidated and the court shall give such

direction as may be necessary with respect to the hearing of the causes or matters so consolidated.

6. Subject to the provisions of these rules or of any written law inforce in the state, 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 the leave of court or a

judge in chambers.

7.Writ of summons shall be printed of opague foolscap size paper of good quality.

8.(1) Every writ shall be in form 1, 2, 3, or 4or forms to the like effect in all matters, causes and proceedings to which

they are applicable, with such variations as circumstances may require.

(2) In proceedings for which forms are not provided or prescribed by these rules or by any subsequent Rules or Orders of

Court, the Chief Registrar may subject to the approval of the Court, from time to time, frame the forms required.

9. The sealing of any writ or Process shall not be necessary in addition to the signature of the Registrar or other officer

by whom the same shall be signed, except in cases where sealing may be expressly directed by these rules or any written law

or Rule of Court or by any prescribed form.

10.Before a writ is issued, it shall be endorsed—

(a) with a statement of claim or if the statement of claim is not endorsed on the writ, with a concise statement of the

nature of the claim made or the relief or remedy required in the action begun thereby;

(b) where the claim made by the plaintiff is for a debt or a liquidated demand only, with a statement of the amount claimed m

respect of the debt or demand, and for costs.

11.(1) Before a writ is issued it shall be endorsed—

(a) where the plaintiff sues in a representative capacity with a statement of the capacity in which he sues;

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

(2)Before a writ is issued in an action brought by a plaintiff who in bringing it is 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.

12. 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 and also if the legal practitioner is the

agent of another, the name of firm and business address of his principal.

(2) Where the plaintiff sues in person, the Writ shall be endorsed with-

(a)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;

(b)His occupation; and

(c)an address for service.

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

issued or at any time thereafter before the original writ ceases to be valid.

(2) without prejudice to the generality of the provisions of paragraph (l), 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 such differences only (if any) as are necessary having regard

to the purpose for which the writ is issued.

14.No writ which, or notice of which, is to be served out of the jurisdiction shall be issued without leave of the Court:

Provided that if any claim made by a writ is one which by virtue of an enactment the Court has power to hear and determine

notwithstanding that the person against, whom the claim is made is not within the 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 foregoing

provisions shall not apply to the writ.

15.Issue of a writ takes place upon its being signed by the Registrar or other officer of the Court duly authorized to sign

the writ.

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

beginning with the date of its issue, and a concurrent writ is valid in the first instance for the period of validity of the

original writ which is unexpired at the date of issue of the concurrent writ.

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

for such period, not exceeding twelve months at any one timey beginning with the day next following that on which it would

otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or

such later day (if any) as the Court may allow.

(3)Before a writ, the validity of which has been extended tinder this provision is served, it shall be marked with an

official stamp showing the period for which the validity of the writ has been so extended.

(4)Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other

writ (whether original or concurrent) issued in the same action which has not been served so as to extend the validity of

that other writ until the expiration of the period specified in the Order.

ORDER 6

ORIGINATING SUMMONS

1. The provisions of this order shall apply to all originating summonses subject, in the case of originating summonses of any

particular class, to any special provisions relating to originating summonses of that class made by these rules or by or

under any Act or-other written law.

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

(2) The party taking out an originating summons (other than an ex-parte summons) shall be described as plaintiff and the

party against whom it is taken out shall be described as defendant.

3.(1) Every originating summons shall include a statement of the questions on which the plaintiff seeks the determination or

direction of the Court or as the case may be, concise statement of the relief or remedy claimed in the proceeding begun by

the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the

plaintiff claims that relief or remedy.

4.(1)Before an originating summons is issued it shall be endorsed-

(a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;

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

(2) Before an originating summons is issued in an action brought by a plaintiff who is bringing it is 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.

5.(1) Where a plaintiff sues by a legal practitioner, the originating summons shall be endorsed with the plaintiff's address

and the 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.

(2)Where the plaintiff sues in person, the originating summons shall be endorsed with-

(a)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;

(b) his occupation; and

(c) an address for service.

6. An originating summons for service within the jurisdiction may be issued and marked as concurrent originating summons

with one for service out of the jurisdiction; and an originating summons for service out of jurisdiction may be issued and

marked as a concurrent originating summons with one for service within the jurisdiction.

7. No originating summons which, or notice of which is to be served out of jurisdiction shall be issued without leave of the

Court: Provided that if any claim made by an originating summons is one which by virtue of an enactment the Court has power

to hear and determine notwithstanding that the person against whom the claim is made is not within the 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

foregoing provisions shall not apply to the summons.

8. Issue of an originating summons takes place upon its being signed by the Registrar or other officer of the Court duly

authorized to sign summonses.

9.(1) For the purpose of service, an originating summons (other than a concurrent one) is valid in the first instance for

twelve months beginning with the date of its issue and a concurrent originating summons is valid in the first instance for

the period of validity of the original summons which is unexpired at the date of issue of the concurrent summons.

(2) Where an originating summons has not been served on a defendant, the court may by order extend the validity of the

summons from time to time for such period, not exceeding twelve months at any one time, beginning with the day next following

that on which it would otherwise expire, as may be specified in the order; if an application for extention is made to the

Court before that day or such later day (if any) as the Court may allow.

(3) Before an originating summons, the validity of which has been extended under this provision is served, it shall be marked

with an official stamp showing the period for which the validity of the summon has been so extended.

(4) Where the validity of an originating summons is extended by order made under this rule the order shall operate in

relation to any other summons (whether original or concurrent) issued in the same action which has not been served, so as the

extend the validity of that other summons until the expiration of the period specified in the order.

10. Rules 2 (1) and 3 (1) shall, so far as applicable, apply to an ex-parte originating summons; but save as aforesaid, the

foregoing provisions of this Order shall not apply to ex-parte originating summonses.

ORDER 7

PETITION: GENERAL PROVISIONS

1.This Order shall apply to petitions by which civil proceedings in the Court are begun, subject, in the case of petitions of

any particular class, to any special provisions relating to petitions of that class made by or under any act or Law.

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

proceedings petition, begun thereby.

(2) Every petition shall include at the end thereof a statement of the names of the persons, if any, required to be served

therewith or, if no person is required to be served, a statement to that effect.

(3) Where a person brings a petition 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.

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

(a) 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;

(b) his occupation; and

(c) an address for service

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

4. (1) A day and time for the hearing of a petition which is required to be heard shall be fixed by the Registrar.

(2) Unless the Court otherwise directs, a petition which is required to be served on any person shall be served on him not

less than seven days before the day fixed for the hearing of the petition.

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

ORDER 8

INTERLOCUTERY APPLICATIONS

1. MOTIONS GENERALLY

1. Interlocutory applications may be made at any stage of an action.

2. (1) Where by these Rules any application is authorized to be made to the Court or a Judge in Chambers or a Registrar, such

application may be made by motion.

(2) The Registrar shall make up, for each day oil which there are any motions to be heard, a motion list, on which he shall

enter the names of each cause in which a motion is made, the party moving, and the terms of the order sought by him.

3. Every motion shall be supported by 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 the Court or Judge, such motion shall be served

together with all affidavits on which the party moving intends to rely.

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

6. The hearing of any motion may from time to time be adjourned upon such terms as the Court may deem fit.

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

(2) Notwithstanding paragraph (1), the Court, if satisfied that to delay the motion till after notice is given to the parties

affected would entail irreparable damage or serious mischief to the party moving, may make an order ex-parte upon such terms

as to costs or otherwise and subject to such undertakings, if any, as the justice of the case demands.

2-EX-PARTE MOTIONS

8. A motion ex-parte shall be supported by affidavit which, in addition to the requirements of rule 3, shall state sufficient

grounds why delay in granting the order sought would entail irreparable damages or serious mischief to the party moving.

9. Any party moving the Court ex-parte may support his motion by argument addressed to the Court on the facts put in

evidence, and no party to the suit or proceeding, although present, other than the party moving, shall be entitled to be then

heard.

10. Where a motion is made ex-parte, the 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 to be affected

thereby.

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

within such further times as the Court shall allow, apply to the Court by motion to vary or discharge it; and the Court, on

notice to the party obtaining the order, either may refuse to vary or discharge it, or may vary or discharge it with or

without imposing terms as to costs or security, or otherwise, as seems just.

3-Orders to show cause

12. An order to show cause shall specify a day when cause is to be shown, to be called the return-day to the Order, which

shall ordinarily be not less than three days after service.

13. A person served with an order to show cause may before the return-day, produce evidence to contradict the evidence used

in obtaining the order, or setting forth other facts on which he relies to induce the Court to discharge or vary such order.

14. On the return-day, if the person served does not appear and it appears to the Court that the services 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

seems just.

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

the matter

16. The Court may either discharge the order or make the same absolute, or adjourn the consideration thereof, or permit

further evidence to be produced in support of or against the order, and may modify the terms of the order so as to meet the

merits of the case.

4-Notice of Motion

17. Unless the Court gives special leave to the contrary, 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.

18. Notice of motion may without leave of the Court, be served by any person, notwithstanding that such person is not an

officer of the Court.

19. Where a party acts by a solicitor, service of notice of motion on such solicitor shall be deemed good service on such

party.

20. Along with the notice of motion there shall be served a copy of any affidavit on which the party moving intends to rely

at the hearing of such motion.

21. If at the hearing of any motion, the Court shall be of opinion that any person, to whom notice has not been given, ought

to have or to have had such notice, the Court may either dismiss the motion, or adjourn the hearing thereof in order that

such notice may be given, uponsuch terms as the Court may deem fit.

22. The plaintiff may, by leave of the Court, cause any notice of motion to be served upon any defendant with the writ of

summons

5—Evidence in Interlocutory Proceedings.

23. Oral evidence shall not be heard in support of any motion unless by leave of the court where the party moving is

illiterate, the court may direct evidence to be taken by the Registrar, or other fit officer of Court, and the minutes of

such evidence may be used as an affidavit,

24. In addition to or in lieu of affidavits the court may, if it thinks it expedient, examine any witness viva voce, or

receive documents in evidence and may summon any person to attend to produce documents before it, or to be examined or

cross-examined before it in like manner as at the hearing of a suit.

25. Such notice as the Court in each case, according to the circumstances, considers reasonable, shall be given to the

persons summoned, and to such persons (parties to the cause or matteror otherwise interested) as the court considers entitled

to inspect the documents to be produced, or to examined the person summoned or to be present at his examination, as the case

may be.

26. The evidence of a witness on any such examine shall be taken in like manner as nearly as may be as at the hearing of a

suit.

27. Upon the hearing of any motion the Court may, on such terms as to cost and adjournment as it may deem fit, allow any

additional affidavit to be used after such affidavit has been duly filed and served on the opposite side.

28. A registrar hearing any application by virtue of the provisions of these rules shall have and exercise all the powers

conferred by these Rules on the Court or a judge when dealing with such applications.

29. No Registrar other than one who is also a qualified legal practitioner shall have the power to hear and determine any

application which by these rules is conferred upon a Registrar.

30. In any judicial division where there is no legally qualified Registrar, any application which by these rules is

authorized to be determined by a registrar shall be made to a judge who in his absolute discretion may take such application

in Court or in chambers.

31. (1) Upon the determination of any application by a Registrar, any party dissatisfied with the ruling or decision of the

Registrar in the matter may within fourteen days of the decision or ruling apply to the Court or to a Judge in chambers for a

redress in the following manner and circumstance

(a) where the aggrieved party is the mover of the application before the Registrar, he shall renew his application before the

Court or a Judge.

(b) where the aggrieved party is the respondent to the application before the Registrar, he shall apply to the Court or a

Judge for an order setting aside the order of the Registrar about which he is dissatisfied.

(2)(a) any application under sub-paragraph (a) or (b) of paragraph (1) of this rule shall be supported by affidavit showing

the grounds upon which redress is sought.

(b) There shall be attached to the application a copy of the ruling or decision of the Registrar with which the party is

dissatisfied and copies of all affidavits and documents used ln support of the application before the Registrar.

ORDER 9

AFFIDAVITS

1. Upon any motion, petition or summons, evidence may be given by affidavit; but the Court or a Judge in Chambers may, on the

application of either party, order the attendance for cross-examination of the person making any such affidavit and where,

after such an order has been made, the person in question does not attend his affidavit shall not be used as evidence unless

by special leave of the Court or a Judge in Chambers.

2. Every affidavit shall be titled in the cause or matter in which it is sworn; but in every casein which there are more than

one plaintiff or defendant, it shall be sufficient to state the full name or the first plaintiff and first defendant

respectively, and indicate that there are other plaintiffs or defendants, as the case may be.

3. The Court or a Judge in Chambers may receive any affidavit sworn for the purpose of being used in any cause or matter

notwithstanding any defect by misdiscription of parties or otherwise in the title or jurat, or any other irregularity in the

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

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

the Court or a judge in chambers.

5. Except by leave of the Court or a Judge in Chambers, no order made ex-parte in Court founded on any affidavit shall be of

any force unless the affidavit on which the application was made, was actually made before the order was applied for, and

produced or filed at the time of making the motion.

6. The party intending to use any affidavit in support of any application made by him in chambers shall give notice to the

other parties concerned in that behalf.

7. .All affidavits which have been previously made and read in Court upon any proceeding in a cause or matter may be used

before the 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 such 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 or referred to in the affidavit as so annexed b it shall be referred to as exhibits.

10. Every certificate on an exhibit referred to in an affidavit signed by the Commissioner before whom the affidavit is sworn

shall be marked with the short title of the cause or matter.

11. Sections 77 to 89 of the Evidence Act which set out provisions governing affidavits shall apply as if they were part of

these rules.

12. A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a Court, Judge,

Notary Public or person having authority to administer oath in any part of the Commonwealth outside Nigeria in testimony of

an affidavit being taken before it or him in that part shall be admitted in evidence without proof of the seal or signature

of that Court, Judge, Notary Public or person.

ORDER 10

PLACE OF INSTITUTING AND OF TRIAL OF SUITS

1. All suits relating to land, or any mortgage or charge thereon, or any other interest therein, or for any injuries thereto,

and also all actions relating to personal property distrained or seized for any cause, shall be commenced and determined in

the Judicial Division detrained or in which the land is situated, or the distress or seizure took place.

2. All actions for recovery of penalties and forfeitures, and also all actions against public officers, shall be commenced

and tried in the Judicial Division in which the cause of action arose.

3. All suits for specific performance, of upon the breach of any contract, shall be commenced and determined in the judicial

Division in which such contract ought to have been performed or in which the defendant resides or carries on business.

4. All other suits shall be commenced and determined in the Judicial Division in which the defendant resides or carries on

business or in which the cause of action rose. If there are more defendants than one resident in different Judicial

Divisions, the suit may be commenced in any one of such Judicial Divisions; subject, however, to any order which the Court

may, upon the application of any of the parties or on its own motion, think fit to make with a view to the most convenient

arrangement for the trial of such suit.

5. In case any suit shall be commenced in any other Judicial Division than that in which it ought have been commenced, the

same may, notwithstanding, be tried in the Judicial Division in which it shall have been so commenced, unless the court shall

otherwise direct, or the defendant shall plead specially in objection to the jurisdiction before or at the time when he is

required to state his answer or to plead in such cause.

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 such order

shall not be subject to appeal.

ORDER 11

PARTIES

A. GENERAL

1. All persons may be joined in one action as plaintiffs in whom any right to relief (in respect of or arising out of the

same transaction or in a series of transactions) is alleged to exist whether jointly, severally, or in the alternative,

where, if such persons brought 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, for such relief as he or they may be

entitled to, without any amendment.

Provided that if, upon the application of any defendant, it shall appear that such joinder may embarrass any of the parties

or delay the trial of the action, the Court or a Judge in Chamber may order separate trials, or make such other order as may

be expedient in the circumstances.

2. Where an action has been commence in the name of the wrong person as plaintiff, or where it is doubtful whether it has

been commenced in the name of the right plaintiff, the Court or a Judge in Chambers, may, if satisfied that it has been so

commenced through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do,

order any other person to be substituted or added as plaintiff upon such terms as may be just.

3. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly,

severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be

liable according to their respective liabilities without any amendment.

4. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a

counter-claim or set-off, such defendant may obtain the benefit thereof by establishing his set or counter-claim as against

the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding

consequent thereon.

5. (1) If it shall appear to the Court, at or before the hearing of a suit, that all the persons who may be entitled to or

who claim some share or interest in the subject matter of the suit, or who may likely be affected by the result, have not

been made parties, the Court may adjourn the hearing of the suit to a future day, to be fixed by the Court, and direct that

such persons shall be made either plaintiffs or defendants in the suit, as the case may be. In such case the Court shall

issue a notice to such persons which shall be served in the manner provided by these rules for the service of a writ of

summons or in such other manner as the court thinks fit to direct; and on proof of the due service of such notice, the person

so served, whether he shall have appeared or not, shall be bound by all proceedings in the cause;

Provided that a person so served, and failing to appear within the time limited by the notice for his appearance, may at any

time before judgment in the suit, apply to the Court for leave to appear, and such leave may be given upon such terms (if

any) as the Court shall think fit.

(2) The Court may, at any stage of the proceedings and on such terms as appear to the Court to be just, order that the name

or names of any party or parties, whether as plaintiffs or defendants, improperly joined, be struck out.

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 to a suit concerning that demand all the persons liable thereto, and

he may proceed against any one or more of the persons severally or jointly and severally liable.

7. If the plaintiff sues, or any defendant counter-claims, in any representative capacity, it shall so be expressed on the

writ. The Court may order any of the persons represented to be made parties either in lieu of, or in addition to, the

previously existing parties.

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

Court, be authorized by the other persons interested to sue or to defend in such suit for the benefit of or on behalf of all

parties so interested.

9. Any two or more persons claiming or alleged to be liable as partners may sue or be sued in the name of the firm in which

they were partners when the cause of action arose; and any party to an action may in such case apply to the Court for a

statement of the names and addresses of the persons who were, when the cause of action arose, partners in any such firm, to

be furnished in such manner, and verified on oath or otherwise, as the Court may direct.

10. Infants may sue as plaintiffs by their next friends and may defend by guardians appointed for that purpose.

11. Lunatics and persons of unsound mind may respectively sue as plaintiffs by their committees or next friends, and may in

like manner defend any action by their committees or guardians appointed for that purpose.

12. An infant shall not enter an appearance except by his guardian ad litem.

No order for the appointment of such guardian shall be necessary if the legal practitioner applying to enter such appearance

shall make and file an affidavitin Form 14 in the Appendix with such variations as circumstances may require.

This provision shall also apply in cases where an infant is served with a petition or notice of motion, or a summons, in any

matter.

13. Before the name of any person shall be used in any action, as next friend of any infant or other party, or as relator,

such person shall sign a written authority for that purpose, and the authority shall be filed in the Registry.

14. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of

which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or

estate, and shall be considered as representing such persons; but the Court or a Judge in Chambers may at any stage of the

proceedings, order any such persons to be made parties either in addition to or in lieu of the previously existing parties.

This rule shall also apply to trustees, executors and administrators sued in proceedings to enforce a security by foreclosure

or otherwise.

15. Where Defendant is added or substituted, the writ of summons shall be amended accordingly and the plaintiff shall, unless

otherwise ordered by the Court or a Judge in Chambers, file an amended writ and cause the new defendant to be serve and the

proceedings shall be continued as if the new defendant had originally been made a defendant.

16. Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a Judge in

Chambers at any time before trial by motion or summons, or in a summary manner at the trial of the action.

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

called "the notice-third party'):—

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

(b) that he is entitled to any relief or remedy relating to, or connected with the original subject matter of the action and

substantially the same as some relief or remedy claimed by the plaintiff; or

(c) that any question or issue relating to or connected with the said subject matter is substantially the same as some

question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the

plaintiff and the defendant but also as between the plaintiff and the defendant and the third party or between any or either

of them.

The court or a Judge in Chambers may give leave to the defendant to issue and serve a third party notice.

(2) The Court or a Judge in Chambers may give leave to issue and serve a third party notice on an ex-parte application

supported by affidavit, or, where the Court or Judge in Chambers direct a summon to the plaintiff to be issued, upon the

hearing of the summons:

Provided that leave shall not be granted in cases where the action was begun and an order for pleadings made before the date

of the commencement of this rule.

18 (1) The notice shall state the nature and grounds of the claim or the nature of the question or issue sought to be

determined and the nature and extent of any relief or remedy claimed. It shall be in accordance with Form 23 or Form 24 with

such variations as circumstances may require, and shall be sealed and served on the third party in the same manner as a writ

of summons is sealed and served.

(2) The notice shall, unless otherwise ordered by the Court or by a Judge in Chambers, be served within the time limited for

delivering the defence, or, where the notice is served by a defendant to a counter-claim, the reply, and with it also shall

be served a copy of the writ of summons or originating summons and of any pleadings filed in the action

19. The third party shall, as from the time of the service upon him of the notice, be a party to the action with the same

rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary

way by the defendant.

20. The third party may enter an appearance in the action within eight days from service or within such further time as may

be directed by the Court or Judge in Chambers as specified in the no ice (where the third party is served in Nigeria outside

the jurisdiction of the High Court of the state, the period for entering appearance shall be at least thirty days):

Provided that a third party failing to appear within such time may apply to the Court or Judge in Chambers for leave to

appear, and such leave may be given upon such terms, if any, as the court or Judge in Chambers shall think fit.

21. If a third party duly served with a third party notice does not enter an appearance or makes default in filing any

pleading winch he has been ordered to file, he shall be deemed to admit any claim stated in the third party notice and shall

be bound by any judgment given in the action, whether by consent or otherwise, and by any decision therein or any question

specified in the action, and when contribution or indemnity or other relief or remedy is claimed against him in the notice,

he shall be deemed to admit his liability in respect of such contribution or indemnity or other relief or remedy.

22. Where a third party makes default in entering an appearance or tiling any pleading which he had been ordered to file and

the defendant giving the notice suffers judgment by default, such defendant shall be entitled at any time, after satisfaction

of the judgment against himself, or before such satisfaction by leave of the Court or, a Judge in Chambers, to enter

Judgement against the third party to the extent of any contribution or indemnity claimed in the third party notice, or by

leave of the Court or a Judge in Chambers to enter such judgement in respect of any other relief or remedy claimed as the

Court or a Judge shall direct:—

Provided that it shall be lawful for the Court or a Judge in Chambers to set aside or vary such judgement against the third

party upon such terms as may seem just.

23. (1) If the third party enters an appearance, the defendant giving notice may, after notice of the intended applications

has been served upon the plaintiff, the third party and on other defendant, apply to the Court or a Judge in Chambers for the

directions and the Court or Judge in Chambers may :—

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

application, order such judgement as the nature of the case may require to

be entered against the third party in favor of the defendant giving the notice; or

(b) if satisfied that there is a question or issue properly to be tried as between the plaintiffs and the defendant and the

third party or between any or either of them as to the liability of the defendant to the plaintiff or as to the liability of

the third party to make any contribution or indemnity claimed, in whole or in part, or as to any other relief or remedy

claimed in notice by the defendant or that a question or issue stated in the notice should be determined not only as between

the plaintiff and the defendant but as between the plaintiff, the defendant and the third party or any or either of them,

order such question or issue to be tried in such manner as the court or judge in Chambers may direct; or

(c) dismiss the application.

(2) Any direction given pursuant to this rule may be -given either before or after any judgement has been entered in favour

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

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

24. The Court or a Judge in Chambers upon the hearing of the application for directions may, if it shall appear describable

to do so, give the third party liberty to defend the action either alone or jointly with the original defendant upon such

terms as maybe just; or to appear at the trial and take such part therein as may be just, and generally may order such

proceedings to be taken , pleadings or documents to be filed, or amendments to be made, and give such directions as to the

court or Judge in chambers shall appear proper of having the question and the rights and the liabilities of the parties most

conveniently determined and enforced, and as to the mode and extent in or to which the third party shall be bound or made

liable by the decision or judgement in the action.

25 (1) Where the action is tried, the Judge who tries the action may, at or after the trial, enter such judgement as the

nature of the case may require for or against the defendant giving the notice or against the third party, and may grant to

the defendant or to the third party, any relief or remedy which might properly have been granted if the third party had been

made a defendant to an action duly instituted against him by the defendant.

26. Any person carrying on business within the jurisdiction in a name 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.

27. In probate actions, any person not named in the writ may intervene and appear in the action on the filing an affidavit

showing how he is interested in the state of the deceased.

28. Any person not named as a defendant in a writ of summons for the recovery of land may be leave of the court or a 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.

29. Any person appearing to defend an action for the recovery of land as landlord, in respect of property whereof he is in

possession only by his tenant, shall state in his appearance that he appears as landlord.

30 Where a person not named as defendant in any writ of summon for the recovery of land has obtained leave of the Court or a

Judge in Chambers to appear and defend, he shall enter an appearance, according to the foregoing rules of this Order, and

shall forthwith pay the proper fees for notice of such appearance to be given by the Registrar to the plaintiff's legal

practitioner, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as party defendant

to the action.

31. Where a plaintiff, on whose behalf or by whom a suit is instituted or carried on, either alone or jointly with another

person, is out of the jurisdiction, or is only temporarily therein, he shall assign a fit place within the jurisdiction where

notices or other papers issuing from the Court may be served on him.

32. If it shall be made to appear on oath or affidavit to the satisfaction of the Court that the defendant has a bona fide

counter-claim against such plaintiff which can be conveniently tried by the Court, it shall be lawful for the Court in its

discretion to stay proceedings in the suit instituted by such plaintiff until he shall have provided such security to comply

with the orders and judgement of the court with respect to such counter-claim as the Court shall think fit.

33. Where by these rules any act may be done by any party in action, such act may be done either by the party in person, or

by his legal practitioner, or by his agent(unless an agent is expressly debarred under these rules or any written law in

force in the state).

B. Alteration of Parties

34. (1) Where after the institution of a suit any change or transmission of interest or liability occurs in relation to any

party to the suit; or any party to the suit dies or becomes incapable of carrying on the suit, or the in any other way

becomes defective or incapable of being carried on, any person interested may obtain from the Court any order requisite for

curing the defect, or enabling or compelling proper parties to carry on the proceedings.

(2) Any persons served with such an order may, within such time as the Court in the order directs, apply to the Court to

discharge or vary the order.

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

36. If there be two or more plaintiffs or defendants, and one of them dies, and if the cause of action survives to 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 or plaintiffs, and. against the surviving, defendant or defendants.

37. If there be two or more plaintiffs and one of them dies and if the cause of action shall not survive to the surviving

plaintiff or plaintiffs alone, but shall survive to them and 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 such deceased

plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative

of the deceased plaintiff. If no application shall be made to the Court by any person claiming to be the legal representative

of the deceased plaintiff the suit shall proceed at the instance of the surviving plaintiff or plaintiffs; and the legal

representative of the deceased plaintiff shall, after notice to appear, be interested in, and shall be boundby the judgement

given in the suit, in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or

plaintiffs, unless the Court shall see cause to direct otherwise.

38. In case the death of a sole plaintiff, or sole surviving plaintiff, the Court may, on the application of the legal

representative of such plaintiff, enter the name of such representative in the place of such plaintiff in the suit, and the

suit shall thereupon proceed; If no such application shall be made to the Court within what it may consider a reasonable time

by any person claiming to be the legal representative of the deceased sole plaintiff or sole surviving plaintiff, it shall be

competent for the Court to make an order that the suit shall abate, and to award to the defendant the reasonable costs which

he may have incurred in defending the suit, to be recovered from the estate, of the, deceased sole plaintiff or surviving

plaintiff; or the Court may, if it thinks proper, on the application of the defendant and upon such terms as to costs as may

seem just, make such order for bringing in the legal representative of the deceased: sole plaintiff or surviving plaintiff,

and for proceeding with the suit in order to a final determination of the matters in dispute, as may appear just and proper

in the circumstances of the case.

39. If any dispute arises as to who is the legal representative of a deceased plaintiff, it shall be competent to the Court

either to stay the suit until the fact has been duly determined in another suit, or to decide at or before the hearing of the

suit who shall be admitted to be such legal representative for the purpose of prosecuting that suit.

40. If there be two or more defendants and when one of them dies the cause of action survives but does not survive against

the surviving defendant or defendants alone, and also in the case of the death of a sole defendant, or sole surviving

defendant, where the action survives, the plaintiff may make an application to the Court, specifying the name, description

and place of abode of any person whom the plaintiff alleges to be the legal representative of such defendant and whom he

desires to be made the defendant in his stead; and the Court shall thereupon enter the name of such representative in the

suit in the place of such defendant, and shall issue an order to him to appear on a day to be therein mentioned to defend the

suit and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant,

and had been a party to the former proceedings in the suit.

41. The bankruptcy of the plaintiff, in any suit which the assignee or trustee might maintain for the benefit of the

creditors, shall not be a valid objection to the continuance of such suit, unless the assignee or trustee shall decline to

continue the suit, or shall neglect or refuse to give security for the costs thereof, within such reasonable time as the

Court may order; if the assignee or trustee neglects or refuses to continue the suit and to give such security within the

time limited by the order, the defendant may, within eight days after such neglect or refusal, plead the bankruptcy of the

plaintiff as a reason for abating the suit.

42. Where any cause or matter becomes abated or in the case of any such change of interest as is by these rules provided for

the legal practitioner for the plaintiff or person having the conduct of the cause or matter, as the case may be, shall

certify the fact to the registrar, who shall cause an entry thereof to be made in the cause opposite to the name of such

cause or matter.

43. Where any cause or matter shall have been standing for one year in the Cause Book, marked as "abated" or standing over

generally, such cause or matter at the expiration of the year shall

be struck out of the Cause Book.

ORDER 12

SERVICE OF PROCESS

(A) SERVICE WITHIN JURISDICTION

1. Service of write of summons, notices, petitions, pleadings, orders, summonses, warrants and of all other proceedings,

documents, or written communications of which service is required, shall be made by the Sheriff or a deputy Sheriff, bailiff,

officer of the Court, or by a person appointed therefor either especially or generally by the Court or by a Judge in

Chambers, unless another mode of service is prescribed by these rules, or the Court or a Judge in Chambers otherwise directs:

Provided that when a party is represented by a legal practitioner, service of notices, pleading, petitions, orders,

summonses, warrants and of all other proceedings, documents or written communications of which personal service is not

required may be made by or on such legal practitioner or his clerk under his control.

2. Save as otherwise prescribed by any of these rules, an originating process shall be served personally by delivering to the

person to be served a copy of the document, duly certified by the Registrar as being a true copy of the original process

filed, without exhibiting the original thereof.

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.

4. The Court may in any civil case, for reasons which shall seem to it sufficient, appoint any process to be executed by a

special bailiff, who for the time being shall have the privileges and liabilities of an officer of Court. The expense of such

special bailiff shall be defrayed by the party on whose application he is appointed unless the Court in any case sees reason

to vary this rule.

5. Where it appears to the Court (either after or without an attempt at personal service) that for any reason personal

service cannot be conveniently effected, the Court may order that service be effected either—

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

be served; or

(b) by delivery thereof 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;

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

(d) by notice put up at the principal court-house of, or some other place of public resort in, the Judicial Division where in

the proceeding in respect of which the service is made is instituted, or at the usual or last known place of abode or of

business, of the person to be served.

6. When a party to be served is in the service of any Ministry on or non-Ministerial Department of Government or of a Local

Government, the Court may transmit the document to be served and

a copy thereof to the senior officer of the Department of Government in the Judicial Division or place where the party to be

served works or resides or to the Local Government in whose service is the party to be served, and such officer, or Local

Government shall cause the same to be served on the proper party accordingly.

7. Where partners are sued in the name of their firm, the writ or other document shall be served either upon any one or more

of the partners, or at the principal place within the judicial division

of the business of the partnership upon any person having at the time of the service the control or management of the

partnership business there; and such service shall be deemed good service upon the firm.

8. When the suit is against a corporation or a company authorized to sue and be sue in its name or in the name of an officer

or trustee, the writ or other document may be served, subject to the enactment establishing such corporation or company or

under which it is registered as the case may be, by giving the same to any director, secretary, or other principal officer,

or by leaving it at the office, of the corporation or company.

9. Where the person on whom service is to be effected is living or serving on board of any ship, it shall be sufficient to

deliver the writ or other document to the person on board who is at the time

of such service apparently in charge of such ship.

10. Where the person on whom service is to be effected is a prisoner in a prison, or a lunatic in any asylum, it shall be

sufficient service to deliver the writ or other document at the prison or asylum to the superintendent or person appearing to

be the head officer in charge.

11. -Where an infant is a party to an action, service on his father or guardian, or if none, then upon the person with whom

the infant resides or under whose care he is, shall unless the Court or a Judge in Chambers otherwise orders, be deemed good

personal service on the infant:

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

service.

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

name or under the name of a firm through an authorised agent, and the proceeding is limited to a cause of action which arose

within the jurisdiction, the writ or other document may be served by giving it to such 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 writ of summons may be allowed by the Court or a Judge in

Chambers whenever—

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

(2) any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction,

is sought to be construed, rectified, set aside, or enforced in the action; or

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

(4) the action is for the administration of the personal estate of any 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 jurisdiction; or

(5) 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—

(a) made within the jurisdiction; or

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

of the jurisdiction; or

(c) by its terms or by implication to be governed by the law in force in the jurisdiction, or is brought against the

defendant in respect of a breach committed within the jurisdiction of a contract wherever made, even though such 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

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

(7) 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

(8) any person out of jurisdiction is a necessary or proper party to an action properly brought against some other party

within the jurisdiction; or

(9) the action is by a mortgagee or mortgagor in relation to a mortgage of property situate within the jurisdiction and seeks

relief of the nature or kind following that is to say: sale, foreclosure, delivery of possession by the mortgagor,

redemption; reconveyance, delivery of possession by the mortgagee; but does not seek (unless and except so far as permissible

under paragraph (5) of this rule) any personal judgement or order for payment of any moneys due under the mortgage; or

(10) the action is one brought under the Civil Aviation Act or any regulations made in pursuance of such Act or any law

relating to carriage by air.

14. "Out of Jurisdiction" in this Order means out of the Federal Republic of Nigeria.

15. Every application for leave to serve such notice or writ on a defendant out of the jurisdiction shall be supported by

affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action, and showing

in what place or country such defendant is or probably may be found, and whether such defendant is a Common-Wealth citizen or

not, and the grounds upon which the application is made, and no such leave shall be granted unless it shall be made

sufficiently to appear to the Court or a Judge in Chambers that the case is a proper one for service out of the jurisdiction

under these rules.

16. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within

which such defendant is to enter an appearance, such time to depend on

the place or country where or within which the writ is to be served or the notice given, and on whether the air mail is

available to such defendant.

17.(1)When the defendant is neither a Commonwealth citizen nor that of any country which is a member of either the O.A.U. or

ECOWAS and who is not in any such country, notice of the writ and not the writ itself, is to be served upon him.

(2) Where leave is given under the fore-going provision to serve notice of the writ of summons out of the jurisdiction, such

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 the Court or a Judge in Chambers of the following processes or of

notices thereof, that is to say—

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

within these rules;

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

(i) in relation to an infant or lunatic or person of unsound mind; or

(ii) under any law or enactment under which proceedings can be commenced otherwise than by writ of summons; or

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

(c) without prejudice to the generality of the last foregoing paragraph, any summons, order or notice in any interpleader

proceedings or for the appointment of an arbitrator or umpire or to remit, set aside, or enforce an award in an arbitration

held or to be held within the jurisdiction:

(d) any summons, order or notice in any proceedings duly instituted whether by writ of summons or other such originating

process as aforesaid.

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

summons, order, or notice is to be served is neither a Commonwealth citizen nor residing within the Commonwealth countries, a

copy of the document concerned shall be served, together with an intimation in writing that a process in the form of copy has

been issued, or otherwise launched.

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

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

country with which a convention in that behalf has been made, the following procedure may be adopted—

(a) the document to be served shall be sealed with the seal of the Court for use out of the jurisdiction, and shall be

transmitted to the Permanent Secretary to the Ministry of Justice by the Chief Registrar on the direction of the Chief Judge,

together with a copy thereof translated into the language of the country in which service is to be effected and with a

request for transmission to the Minister responsible for External Affairs for the further transmission of the same to the

Government of the country in which leave to serve the document has been given. Such request shall be in Form 7 in the

Appendix with such variations as circumstances may require;

(b) the party bespeaking a copy of a document for service under this section shall, at the time of bespeaking the same, file

a request in Form 8 of the Appendix;

(c) an official certificate, or declaration upon oath or otherwise, transmitted through the diplomatic channel by the

Government or Court of a foreign country to which this provision applies, to the Court, shall, provided that it certifies or

declares the document to have been personally served, or to have been duly served Upon the defendant in accordance with the

law of such foreign country, or words to that effect, be deemed to be sufficient proof of such service, and shall be filed as

record and be equivalent to, an affidavit of service within the requirements of these rules in that behalf;

(d) where an official certificate or declaration, transmitted to the Court in manner provided in the last preceding paragraph

certifies or declares that efforts to serve a document have been without effect, the Court or a Judge may, upon the ex-parte

application of the plaintiff, order substituted service of such document, and the document and copy of the same, and the

order shall be sealed and transmitted to the Permanent Secretary to the Ministry of Justice in manner aforesaid together with

a request in Form 9 of the Appendix, with such variations as circumstances may require. Nothing herein contained shall in any

way prejudice or affect any practice or power of the Court under which when lands, funds, choses in action, rights or

property within the jurisdiction are sought to be dealt with or affected, the Court may, without affecting to exercise

jurisdiction over any person out of the jurisdiction, cause such person to be informed of the nature or existence of the

proceedings with a view to such person having an opportunity of claiming, opposing or otherwise intervening.

20. (1) Where, for the purpose of an action under the civil Aviation Act and the convention therein set out, leave is given

to serve a notice of writ of summons upon a high contracting party to the Convention other than Nigeria, the provisions of

this 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 sealed with the seal of the Court for service out of the jurisdiction, and shall be transmitted to the

Ministry of Justice, together with a copy thereof translated into the language of the country of the defendant, and with a

request for transmission to the Minister responsible for further transmission of the same to Government of that country.

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

(5)The party bespeaking a copy of a document for service under this rule shall at the time of bespeaking the same file a

praecipe in Form 9 in the Appendix.

(6) An official certificate from the Minister External Affairs transmitted by the Ministry of Justice or otherwise to the

Court certifying that the notice was delivered on a specified date to the Government of the country of the defendant shall be

deemed to be sufficient proof of service and shall be filed as a record and be equivalent to, an affidavit of service within

the requirements of these rules in that behalf.

(7)After entry of appearance by the defendant, or, if no appearance is entered, after expiry of the time limited for

appearance the action may proceed to judgement in all respects as if the defendant had for the purposes of the action waived

all privileges and submitted to the jurisdiction of the Court.

(8) Where it is desired to serve or deliver a summons, order or notice in to proceedings on the defendant out of the

jurisdiction, the provisions of this rule shall apply with such variation as circumstances may require.

21. Where leave is given in a civil cause or 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 document in any foreign country with which a Convention in

that behalf has been or shall be made, the following procedure shall, subject to any special provisions contained in to

Convention, be adopted:-

(a) the party bespeaking such service shall file in the registry a request in Form 8 or Form 66 in the Appendix, which form

may be varied as may be necessary to meet the circumstances of the particular case, in which it is used. Such request shall

state the medium through which it is desired the service shall be effected, i.e., whether

(i) directly through the diplomatic channels; or

(ii) through the foreign judicial authority, and shall be accompanied by the original document and a translation thereof in

the language of the country in which service is to be affected, 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 the Diplomatic Channels in which case the translation and

copies thereof need not accompany the request unless the Convention expressly requires that they should do so);

(b) the documents to be served shall be sealed with the seal of the Court for use out of the jurisdiction and shall be

forwarded by the Registrar to the Permanent Secretary for External Affairs for transmission to the foreign country;

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

Diplomatic Agent to the Court, establishing the fact and the date of the service of the document, shall be deemed to be

sufficient proof of such service, and shall be filed as record and be equivalent to; an affidavit of service with the

requirements of these rules in that behalf.

22. Rule 21 shall not apply to or render invalid or insufficient any mode of service in any foreign country with which a

Convention has been or shall be made which is otherwise valid or sufficient according to the proceedings of the Court and

which is not expressly excluded by the Convention made with such foreign country.

23. The Court or Judge, in giving leave to serve a document out of the jurisdiction under these rules, may in an appropriate

case direct that the air mail service shall be used by the party effecting service.

24. Where in any civil cause or matter pending before a court or tribunal in any foreign country with which a Convention in

that behalf has been or shall be made a request for service of any document on a person within the jurisdiction is received

by the Chief Judge from the consular or other authority of such country the following procedure shall, subject to any special

provisions contained in the Convention, be adopted—

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

the copy of the translation, to the party or person to be served in person by an officer of the court, unless the Court or a

Judge in Chambers thinks fit otherwise to direct;

(b) no court fees shall be charged in respect of the service. The particulars of charges of the officer employed to effect

service shall be submitted to the Chief Registrar of the Court who shall certify the amount properly payable in respect

thereof;

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

and the date of the service in person, or indicating the reason for which it has not been possible to effect it, and at the

same time shall notify to the said consular or other authority the amount of the charges certified under paragraph (b)

hereof;

25. Upon the application of the Attorney - General, the Court or a Judge in Chambers may make all such order for substituted

service or otherwise as may be necessary to give effect to rules 13 to 23.

26. Any order giving leave to effect service out of the jurisdiction shall prescribe the mode of service, and shall limit a

time after such service within which the defendant is to enter an appearance, such time to depend on the place or country

where or within which the writ is to be served, and the Court may receive an affidavit or statutory declaration of such

service having been effected as prima facie evidence thereof.

(c) General Provisions

27. Where the officer of Court or person charged with the service of any writ or document or any person is prevented by the

violence or threats of such person, or any other person in concert with him, from personally serving the writ or documents,

it shall be sufficient to inform the persons to be served of the nature of the writ or document as near such person as

practicable.

28. In all cases where service of any writ or document shall have been effected by a bailiff or other officer of Court an

affidavit of service sworn to by such bailiff or other officer shall on production, without proof of signature, be prima

facie evidence of service.

29. The costs of and incidental to the execution of any process in a suit shall be paid in the first place by the party

requiring such execution, and the sheriff shall not (except by order of the court) be bound to serve or execute any process

unless the fees and reasonable expenses thereof shall have been previously paid or tendered to him.

30. Service shall not be made on a Sunday or public holiday, unless the Court directs otherwise by order endorsed on the

document to be served.

31. A book shall be kept at every Court 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 ascertained that he served the process on the right person, and where any process shall not have been

duly served, then the cause of failure shall be stated and every entry in such book or an office copy of any entry shall be

prima facie evidence of the several matters therin stated.

ORDER 13

APPEARANCE

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

hereinafter prescribed.

Provided that where a defendant is illiterate and is not represented by a legal practitioner and the Registrar shall fill the

requisite documents as aforementioned that is to say Forms11, 12 or 14 in the appendix whichever is applicable.

(2)On receipt of the requisite documents, 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 thereof 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 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. If the memorandum does not contain an address for service it shall not be accepted. If any such address is illusory or

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 two or more defendants in the same action shall appear by appearing by the same legal practitioner and at the same

time, the names of all the defendants so appearing may be inserted in one memorandum.

5. A defendant may appear at any time before judgement. If he appears at any time after the time limited by the writ for

appearance he shall not, unless the Court or a Judge in Chambers shall otherwise order be entitled to any further time for

delivering his defence, or for any purpose, than if he had appeared according to the writ or other originating process.

6. Any person appearing to an action for the recovery of land shall be at liberty to limit his defence to a part only of the

property mentioned in the action, described that part with reasonable certainty in his memorandum of appearance. Such

appearance shall be in Form 13.

7. A defendant before entering an unconditional appearance shall he at liberty (without obtaining an order to enter, or

entering, a conditional appearance) to take out a summons to set aside the service upon him of the writ or other process, or

to discharge the order authorising such service.

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

ORDER 14

DEFAULT OF APPEARANCE

1. Where a writ of summons is endorsed for a liquidated demand whether specially or otherwise, and the defendant fails, or

all the defendants, if more than one, fail, to appear thereto, the plaintiff may have entered in his favour final judgement

for any sum not exceeding the sum endorsed on the writ, together with interest at the rate specified (if any), or (if no rate

be specified) at the rate of six per cent per annum, to the date of the judgement, and costs:

Provided that this rule shall not apply to an action by a money lender or an assignee for the recovery of money lent by a

money lender, or to an action for the enforcement of any agreement or security relating to any such money.

2. Where the writ of summons is endorsed for a liquidated demand, whether specially or otherwise, and there are several

defendants of whom one or more appear to the writ, and another or others of, them fail to appear, the plaintiff may have

final judgement entered, as in the preceding rule, against those that have not appeared, and may issue execution upon such

judgement without prejudice to his right to proceed with the action against those who have appeared.

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

within the time limited for appearance, the plaintiff shall be at liberty to have judgement entered for him.

(2) If an appearance is entered but the defence is limited to part only, the plaintiff may have judgement entered for him for

the undefended part of his claim, and the rest of the claim may be proceeded within the normal way.

4. In any case to which rules 1, 2 and 3 apply, in which the defendant fails, or all the defendants, if more than one, fail,

to appear, but in which by reason of payment, satisfaction, abatement of nuisance, or for any other reason it is unnecessary

for the plaintiff to proceed with the action, he may, by leave of the Court or a Judge in Chambers to be obtained on summons

in Chambers, have judgement entered for costs.

Provided that such summons shall be filed and shall be served in the manner in which service of the writ has been effected or

in such other manner as the Court or a Judge in Chambers shall direct.

5. In all actions not specially provided for by 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 any

judgement that the plaintiff appears to be entitled to on the facts.

6. Where judgement is entered pursuant to any of the preceding rules of this Order, it shall be lawful for the Court or a

Judge in Chambers to set aside or vary such judgement upon such terms as may be just.

7. Where a defendant or respondent to an originating summons to which an appearance is required to be entered fails to appear

within the time limited, the plaintiff or applicant may apply to the Court or a Judge in Chambers for an appointment for the

hearing of such summons and upon a certificate that no appearance has been entered, the Court or Judge in Chambers shall

appoint a time for the hearing of such summons, upon such conditions (if any) as it or he shall think fit.

8. 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, the plaintiff shall before further proceeding with action against the defendant, apply to the Court or a

Judge in Chamber for an order that some proper person be assigned guardian of such defendant by whom he may appear and defend

the action. But no such order shall be made unless it appears that application was, after the expiration of the time allowed

for appearance, and at least six clear days before the day named in such notice for hearing the application served upon or

left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of

summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or

guardian) served upon or left at the dwelling-house of the father or guardian (if any) of such infant, unless the Court or

Judge in Chambers at the time of hearing such application shall dispense with such last mentioned service.

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

enforcement of any agreement or security relating to any such money, an application for leave to enter judgement in default

of appearance shall be made by notice returnable not less than four 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 in the Appendix with such variations as circumstances may require, and

shall be Served personally.

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

relevant powers of the Court under the Money-Lenders Law.

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

ORDER 15

ARREST OF ABSCONDING DEFENDANT

1. If in any suit for an amount or value of one thousand naira or upwards the defendant is about to leave the jurisdiction of

the Court or has disposed of or removed from the jurisdiction, his property, or any part thereof, or is about to do so, the

plaintiff may, either at the institution of the suit or at any time thereafter until final judgement, make an application to

the Court that security be taken for the appearance of the defendant to answer and satisfy any judgement that may be-passed

against him in the suit.

2. If the Court, after making such investigation as it may consider necessary, shall be of opinion that there is probably

cause for believing that the defendant is about to leave the jurisdiction of the Court, or that he has disposed of or removed

from the jurisdiction his property or any part thereof,or is about to do so, and that in either case by reason thereof the

execution of any decree which may be made against him is likely to be obstructed or delayed, it shall be lawful for the Court

to issue a warrant to bring the defendant before the Court, that he may show cause why he should not give good and sufficient

bail for his appearance.

3. If the defendant fails to show such cause, the Court shall order him to give bail for his appearance at any time when

called upon while the suit is pending and until execution or satisfaction of any judgement that may be passed against him in

the suit, or to give bail for the satisfaction of such judgement; and the surety or sureties shall undertake in default of

such appearance or satisfaction to pay any sum of money that may be adjudged against the defendant in the suit with costs.

4. Should a defendant offer, 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 such deposit.

5. (1) In the event of the defendant neither furnishing security nor offering a sufficient deposit, he may be committed to

custody until the decision of the suit or, if judgement be given against the defendant, until the execution of the decree, if

the Court shall so order:

Provided that the Court may at any time, upon reasonable cause being shown and upon such terms as to security or otherwise as

may seem just, release the defendant.

(2) The application may be made to the Court in any Judicial Division in which the defendant may be and such Court may issue

the warrant for detaining and bringing the defendant before the Court where the suit is pending, and may make such further

order as shall seem just.

(3) In case the warrant shall be issued by a different Court from that in which the suit is pending, such Court shall, on the

request of either of the parties, transmit the application and the evidence therein to the Court in which the suit is

pending, and take sufficient security for the appearance of the defendant in that Court, or send him there in custody of an

officer or court, and the Court in which the suit is pending shall thereupon examine into and proceed in the application in

accordance with the foregoing provisions, in such manner as shall seem just.

6. The expenses incurred for the subsistence in prison of the person so arrested shall be paid by the plaintiff in the action

in advance, and the amount so disbursed may be recovered by the plaintiff in the suit unless the Court shall otherwise order.

The Court may release the person so imprisoned on failure by the plaintiff to pay the subsistence money, or in case of

serious illness order his removal to hospital.

ORDER 16

INTERIM ATTACHMENT OF PROPERTY

1. (a) Where the defendant in any suit with intent to obstruct or delay the execution of any decree that may be passed

against him, is about to dispose of his property, or any part thereof or to remove any such property from the jurisdiction;

or

(b) where, in any 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 the jurisdiction, or there is probable cause to believe that he is concealing himself to

evade service ;and

(fi) the defendant is beneficially entitled to any property in the State in the custody or under the control of any other

person in the State, or such person is indebted to the defendant.

Then in either such case the plaintiff may apply to the Court either at the time of the institution of the suit or at any

time thereafter until final judgement to call upon the defendant to furnish sufficient security to fulfil any decree that may

be made against him in the suit, and on his failing to give such security, or pending the giving of such security, to direct

that any property movable or immovable belonging to the defendant shall be attached until the further order of the Court.

2. The application shall contain a specification of the property required to be attached, and the estimated value thereof so

far as the plaintiff can reasonably ascertain the same, and the plaintiff shall, at the time of making the application,

declare that to the best of his information and belief the defendant is about to dispose of or remove his property with such

intent as aforesaid.

3. If the Court after making such investigation as it may consider necessary, shall be satisfied that the defendant is about

to dispose of or remove his property with intent to obstruct or delay the execution of any decree, it shall be lawful for the

Court to order the defendant, within a time to be fixed by the Court either to furnish security in such sum as may be

specified in the order to produce and place at the disposal of the Court when required the said property, or the value of the

same, or such portion thereof as may be sufficient to fulfil the decree, or appear and show cause why he should not furnish

security. Pending the defendant's compliance with such order, the Court may by warrant direct the attachment until further

order of the whole, or any portion, of the property specified in the application.

4. If the defendant fails to show such cause, or to furnish the required security within the time fixed by the Court, the

Court may direct that the property specified in the application if not already attached, or such portion thereof as shall be

sufficient to fulfil the decree, shall be attached until further order. If the defendant shows such cause, or furnishes the

required security, and the property specified in the application or any portion of it, shall have been attached, the Court

shall order the attachment to be withdrawn.

5. The attachment shall not affect the rights of persons not parties to the suit, and in the event of any claim being

preferred to the property attached before judgement, such claim shall be investigated in the manner prescribed for the

investigation of claims to property attached in execution of a decree.

6. In all cases of attachment before judgement, the Court shall at any time remove the same, on the defendant furnishing

security as above required, together with security for the costs of the attachment or upon an order for a non-suit or

striking out the cause or matter.

7. The application may be made to the Court in the Judicial Division where the defendant, or in case of urgency, where the

property proposed to be attached, may be, and such Court may make such order as shall seem just. In case an order for the

attachment of property shall be issued by a different Court from that in which the suit is pending, such Court shall, on the

request of either of the parties, transmit the application and evidence therein to the Court in which the suit is so pending,

retaining the property in the meantime under attachment or taking sufficient security for its value and the Court in which

the suit is pending shall thereupon examine into and proceed with the application in accordance with the foregoing

provisions, in such manner as shall seem just.

ORDER 17

DETENTION OF SHIPS AND REPARATION FOR NEEDLESS ARRESTS, ETC.

1. Where the circumstances of a case appear to the Court so to in require, it shall be lawful for the Court on the

application of any plaintiff, by warrant under the seal of the Court to stop the clearance or to order the arrest and

detention by the sheriff of any ship about to leave the jurisdiction (other than a ship enjoying immunity from civil

process), and such clearance shall be stopped, or the ship arrested and detained accordingly.

Provided that no such warrant shall be issued at the instance of any plaintiff unless the application shall be supported by

an affidavit of the facts.

2. The Court may at any time release a ship detained under this order upon such terms as it shall deem reasonable.

3. The Court upon making any order to hold to bail, or of sale, injunction or attachment, or any warrant to stop the

clearance of, or to arrest any ship as aforesaid, may impose such terms and conditions as the court shall deem just, and in

particular it may require the person applying for any such order to provide adequate security for his being answerable in any

damages that may accrue through the order or warrant.

4. In any case in which an order as aforesaid shall have been made—

(a) if it shall afterwards appear to the Court that the arrest of any defendant, or any order of attachment, sale, or

injunction, or any warrant to stop the clearance of, or to arrest any, ship, was applied for on insufficient grounds; or

(b) if the suit in which any such application was made is dismissed, or judgement is given against the plaintiff by default

or otherwise, and it shall appear to the Court that there was no reasonable ground for instituting such suit;

The Court may (on the application of the defendant made at any time before the expiration of six months from termination of

the suit), award against the plaintiff, such amount as it may deem reasonable compensation to the defendant for any loss,

injury, or expenses which he may have sustained by reason of such arrest, attachment, order of sale or injunction, as

aforesaid.

5. The provisions of this order shall not take away any right of action or other right which would otherwise have existed,

but no action shall be commenced or continued in respect of the same cause on which the Court has made an award of

compensation under rule 4.

ORDER 18

ACCOUNTANTS AND INQUIRIES

1. (1) Where a writ is endorsed with a claim for an account or a claim which necessarily involves taking an account, the

plaintiff may, at any time after the defendant has entered an appearance or after the time limited for appearing, apply for

an order for an account under this rule.

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

(3). On the hearing of the application, the Court may, unless satisfied by the defendant by affidavit or otherwise that is

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

the account to be due to either party to him within a time specified in the order.

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

necessary accounts or inquiries to be taken or made.

(2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgement or order so

that, as far as may be, each distinct account and inquiry maybe designated by a number.

3. (1) Where the Court orders an account to be taken, it may by the same or subsequent order give directions with regard to

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

(2) Without prejudice to the generality of paragraph (1), the Court may direct that in taking the account the relevant books

of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objections

thereto as they think fit.

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

otherwise 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) Unless the order for the taking of the account otherwise directs, the accounting party shall lodge the account with the

Court and shall at the same time notify the other parties that he has done so and of the filing of any affidavit verifying

the account and of any supporting affidavit.

5. Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have

received or who alleges that any item in his account is erroneous in respect of amount or in any other respect shall give him

notice thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or, as the case

may be, the grounds for alleging that the item is erroneous.

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

effect.

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

proceedings under any judgement 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 the conduct

thereof and for the costs as the circumstances require.

(2) The Court may direct any party or legal practitioner to take over the conduct of proceedings in questions made by an

order under this rule and may make such order h thinks fit as to the payment of legal practitioners costs.

8. Where some of the persons entitled to are in a fund ascertained and difficulty or delay has occurred or is likely to occur

in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons

ascertained without reserving any part of these shares to meet the subsequent costs of ascertaining those other persons.

ORDER 19

REFERENCE TO ARBITRATOR

1. In any case in which a matter is referred to one or more arbitrators under the provisions of the High Court Law, the

arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

2. If the parties cannot agree with respect to the nomination, or if the persons nominated refuse to act, and the parties are

desirous that the nomination shall be made by the Court, the Court shall appoint arbitrators.

3. The Court shall by an order under its seal refer to the arbitrators the matters in difference in the suit which they may

be required to determine, shall fix a time for the delivery of the award, and

the time so fixed shall be stated in the order.

4.If the reference be two or more arbitrators, provision shall be made in the order for a difference of opinion among them,

by the appointment of an umpire, or by declaring that the decision shall be with the majority, or by empowering the

arbitrators to appoint an umpire, or otherwise as may be agreed between the parties, or, they cannot agree, as the Court may

determine.

5. When a reference to arbitrator is made by an order of Court, the same process to the parties and witnesses, whom the

arbitrators or umpire may desire to have examined, shall issue as in ordinary suits; and persons not attending in compliance

with such process or making any other default, or refusing to give evidence, or being guilty of any contempt of the

arbitrators or umpire during the investigations of the suit, shall be subject to the like disadvantages, penalties and

punishments, by order of the Court on the representation of the arbitrators or umpire, as they would incur for the same

offences in suits tried before the Court.

6. When the arbitrators are not able to complete the award within the period specified in the order from want of the

necessary evidence or information, or other good and sufficient cause, the Court, may from time to time enlarge the period

for delivery of the award, if it shall think proper. In any case in which an umpire is appointed, it shall be lawful for him

to enter on the reference in lieu of the arbitrators, if they shall have allowed their time, or their extended time to expire

without making an award or shall have delivered to the Court, or to the umpire, a notice in writing stating that they cannot

agree.

Provided that an award shall not be liable to be set aside only by reason of its not having been completed within the period

allowed by the Court, unless on proof that the delay in completing the award arose from misconduct of the arbitrators or

umpire, or unless the award shall have been made after the issue of an order by the Court superseding the arbitration and

recalling the suit.

7. If, in any case of reference to arbitration by an order of Court the arbitrators or umpire shall die, or refuse or become

incapable to act, it shall be lawful for the Court to appoint a new arbitrator or arbitrators, or umpire in the place of the

person or persons so dying, or refusing or becoming incapable to act. Where the arbitrators are empowered by the terms to the

order or reference to appoint an umpire, and do not appoint an umpire, any of the parties may serve the arbitrators with a

written notice to appoint an umpire; and if within seven days after such notice shall have been served, no umpire be an

pointed, it shall be lawful for the Court upon the application of the party having been served such notice as aforesaid and

upon proof to its satisfaction of such notice having been served, to appoint an umpire. In any case of appointment under this

rule, the arbitrators or umpire so appointed shall have the like power to act in the reference as if their names has been

inserted in the original order of reference.

8. The award shall contain a conclusive finding, and may not find on the contingency of any matter of fact being afterwards

substantiated or deposed to. It shall comprehend a finding on each of the several matters referred.

9. It shall be lawful for the arbitrators or umpire upon any reference by an order of Court, if they shall think fit, and if

it is not provided to the contrary, to state their award as to the whole or any part thereof in the form of a special case

for the opinion of the Court.

10. The Court may, on the application of either party, modify or correct an award where it appears that a part of the award

is upon matters not referred to the arbitrators, (provided such part can be separated from the other part, and does not

affect the decision on the matter referred), or where the award is imperfect in form, or contains any obvious error which can

be amended without affecting such decision.

11. The Court may also, on such application, make such order as it thinks just respecting the costs of the arbitration, if

any question arises about such costs or their amount, and the award contains no sufficient provision concerning them.

12. In any of the following cases the Court shall have power to remit the award, or any of the matters referred to

arbitration, for reconsideration by the arbitrators or umpire, upon such terms as it thinks proper:—

(a) if the award has left undetermined some of the matters referred to arbitration;

(b) if it has determined matters not referred to arbitration;

(c) if the award is so indefinite as to be incapable of execution;

(d) if an objection to the legality of the award is apparent upon the face of the award.

13. No award shall be liable to be set aside except on the ground of perverseness or misconduct of the arbitrators or umpire.

Any application to set aside an award shall be made within fifteen days after the publication thereof.

14. If no application is made to set aside the award, or to remit it or any of the matters referred, for reconsideration, or

if the Court has refused any such application, either party may file the award in Court and the award shall thereupon have

the same force and effect for all purposes as a judgement.

ORDER 20

REFERENCE TO REFEREES

1. In any case in which a matter is referred to a referee under the provisions of the High Court Law, the Court shall furnish

the referee with such part of the proceedings and such information and detailed instructions as may appear necessary for his

guidance, and shall direct the parties, if necessary, to attend upon the referee during the inquiry. The instructions shall

specify whether the referee is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own

opinion on the point referred for his investigation.

2. The Court may at any stage of the proceedings direct any such necessary inquiries or accounts to be made or taken

notwithstanding that it may appear that there is some special or further relief sought for, or some special issue to be

tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

3. The referee may, subject to the order of the Court, hold the inquiry at, or adjourn it to, any place which he may deem

most expedient, and have any inspection or view which he may deem expedient for the disposal of the controversy before him.

He shall, as far as practicable, proceed with the inquiry from day to day.

4. Subject to any order to be made by the Court ordering the inquiry, evidence shall be taken at any inquiry before a

referee, and the attendance of witnesses to give evidence before a referee may be enforced by the Court in the same manner as

such attendance may be enforced before the Court; and every such inquiry shall be conducted in the same manner as nearly as

circumstances will admit as trials before a judge of the Court, but not so as to make the tribunal of the referee a public

court of justice.

5. Subject to any order of Court, the referee shall have the same authority in the conduct of any inquiry as a Judge of the

Court when presiding at any trial.

6. Nothing in these provisions contained shall authorize any referee to commit any person to prison or to enforce any order

by attachment or otherwise, but the Court may, in respect of matters before a referee, make any order of attachment or

committal it may consider necessary.

7. (1) The report made by a referee in pursuance of a reference under these rules shall be made to the Court and notice

thereof served on the parties to the reference.

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

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

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

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

(b) vary the report;

(c) require an explanation from the referee;

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

other referee; or

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

additional evidence.

ORDER 21

RECEIVERS

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

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the

application for such order.

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

an appropriate case.

(4) The Court hearing an application under paragraph (3) may grant an injunction restraining the party beneficially entitled

to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that

property pending the hearing of a summons for the appointment of a receiver and may require such a summons, returnable on

such date as the Court may direct, to be issued.

2. (1) Where a judgement is given, or order made, directing the appointment of a receiver, then, unless the judgement or

order otherwise directs, a person shall not be appointed a receiver in accordance with the judgement or order until he has

given security in accordance with this rule.

(2) Where, by virtue of paragraph (1), or any judgement or order appointing a person named therein to be receiver, a person

is required to give security in accordance with this rule, he shall give security approved by the Court duly to account for

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

(3) Unless the Court otherwise directs, the security shall be by guarantee or, if the amount for which the security is to be

given does not exceed two thousand naira, by an undertaking.

(4) The guarantee or undertaking shall be filed in the Court Registry.

3. A person appointed a receiver shall be allowed such proper remuneration, if any, as may be fixed by the Court.

4. (1) A receiver shall submit account to the Court at such intervals or on such dates as the Court may direct in order that

they may account be passed.

(2) Unless the court otherwise directs, each account submitted by a receiver shall be accompanied by an affidavit verifying

it The 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 thereupon obtain an appointment for the purpose of passing such account.

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

5. The days on which a receiver shall pay into Court the amount shown by his account as due from him, or such part thereof as

the Court may certify as proper to be paid in by him, shall be fixed by the Court.

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

affidavit or do any other thing which he is required to submit, make or do,

he and any or all of the parties to the cause or matter in which he was appointed-may be required to attend in Chambers to

show cause for the failure, and the Court, may, either in Chambers or after adjournment into court, give such directions as

it thinks proper including if necessary, directions for the discharge of the receiver and the appointment of another and the

payment of costs.

(2) Without prejudice to paragraph (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 the date fixed by the Court any sum shown by his account as due from him,

the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay

any such sum into court, charged him with interest at the rate of ten percent per annum on that sum while in his possession

as a receiver.

ORDER 22

COMPUTATION OF TIME

1. Where by any written law or any special order made by the Court in the course of any proceedings, any limited time from or

after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, and such time is

not limited by hours, the following rules shall apply—

(a) the limited time does not include the day of the date of or the happening of the event, but commence at the beginning of

the day next following that day;

(b) the act or proceeding shall be done or taken at latest on the last day of the limited time;

(c) where the time limited is less than five days, no public holiday, Saturday or Sunday shall be reckoned as part of the

time;

(d) when the time expires on a public holiday, Saturday or Sunday the act or proceeding shall be considered as done or taken

in due time if it is done or taken on the next day afterwards not being a public holiday, Saturday or Sunday.

2. The parties may not by consent enlarge or abridge any of the times fixed by the provision of these rules for taking any

step, filing any document, or giving any notice.

3. (1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is

required or authorised by these provisions, or by any judgement, order or direction, to do any act in any proceedings.

(2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not

made until after the expiration of that period.

4. Where a year or more has elapsed since the last proceeding in a cause or matter, the party who desires to proceed shall

give to every other party not less than 30 days notice of his intention to proceed. A summons on which no Order was made is

not a proceeding for the purposes of this provision.

5. Application to set aside or remit an award may be made at any time within six weeks after such award has been made and

published to the parties:

Provided that the Court or Judge in Chambers may by order extend the said time either before or after it has elapsed.

ORDER 23

THE UNDEFENDED LIST

1. Whenever application is made to a court for the issue of a writ of summons in respect of a claim to recover a debt or

liquidate money demand and such application is supported by an affidavit setting forth the grounds upon which the claim is

based and stating that in the deponent's belief there is no defence thereto, the Court shall, if satisfied that there are

good grounds for believing that there is no defence thereto, enter the suit for hearing in what shall be called the

"Undefended List", and mark the writ of summons accordingly, and enter thereon a date for hearing suitable to the

circumstances of the particular case.

2. There shall be delivered by the plaintiff to the Registrar upon the issue of the writ of summons as aforesaid, as many

copies of the above mentioned affidavit as there are parties against whom relief is sought, and the Registrar shall annex one

such copy to each copy of the writ of summons for service, together with a copy of rules 1 to 4 inclusive of this Order.

3. (1) If the party served with this writ of summons and affidavit delivers to the Registrar a notice in writing that he

intends to defend the suit together with an affidavit disclosing a defence on the

merit, the Court may give him leave to defend upon such terms as the Court may think just.

(2) Where leave to defend is given under this rule, the action shall be removed from the Undefended List and placed on the

ordinary Cause List; and the Court may order pleadings, or proceed to hearing without further pleadings.

4. Where any defendant neglects to deliver the notice of defence and 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 judgement given thereon, without calling upon the

plaintiff to summon witnesses before the Court to prove his case formally.

5. Nothing herein shall preclude the Court from hearing or requiring oral evidence, should it so think fit, at any stage of

the proceedings under rule 4.

ORDER 24

PROCEEDINGS IN LIEU OF DEMURRER

1. No demurrer shall be allowed.

2. Any party shall be entitled to raise by his pleading any points of law, and any points so raised shall be disposed of by

the judge who tries the cause at or after the trial:

Provided that by consent of the parties, or by order of the court or a Judge on the application of either party the same may

be set down for hearing and disposed of at any time before the trial.

3. If, in the opinion of the court or a judge the decision of such point of law substantially disposes of the whole action,

or of any distinct cause of action ground of defense, set-off, counter-claim, or reply therin, the court or judge may

thereupon dismiss the action or make such other order therein as may be just.

4. The 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 in any such case or in case of the action or defence being shown by the pleadings to be frivolous or

vexatious, the court or a judge may order the action to be stayed or dismissed, or judgement to be entered accordingly, as

maybe just.

5. No action or proceedings shall be open to objection of the ground that a merely declaratory judgement or order is sought

thereby and the court may make binding declaration of right whether any consequential relief is or could be claimed or not.

ORDER 25

PLEADINGS

1. Unless the Court gives leave to the contrary, or a statement of claim is endorsed on the writ, the plaintiff shall

serve a statement of claim on the defendant, or, if there are two or more defendants, on each defendant, and shall do so

either when the writ, or notice of the writ, is served on that defendant or at any time after service of the writ or notice

but before the expiration of 30 days after that defendant enters an appearance.

Provided that in land cases the plaintiff shall serve his statement of claim on a defendant not later than 60 days after that

defendant enters an appearance, unless the Court gives leave to the contrary.

2. (1) Subject to paragraph (2), a defendant who enters an appearance in, and intends to defend, an action shall, unless the

Court gives: leave to the contrary, serve a defence on the plaintiff before the expiration of 30 days after the statement of

claim is served on him.

Provided that in land cases, unless the Court gives leave to the contrary, a defendant shall serve his defence on the

plaintiff not later than 60 days after the statement of claim is served on him.

(2) If a summons under order 23 rule 1 is served on a defendant paragraph (1) shall not have effect in relation to him unless

by the order of court made on a motion on notice he is given leave to defend the action and, in that case, shall have effect

as if it required him to serve his defence within 30 days after the making of the order or within such other period as may be

specified in the order.

3. (1) A plaintiff on whom a defendant serves a defence shall serve a reply on that defendant if it is needed for compliance

with rule 6, and, if 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 counter-claim.

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

documents.

(4) A reply to any defence shall be served by the plaintiff before the expiration of 30 days after the service on him of that

defence, and a defence to counter-claim shall be served by the plaintiff before the expiration of 30 days after the service

on him of the counter-claim to which it relates.

4.(1) Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party

pleading ralies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall,

when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures but

may also be expressed in words. Pleadings shall be signed by a legal practitioner, or by the party if he sues or defends in

person.

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

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

undue influence, and in all other cases in which particulars may be necessary, particulars (with dates and items if

necessary) shall be stated in the pleadings.

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

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 of limitation,

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

(2)Any condition precedent, the performance or occurence of which is intended to be contested, shall be distinctly-specified

in; his pleading by the plaintiff or the defendant, as the case may be: and, subject thereto, an averment of the performance

or occurence of all conditions precedent necessary for the case of the plaintiff or, the defendant shall be implied in his

pleading.

(3)Without prejudice to paragraph (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 is not

sufficient.

7.(1) A further and better statement of the nature of the claim or defence, or further and better particulars of any matter

stated in any pleading, notice or written proceeding requiring particulars, may in all cases be ordered, upon such terms as

to costs and otherwise, as

may be just.

(2)Before applying for particulars by summons or notice, a party may apply for them by letter. The costs of the letter and of

any particulars delivered pursuant thereto shall be allowable on taxation. 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.

(3)Particulars of a claim shall not be ordered under this rule to be filed before defence unless the Court or Jugde in

Chamber's shall be 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.The party at whose instance particulars have been filed under a Judge's order shall, unless the order otherwise provides,

have the same length of time for pleading after the service of the particulars upon him that he had initially. Save as in

this rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of

proceedings, or give any extension of time.

9.Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary

implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as

against an infant, lunatic, or person of unsound mind not adjudged a lunatic.

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

(2) Subject to paragraph (3) —

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

(b) a party may in his pleading expressly join issue on the next preceding pleading.

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

(4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is an

implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from

the joinder and is stated to be admitted, in which case, the express joinder of issue operates as a denial of every other

such allegation.

11.No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain

any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

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

and distinct facts, they shall be stated, as far as may be, separately and distinct . The same rule shall apply where the

defendant relies upon several distinct grounds of set-off or counter-claim founded upon separate than distinct facts.

(2)Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the

alternative, and may also ask for general relief; and the same rule shall apply to any counter-claim made or relief claimed

by the defendant in his defence.

13.It shall not be sufficient to deny generally the facts alleged by the statement of claim, but the defendant shall deal

specifically with them, either admitting or denying the truth of each allegation of fact seriatim, as the truth or falsehood

of each is within his knowledge or (as the case be) stating that he does not know whether any given, allegation is true or

otherwise.

14.When a party denies an allegation of fact he shall not do so easively, but shall answer the point of substance. And when a

matter of fact is alleged with diverse circumstances it shall not be sufficent to deny it as alleged along with those

circumstances, but a full -and substantial answer shall be given.

15.The defence shall admit such material allegations in the statement of claim as the defendant knows to be true, or desires

to be taken as established without proof thereof.

16. Where any defendant seeks to rely upon any facts 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 setoff or counter-claim as the case may be, and the

particulars of such 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 to the defence, except where the defence

is such as, in the opinion of the Court, ought to have been expressly set up by the defence or is inconsistent with the

statements thereof, or is, in the opinion r>f the Court, likely to take the plaintiff by surprise or to raise new issues not

fairly arising out of the pleadings, as they stand, and such as the plaintiff ought not to be then called upon to meet,

18.The Court, if it considers that the statement of claim and the defence filed in any suit insufficiently disclose and fix

the Teal issues between the parties, may order such further pleadings to be filed -as it may deem necessary for the purpose

of bringing the parties to an issue.

19. Where the Court is of the opinion that any allegations of facts denied or not admitted by any pleading, ought to have

been admitted, the Court shall make such order as may be just with respect to costs.

20. The Court may at any time, on the application of either party, strike out any pleading or any part thereof, on the ground

that it discloses no cause of action, or no defence to the action, as the case may be or on the ground that it is

embarassing, or scandalous, or vexatious, or an abuse of the process of the Court; and the Court may either give leave to

amend such pleading, or may proceed to give judgement for the plaintiff or the defendant, as the case may be, or may make

such other order, and upon such terms and conditions, as may seem just.

21. When a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall

be construed only as a denial in fact of the express contract, promise, or agreement alleged, or the matters of fact from

which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or

agreement, whether with reference to any statute or otherwise.

22.Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as

briefly as ^stated0 possible, without setting out the whole or any part thereof, unless the precise woods of the document or

any part thereof are material.

23.(1)Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any

person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to

be inferred.

(2)Notwithstanding paragraph (1), where in an action for libel or slander the defendant pleads that any of the words or

matters complained of are fair comment on a matter of public interest or were published upon a privileged occasion, the

plaintiff shall, if he intends to allege that the defendant was actuated by express malice, deliver a reply giving

particulars of the facts and matters from which such malice is to be inferred.

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

statements of facts, 4hey are true in substance and in fact, and in so far as they consist of expressions of opinion, they

are fair comment on a matter of public interest, or pleads to the like effect, he shall give particulars stating which of the

words complained of he alleges are 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 Notice, fact, matter or thing, it shall be sufficient to

allege such notice as a fact, unless the form or the precise terms of such notice or the circumstances from which such notice

is to be inferred is material.

25.Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations, or

otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer

generally to such letters, conversations, or circumstances without setting them out in detail.

And if in such case, the person so pleading desires to rely in the alternative upon more contracts or relations than one as

to be implied from such circumstances, he may state the same in the

26.Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the

burden of proof lies upon the other side, unless the same has first been specifically denied (e.g. 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 probate actions it shall be stated with regard to every defence which is pleaded what is the substance of the case

on which is intended to rely; and further where it is pleaded that the testator was not of sound mind, memory and

understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial,

and, except by 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 the party opposing a will may, with his defence, give notice to the party setting up the will that he

merely insists upon 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 shall thereupon be at liberty to do so, and shall not in any event be liable to pay the costs of

the other side unless the Judge shall be of opinion that there was no reasonable ground for opposing the will.

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

29.The provisions of the foregoing rules of this Order shall not apply in actions where a summons has been issued before the

date of commencement of these rules, in such cases, the 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 there in alter, modify, or extend his claim without any

amendment of the endorsement of the writ;

Provided that this rule shall not apply where the writ has been specially endorsed:

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

writ.

31.In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars; but

in any case in Which a statement of account is relied on by way of evidence or admission of any other cause of action which

is pleaded, the same need not be alleged in the pleadings.

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

rule 1 of Order 31 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 of Defence of an ascertained amount or not) is relied on as a

defence to the whole or part of a claim made by the plaintiff; it may be included in the defence and set-off against the

plaintiff's claim, whether or not it is also added as a counter-claim.

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

may, if the balance is in favour of the defendant, give judgement for the defendant for such balance, or otherwise adjudge to

the defendant such relief as he may be entitled to upon the merits of the case.

(2) Paragraph (1) shall apply mutatis mutandis where the balance is in favour of the plaintiff.

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

(a) at the expiration of 30 days after service of the reply or, if there is no reply but only a defence to counter-claim,

after service of the defence to counter-claim; or

(b) if neither a reply nor a defence to a counter-claim is served, at the expiration of 30 days after service of the defence.

(2)The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request

or order for particulars has been made but has not been complied with at that time.

ORDER 26

AMENDMENT

1.The Court or a Judge in Chambers may at any time, and on such terms as to costs or otherwise as the Court or Judge may

think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of

determining the real question or issue raised by or depending on the proceedings.

2.The Court or a Judge in Chambers may, at any stage of the proceedings allow either party to alter or amend his indorsement

or pleadings, in such manner and on such terms as may be just, and all pleadings, such amendments shall be made 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 either party to a Judge in Chambers or to the court at the trial of the

action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just.

4.If a party who has obtained an order for leave to amend does ordered not amend accordingly within the time limited for that

purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to

amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as tie case may be, become ipso

facto void, unless the time is extended by the Court or a Judge.

5. Whenever any indorsement or pleading is amended, the court or the Judge in Chambers, as the case may be, 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.Whenever any indorsement or pleading is amended, the same 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 such amendment is made, in manner following viz:—

"Amended................................day of.........................., pursuant to order of

.... dated the ....of............................"

7.Clerical mistakes in judgements or orders, or errors arising accidental therein from any accidental slip or omission, may

at any time be corrected by the Court or a Judge in Chambers on motion or summons without an appeal.

ORDER 27

DEFAULT OF PLEADINGS

If the plaintiff, being bound by these rules or an order of Court or a Judge in Chambers to file a statement of claim, does

not file it within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court

or a Judge in Chambers to dismiss the action with costs, for want of prosecution; and on hearing of such application the

Court or Judge may, if no statement of claim shall have been filed, order the action to be dismissed accordingly, or may make

such other order on such terms as the Court or Judge shall think just.

2.(1) If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed

by these rules or an order of Court or a Judge in Chambers for that purpose, file a defence, the plaintiff may, at the

expiration of such time, apply for final judgement for the amount claimed, with costs.

(2) In actions by a money-lender or an assignee for the recovery of money lent by a money-lender or the enforcement of any

agreement or security relating to any such money, judgement shall not be entered in default of defence except in accordance

with the provisions of Order 14 rule 9,

3.When in any action for a debt or liquidated demand there are several defendants if one of them makes default as mentioned

in default rule 2(1), the plaintiff may, subject to rule 2 (2), have final judgement entered against the defendant so making

default, and issue execution

upon such judgement without prejudice to his right to proceed with his action against the other defendants.

4.Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant makes default in

pleading, the plaintiff may, after the expiration of the period fixed as aforesaid liquidated for service of defence, have

judgement entered against that defendant for damages to be assessed by the Court and costs, and may proceed with the action

against the other defendants, if any.

5.Where the plaintiff's claim against the defendant relates to default of the detention of goods only, then, if that

defendant makes default in defence: pleading, the plaintiff may, after the expiration of the period fixed as aforesaid for

service of the defence, have entered either—

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

(b)judgement 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 defen¬dants, if any.

6.(1) Where the plaintiff's claim against a defendant is for the possession of land only, then, if that defendant makes

default in plea- claim for ding, the plaintiff may, after the expiration of the period fixed as aforesaid for service of the

defence, and on producing a certificate by

his legal practitioner or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of

the nature of mortgage action, have judgement entered for possession of the land as against that defendant and for costs, and

proceed with the action against the other defendants, if any.

(2)Where there is more than one defendant, judgement entered under this rule shall not be enforced against any defendant

unless and until judgement for the possession of the land has been entered against all the defendants.

7.Where the plaintiff makes against a defendant two or more of the claim mentioned in rules 2 to 6, and no other claim, then,

if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed as

aforesaid for service of the defence, have entered against that defendant such judgement in respect of each such claim as he

would be entitled to under those rules if that were the only claim made, and proceed with the action against the other

defendants, if any.

8.(1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 6,

then if the defendant or all the defendants (where there are more than one) fails or fail to serve a defence on the

plaintiff, the plaintiff may, after the expiration of the period fixed as aforesaid for service of the defence apply to the

Court for judgement, and on the hearing of the application the Court shall give such judgement as the plaintiff appears

entitled to on his statement of claim

(2)Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of

the defendants makes default as mentioned in that paragraph, the plaintiff may—

(a)if his claim against the defendant in default is severable from his claim against the other defendants, apply under that

paragraph for judgement against that defendant, and proceed with the other defendants; or

(b)set down the action on motion for judgement against the defendant in default at the time when the action is set down for

trial or is set down on motion for judgement against the other defendants.

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

9.A defendant who counter-claims against a plaintiff shall be treated for the purposes of rules 2 to 8 as if he were a

plaintiff who had made against a defendant the claim made in the counter-claim 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, those rules shall apply as

if the counter-claim were a statement of claim, the defence to the counter-claim a defence and the parties making the

counter-claim and against whom it is made were plaintiffs and defendants respectively, and as if references to the period

fixed by or under these rules for service of the defence were references to the period so fixed for service of the defence to

counter-claim.

10.The Court may, on such terms as it thinks just, set aside vary any judgement entered in pursuance of this order.

11.In this Order, a party makes default in pleading when he 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 the order of the Court or a Judge

in Chambers.

ORDER 28

INTERPLEADER

1.(1) Where—

(a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to

be sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims

thereto; or

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

or to the proceeds or value of any such goods or chattels by a person other than the person against whom the process is is-

sued, the person under liability as mentioned in paragraph (1) (a) or, as the case may be, the sheriff, may apply to the

Court for relief by way of interpleader.

(2) References in this Order to sheriff shall be construed as including references to any other officer charged with the

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

2.(1) Any person making a claim to or in respect of any money, goods or chattels taken or intended to be taken under process

of the Court or to the proceeds or value of any such goods or chattels, shall give notice of his claim to the sheriff charged

with the execution of the process and shall include in his notice a statement of his address, and that address shall be his

address for service.

(2)(a) On receipt of a claim made under this rule, the sheriff shall forthwith give notice thereof to the execution creditor

and the execution creditor shall, within 7 days after receiving the notice, give notice to the sheriff informing him whether

he admits or disputes the claim.

(6)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.

(3) Where—

(a)the sheriff receives a notice from an execution creditor under paragraph (2) disputing a claim, or the execution creditor

fails, within the period mentioned in that paragraph to give the required notice; and

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

(4)A sheriff who receives a notice from an execution creditor under paragraph (2) admitting a claim made under this provision

shall withdraw from possession of the money, goods or chattels claimed and may apply to the Court for relief under this

provision of the following kind, that is to say, an order restraining the bringing of an action against him for or in respect

of his having taken possession of that money or those goods or chattels.

3.(1) An application for relief under this Order shall be made by originating summons unless made in a pending action, in

which case it shall be made by motion in the action.

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

is applying for relief under rule 2 (4), the summons shall be served on any person who made a claim under rule 2 (1) to or in

respect of that money, or goods or chattels, and that person may attend the hearing of the application.

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

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

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

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

(c)that the applicant is willing to pay or transfer the subject matter into Court or to dispose of it as the Court or a Judge

in Chambers may direct.

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

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

in the action.

7. If the claimants appear in pursuance of the summons, the Court or a Judge in Chambers may order either that any

claimant be made a defendant in any action already commenced in respect of the subject matter in dispute in lieu of or in

addition to the applicant, or that an issue between the claimants be stated and tried; and in the latter case may direct

which of the claimants is to be plaintiff, and which the defendant.

8. If a claimant, having been duly served with summons calling on him to appear and maintain, or relinquish, his claim, does

not appear in pursuance of the summons, or, having appeared, neglects neglect to or refuses to comply with any order made

after his appearance, the Court or a 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.The Court or a Judge in Chambers may, in or for the purposes of any interpleader proceedings, make all such orders as to

costs and all other matters as may be just and reasonable.

ORDER 29

WITHDRAWAL AND DISCONTINUANCE

1.A party who has entered an appearance in an action may with draw the appearance at any time with leave of the Court.

2. (1) The plaintiff in an action may, without the leave of the Court, discontinue the action, or withdraw any particular

claim made by him therein, as 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, of the defence last served, by serving a notice to that effect on the

defendant concerned.

(2)A defendant may, without leave of the Court:—

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

(b) discontinue a counter-claim, or withdraw any particular claim made by him therein, as against any or all of the parties

against whom it is made at any time 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

by or under this rule for service by any of those defendants of his defence expires after the latest date on which any other

defendant serves his defence paragraph (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)Paragraph (3) shall apply in relation to a counter-claim as it applies in relation to an action, with the substitution for

references to a defence, to the plaintiff and to paragraph (1), of references to a defence to counter-claim, to the defendant

and to paragraph (2) respectively.

(5)If all the parties to an action consent, the action may be withdrawn without leave of the Court at any time before trial

by producing to the Registrar a written consent to the action being withdrawn signed by all the parties, and the action shall

thereafter be struck out.

3.(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 therein without leave of the Court, and the Court hearing an application for the grant of such leave may order

the action or counter-claim to be discontinued or any particular claim made therein to be struck out, as against any or all

of the parties against whom, it is brought or made on such terms as to costs, 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 imposed by the Court in granting leave under rule 3, the fact that a party has discontinued an action

or counter-claim or withdrawn a particular claim made by him therein shall not be a defence to a subsequent action for the

same, or substantially the same, cause of action.

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

liable to pay costs to any other party of the action or counter-claim or t he costs occasioned to any other party by the

claim withdrawn, then if, before payment of those costs, he subsequently brings an action for the same or substantially the

same cause of action, the Court may order the proceedings in that 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 cause or matter may not withdraw it without leave of the

Court.

ORDER 30

ADMISSIONS

Any 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)Any party may, by leave of Court obtained in a motion on notice, call upon any other party to admit any document or

fact, admit' 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)The Court, if it grants such leave, shall fix the terms and conditions thereof, including the time within which the

admission is to be made.

(4)If a party on whom a notice under paragraph (2) is served desires to deny the existence or the authenticity of any fact or

document therein 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 the same be

proved at the trial.

(5)A party who fails to give a notice of non-admission in accordance with paragraph (4) in relation to any fact or document

shall be deemed to have admitted that fact or the authenticity of that document unless the court otherwise orders.

(6)Except where rule 4 (3) applies, a party to a cause or matter may serve on any other party a notice requiring them to

produce the documents specified in the notice at the trial of the cause or matter.

3.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 judgement or order as upon those admissions he may be entitled to, without waiting for the determination of any

other question between the parties, and the Court may give such judgement, or make such order, on the application as it

thinks just. An application for an order under this rule may be made by motion or summons.

4.(1)Subject to paragraph (2) and without prejudice 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 the provisions of order 32, shall, unless, the Court

otherwise orders, be deemed to admit—

(a)that any document described in the list as an original document is such a document and was printed, written, signed or

executed as it purports respectively to have been; and

(b)that any document described therein as a copy is a true copy.

This paragraph does not apply to a document the authenticity of which the party has denied in his pleading.

(2)If before the expiration of 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 part whose list

it is, a notice stating in relation to any document specified therein, that he does not admit the authenticity of that

document and requires it to be proved at trial he shall not be deemed to make any admissions in relation to that document

under paragraph (1)

(3)A party by whom a list of documents is served on any other party in pursuance of any provision of order 32 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 inline list as are in his possession custody or power.

(4)The foregoing provisions of this rule apply in relation to an affidavit made in compliance with an order under the

provisions of Order 32 as they apply in relation to a list of documents served in pursuance to any provision of that Order.

ORDER 31

PAYMENT INTO AND OUT OF COURT

1.(1) In any action for a debt or damages the defendant may, at any time after he has entered appearance in the action, pay

into Court a sum of money in satisfaction of the cause of action in respect of 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 of those causes of

action.

(2)On making any payment into Court under this rule and on increasing any such payment already made, the defendant shall give

notice thereof in form 26 to the plaintiff and every other defendant (if any), and within 7 days after receiving the notice

the plaintiff shall send to the defendant a written acknowledgement of its receipt.

2.(1)Payment into Court whether made in satisfaction of the mission of plaintiffs claim generally or in satisfaction of some

specific part thereof operate, unless the defendant in his defend 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 provision of rule 5.

3.Where the defendant pays money into and the liability of the defendant in respect of the claim or cause of action in

satisfaction of which the payment into Court is made is not denied in the defence, the plaintiff shall be at liberty to

accept same in full satisfaction and discharge of the cause of action in respect of 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, the Court shall make such

order as to stay of further proceedings in the suit, m whole or in part, and as to cost and other matters as seems just.

4.If the plaintiff does not apply he shall be considered as insisting that he has sustained damages to a greater amount or

(as the case may be) that 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 in into Court having been

made and not accepted.

5. When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into

court has been made, is denied in the pleadings, the following rules shall of liability, apply—

(a)the plaintiff may accept in satisfaction of the claim or cause of action in respect of which the payment into Court has

been made, the sum so paid in (where upon all further proceedings in respect of such claim or cause of action except as to

costs shall be stayed) or the plaintiff may refuse to accept the money in satisfaction, in which case the money shall remain

in court subject to the provisions hereinafter mentioned;

(b)if the plaintiff accepts the money so paid in, he shall be entitled with leave of the Court to have the money paid out to

him;

(c) if the plaintiff does not accept the sum so paid in, but proceeds with the action in respect of such claim or cause of

action or any part thereof, the money shall remain in Court. If the plaintiff proceeds with the action in respect of such

claim or cause of action or any part thereof and succeeds, the amount paid in shall be applied as far as is necessary in

satisfaction of the plaintiff claim and the balance (if any) shall under Court order be repaid to the defendant. If the

defendant succeeds in respect of such claim or cause of action, the whole amount shall under Court order, be repaid to him.

6. Where any money is required to be paid into or deposited in Court, the Court may, if it shall think fit expedient, order

that the money be paid into a savings account at a reputable commercial Bank. Such 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.

7.A plaintiff may, in answer to a counter-claim, pay money into Court in satisfaction thereof subject to the like conditions

as to costs and otherwise as upon payment into Court by a defendant.

8. Money paid into court pursuant to rule 1 or 7 or under the order of the Court or a Judge shall not be paid out except in

pursuance of an order of the court or the Judge.

9.Where a person entitled to a fund in Court or a share of such 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 two 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 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.

10.Where the value of the estate of the deceased described above exceeds N2,000.00 (two thousand Naira), a letter of

administration must be sought in accordance with order 49. "Fund in Court" in this rule includes money paid into a bank

account under rule 6.

ORDER 32

DISCOVERY AND INSPECTION OF DOCUMENTS

1. After the close of pleadings in any cause or matter any party by leave of Court or Judge in Chambers may deliver

interrogatories in writing for the examination of any other party or parties, and such interrogatories when delivered shall

state clearly which of such interrogatories each of such parties is required to answer.

Provided that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed

irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

2. 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 thereof (unless in any case the Court or Judge in

Chambers shall think fit to dispense with this requirement). In deciding upon such application, the 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 be given as to such only

of the interrogatories as shall be considered necessary either for disposing fairly of the action or for saving costs.

3.Interrogatories shall be in Form 30 with such variations as circumstances may require.

4. If any party to an action is a body corporate or a join stock company, whether incorporated or not, or 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 such corporation,

company, or body, and an order may be made accordingly.

5.Interrogatories shall be answered by affidavit to be filed within 10 days, or within such other time as the Court or a

Judge in Chambers may allow. Two copies of the 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.If any 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. And an order may be made

requiring him to answer or answer further either by affidavit or by viva voce examination, as the Court or Judge may direct.

9.Any party may, without filing any affidavit, apply to the Court or a Judge in Chambers, for an order directing any other

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. On the hearing of such application the Court or Judge in Chambers may either refuse or adjourn the same, if satisfied

that such discovery is not necessary or make such order, either generally or limited to certain classes of documents, as may,

in its or his discretion, be thought fit;

Provided that discovery shall not be ordered when so far as the Court or Judge shall be of opinion that it is not necessary

either for disposing fairly of the action or for saving costs.

10. Where in any action arising on a marine insurance policy an application for discovery of documents is made by the

insurer, the following provisions shall apply

(a)on the hearing of the application, 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 the 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 circumstances of the case, to make an order for the

production of a ship's papers, the Court or Judge in Chambers may make such an order in Form 68;

(c) in making an order under this rule the Court or Judge in Chambers may impose such terms and conditions as to staying

proceedings or otherwise as the Court or Judge in Chambers in its or his absolute discretion shall think just;

(d) rule 13 shall not apply to any application made under this rule.

11.The affidavit to be made by any person against whom an order for discovery of documents has been made under rule 9 or

under paragraph (a) or paragraph (b) of rule 10 shall specify which, if any, of the documents therein mentioned he objects to

produce, and it shall, except in the case of an order made under paragraph (b) of rule 10 be in Form 32 with such variations

as circumstances may require.

12. On the hearing of any application for discovery of documents the Court or Judge in Chambers in lieu of ordering an

affidavit of documents to be filed may order that the party from whom discovery is sought 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. Such

list shall, as nearly as may be, follow the form of one affidavit in Form 32:

Provided that the ordering of such list shall not preclude the Court or Judge in Chambers from afterwards ordering the party

to make and file an affidavit of documents.

13.It shall be lawful for the Court or a Judge in Chambers at any time during the pendency of an action to order the

production by any party, upon oath, of such of the documents in his possession or power, relating to any matter in question

in such action as the Court or Judge in Chambers shall think right, and the Court may deal with such documents, when

produced, in such manner as shall appear just.

14.(1) Every party to a cause or matter shall be entitled, at any time, by notice in writing, to give notice to any other

party in whose pleadings or affidavits reference is made to any document to produce such document for the inspection of the

party giving such notice, or of his legal practitioner, and to permit him or them to take copies thereof.

(2)Any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his

behalf in such action, unless he shall satisfy the Court or a Judge in Chambers that such document relates only to his own

title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or Judge in

Chambers shall deem sufficient for not complying with such notice, in which case the Court or Judge in Chambers may allow the

same to be put in evidence on such terms as to costs and otherwise as the Court or Judge in Chambers may think fit.

15.Notice to any party to produce any documents referred to in his pleadings or affidavit shall be in Form 33 with such

variations as circumstances may require.

16.The party to whom notice is given under rule 14 shall, within 2 days from the receipt of such notice, if all the documents

therein referred to have been set forth by him in such affidavit as is mentioned in rule 11, or if any of the documents

referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of

such notice, deliver to the party giving the same notice stating a time within 7 days from the delivery thereof at which the

documents, or such of them as he does not object to produce, may be inspected at the office of his legal practitioner, or in

the case of banker's 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. Such

notice shall be in Form 34 with such variations as circumstances may require.

17.(1) If the 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 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 Courts or Judge

may think fit.

Provided that the order shall not be made when and so far as the Court or Judge in Chambers shall be of opinion that it is

not necessary either for disposing fairly of the action or for saving costs.

(2)Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavit of the

party against whom the application is made, or disclosed in his affidavit of documents shall be founded upon an affidavit

showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the

possession or power of the other party.

18.(1) Where inspection of any business books is applied for, the Court or a Judge in Chambers may, if it or he shall think

fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified

by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether

or not there are in the original book any and what erasures, interlineations, or alterations:

Provided that, notwithstanding that such copy has been supplied, the Court or Judge in Chambers may order inspection of the

book from which the copy was made.

(2) Where, on an application for an order for inspection, privilege is claimed for any document, it shall be lawful for the

Court or a Judge in Chambers to inspect the document for the purpose of deciding as to the validity of the claim of

privilege.

(3)The Court or a Judge in Chambers may, on the application of any party to an action at any time, and whether an affidavit

of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by

affidavit whether any particular document or documents or any class or classes of documents, specified or indicated in the

application, is or are, or has or have at any lime been, in his possession, custody, or power, when he parted with the same

and what has become of it. Application for such order shall be made on an affidavit stating that in the belief of the

deponent the party against whom the application is made has or has at some time had in his possession, custody or power the

particular document or documents, or the class or classes of documents specified or indicated in the application, and that

they relate to the matters in question in the action, or to some or one of them.

19.If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court

or Judge in Chambers may, if satisfied that the right to the discovery or inspection sought depends on the determination of

any issue or question in dispute in the action or that for any other reason it is desirable that any issue or question in

dispute in the action should be determined before deciding upon the right to the discovery or inspection, order that such

issue or question be determined first, and reserve the question as to the discovery or inspection.

20.If any party fails to comply with any order to answer interrogatories or for discovery or inspection of documents, he

shall be liable to committal. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution,

and, if a defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended,

and the party interrogating may apply to the Court or a Judge in Chambers for an order to that effect, and an order may be

made accordingly.

21.Service of an order for interrogatories or discovery or inspection made against any party or his legal practitioner shall

be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the

application for attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

22.A legal practitioner upon whom an order against any party for interrogatories or discovery or inspection is served under

the last preceding rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to pay

the costs occasioned thereby.

23.Any party may, at the trial .of a cause, matter or issue, use in evidence any one or more of the answers or any part of an

answer of the opposite party to interrogatories without putting in the others or the whole of such answer:

Provided always, that in such case the Judge may look at the whole of the answers, and if he shall be of opinion that any

others of them are so connected with those put in that those put in ought not to be used without them, he may direct them to

be put in.

24.In any action against or by a sheriff in respect of any matters connected with the execution of his office, the Court or a

Judge in Chambers may, on the application of any party, order that the affidavit to be made in answer either to

interrogatories or to an order for discovery shall be made by the officer actually concerned.

25.This order shall apply to infant plaintiffs and defendants, and to their next friends and guardians ad litem.

26.Any order made under the provisions of this order (including an order made on appeal) may, on sufficient cause being

shown, be revoked or varied by a subsequent order or direction of the Court or a Judge in Chambers made or given at or before

trial.

ORDER 33

INTERLOCUTORY INJUNCTIONS AND INTERIM PRESERVATION OF PROPERTY

1.(1)An application for the grant of an injunction may be made by any 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 the applicant is the plaintiff and the case is one of urgency, such application may be made ex-parte on affidavit

but, except as aforesaid, such application shall be made by motion on notice or summons.

(3)The plaintiff may not make such an application before the issue of the process by which the action is to be begun, except

where the case is one of urgency, and in that case the injunction is applied for may be granted on terms providing for the

issue of the process and such other terms, if any, as the Court thinks fit.

2.(1) On the application of any party to an action the Court may make an order for the detention, custody or preservation of

any property which is the subject matter of the action or as to which any question may arise therein or for the inspection of

any such property in the possession of a party to the action.

(2)For the purpose of enabling any order under paragraph 1) to be carried out, the Court may by the order authorise any

person to enter upon any land or building in the possession of any party to the action.

(3)Where the right of any party to a specific fund is in dispute in an action, the Court may, on the application of the

party, order the fund to be paid into Court or otherwise secured.

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

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

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

appearance.

3.(1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any action,

the Court may, on the application of a party and on such terms, if any, as it thinks just, by order authorise or require any

sample to be taken of any property which is the subject matter of the action or as to which any question may arise therein,

any observation to be made on such property or any experiment to be tried on or with such property.

(2)For the purpose of enabling any order under paragraph (1) to be carried out, the Court may by the order authorise any

person to enter any land or building in the possession of any party.

(3)Paragraphs (5) and (6) of rule 2 shall apply in relation to an application for an order under this rule as they apply in

relation to an application for an order under that rule.

4.(1) The Court may, on the application of any party make an order for the sale by such person, in such manner and on such

terms (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 which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for

any other reason it is desirable to sell forthwith.

(2) Paragraphs (5) and (6) of rule 2 shall apply in relation to an application for an order under this rule as they apply in

relation to an application for an order under that rule.

5. Where on the hearing of an application made before the trial of a cause or matter, for an injunction or appointment of a

receiver or an order under rule 2, 3 or 4, or it appears to the Court that the matter in dispute can be better dealt with by

an early trial than by considering the whole merit thereof for the purposes of the application, the Court may make an order

accordingly and may also make such order as respects the period before trial as the justice of the case requires.

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

6.Where the plaintiff, or the defendant by way of counter-claim claims the recovery of specific property (other than land)

and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled

to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the

claim to be so entitled appears from the pleadings (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 respect of which the security is claimed and such further sum if any for interests and costs as the Court may direct

and that, upon such payment being made, the property claimed be given up to the party claiming it, but subject to the

provisions of the Exchange Control Acts.

7.Where an application is made under any of the foregoing provisions of this Order the Court may give directions as to the

further proceedings in the action.

8.where any real or personal property form the subject matter of any proceedings, and the Court is satisfied that it will be

more than sufficient to answer all the claims thereon for which provisions ought to be made in the proceedings, the Court may

at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or

all of the parties who have an interest therein or may direct that any part of the personal property be transferred or

delivered to any or all such parties.

ORDER 34

TRANSFERS AND CONSOLIDATION

TRANSFER

1.Where the Chief Judge has, in exercise of the powers conferred by section 35 of the Magistrate's Court Edict, ordered the

transfer of any action from the Magistrate's Court to the Court or to another Magistrate's Court, a copy of the order duly

certified by the Registrar shall forthwith be sent to the Registrar of the Magistrate's Court who shall transmit to the Court

or the Magistrate's Court, as the case may be, the process and proceedings in every such action, and an attested copy of all

entries in the books of that Court relating thereto and henceforth all proceedings in the action shall be taken in the Court

to which the transfer is made as if the action had been commenced therein.

2.(1) On receipt by the Court of the documents mentioned in the last preceding rule, the registrar shall notify the party who

applied for the transferor, where the transfer was not made on application of any party, the plaintiff, to attend at the

Registry of the Court and pay the fees for filing the documents, if any. Such payment shall be without prejudice to the

question how the costs shall ultimately be borne.

(2)Such notification shall be effected by serving a notice personally on the party concerned or where an address for service

has been given by such party in the Magistrate's Court, service 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.

3.(1)The registrar shall, on payment of the prescribed fees, if any, file the document received from the Magistrate's Court

and make an entry of such filing in the Cause Book.

(2) The Registrar shall then serve notice on the parties to attend in person or by the legal practitioners before the Court

on the day and at the time specified in the notice.

The fees for the service of this notice shall be defrayed in the first instance by the party who has paid the fees for filing

as provided by rule 2 (1).

4.(1) If the plaintiff fails to attend in compliance with notice Party given under rule 3 (2), the Court shall record his

default and the defendant may apply by summons for an order dismissing the action. The provisions of paragraph (2) of rule 2

shall apply to the service of such summons on the plaintiff.

(2)Upon 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 shall think just.

(3)If the defendant fails, or all the defendants if more than one fail 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 judgement entered for him with costs or obtain the order prayed for in the transferred

proceedings. The provisions of paragraph (2) of rule 2 shall apply to the service of such summons on the defendant or the

defendants.

5.The references in rule 4 to the plaintiff and the defendant shall, in relation to proceedings commenced otherwise than by

plaint, be construed as references to the applicant and the respondent.

CONSOLIDATION

6.(1) Actions pending in the High Court may be consolidated by 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 one and 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 defendant, or

between different plaintiffs and different defendants;

Provided that where actions are brought by the same plaintiff against different defendant, they shall not be consolidated

without the consent of all the parties unless the issues to be tried are precisely similar.

(3)Applications for consolidation may be made by summons or notice for directions in Chambers, or they may be made by motion

in Court on notice.

(4)Where an order for consolidation has been made, it shall be drawn up at the expense of the party or parties who applied

for consolidation and shall be recorded in the Cause Book.

(5)In the application of these provisions to proceedings not begun by a writ of summons, references to the plaintiff and the

defendant shall be construed as references to the applicant and the respondent.

ORDER 35

SETTLEMENT AND TRIAL OF ISSUES

SETTLEMENT OF ISSUES

1.At any time before or at the hearing, the Court may, if it thinks fit, on the application of any party or of its own

motion, proceed to ascertain and determine what are the material questions in controversy between the parties, and may reduce

such questions into v. riling and settle them in the form of issues which issues when settled may state questions of law on

admitted facts, or questions of disputed facts, or questions partly of the one kind and party of the Other.

2.The Court may, if it thinks fit, direct the parties to prepare such issues, and the same shall be settled by the Court.

3.The 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. If otherwise, notice shall be given to the parties to attend the settlement of the issues.

4.At any time before the decision of the case, if it shall appear to the Court necessary 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 shall seem fit.

TRIAL OF QUESTIONS AND ISSUES

5.(1) The Court may order any question or issue arising in a cause or matter, whether of fact or of law, or partly of fact

and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause

or matter, and may give directions as to the manner in which the question or issue shall be stated.

(2)An order under this rule may be made on application by a party or by the Court or a Judge in Chambers on its or his own

motion.

(3)Application by any party for such order shall be by motion on notice stating the question or issue sought to be tried.

6.If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately

from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter

unnecessary, it may dismiss the cause or matter, or make such other order or give such judgement therein as may be just.

7.This order shall be subject to the provisions of these rules and any written law inforce in the State regarding transfer of

cases.

ORDER 36

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 which under any other rule or any written law may be disposed of in Chambers:—

(a) applications to serve a writ or other process out of the jurisdiction ;

(b) applications for substituted service of a writ or other process,

(c) applications to have cases heard during vacations;

(d) applications for enlargement of time;

(e) applications for a writ of attachment or for a garnishee order;

(f) applications for payment or transfer to any person of any cash or securities standing to his credit in any cause or

matter where there has been a judgement 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;

(g) applications as to the guardianship and maintenance or advancement of infants;

(h) any matter relating to the adoption of children;

(i) applications connected with the management of property;

(j) 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 regard to interlocutory applications by way of motion in Court shall apply mutatis mutandis

to applications to a Judge in Chambers.

3.Subject to any provision contained in the Kano State High Court Law, any order or direction made or given by a Judge in

Chambers shall have the same effect as if such order or direction had been made or given in Court.

ORDER 37

TRIAL PROCEEDINGS IN GENERAL

Attendance of parties at hearing

1.(1) In every cause or matter pending before the Court, in case it shall appear to the satisfaction of the Court that any

party who may not be represented by legal practitioner is prevented by some good or sufficient cause from attending the Court

in person, the Court may in its discretion permit any master, servant, clerk or member of the family of such plaintiff or

defendant, or officer of the plaintiff or defendant company, who shall satisfy the Court that he has authority in that

behalf, to appear in Court for such party.

(2)If, when the trial of an action is called on, neither party appears, the action may be struck out of the list, without

prejudice, however, to the restoration thereof, on the direction of a Judge.

2.If, when a trial is called on the plaintiff appears, and the defendant does not appear, then the plaintiff may proof his

claim, so far as the burden of proof lies upon him.

3.If, when a trial is called on the defendant appears and the plaintiff does not appear, the defendant, if he has no

counter-claim, shall be entitled to judgement dismissing the action, but if he has a counter-claim then he may prove such

counter-claim, so far as the burden of proof lies upon him:

Provided that if the defendant shall admit the cause of action to the full amount claimed, the Court may, if it thinks fit,

give judgement as if the plaintiff had appeared.

4.Any judgement 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.

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

such terms, if any, as he may think fit.

Proceedings at the Hearing

6.In actions for libel or slander, in which the 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 in action for with a 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 the Court, unless 7 days at least before the trial he furnishes particulars to the plaintiff of

the matters as to which he intends to give evidence.

7.The trial Judge shall, at or after trial, direct judgement to be entered as he shall think right, and no motion for

judgement shall be to be necessary in order to obtain such judgement.

8.The Registrar, or other proper officer present at any trial or hearing, shall make a note of times at which such trial or

hearing shall commence and terminate respectively, and the time actually occupied thereby of each day on which the same shall

take place for communication to the Taxing Officer if required.

9.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.

10.The order of proceeding at the trial of a case where pleadings have been filed shall be as prescribed in the following

rules.

11.The party on whom the burden of proof is thrown by the nature of the material issues or questions between the parties, as

the Court may determine, shall begin.

12.The party beginning shall then produce his evidence and examined his witnesses. When the party beginning has conclude his

evidence, he shall ask the other party if he intends to call evidence (in which term is included evidence taken by affidavit

or deposition, or under commission, and documentry evidence not already read or taken as read); and if answered in the

negative, he shall be entitled to sum up the evidence already given, and comment thereon; but if answered in the affirmative,

he shall wait for his general reply.

13.When the 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 thereon.

14.If the 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 re ply 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.

15.Where evidence in reply is tendered and allowed to be given, the party against whom the same has been adduced shall be at

liberty to address the Court, and the party beginning shall be entitled to the general reply.

16. Documentary evidence shall be put in and read, or taken as read by Consent.

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

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

in.

18.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. Where more exhibits than one are rejected in the same action, they shall be

numbered serially. If the case goes on appeal, a list of such exhibits shall be transmitted to the appeal court.

19. (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 Federal Court of Appeal may be given has elapsed without such notice having been given, and they only

if the Judge who presided over the trial (or, in his absence, another Judge) grants leave to release such exhibit on being

satisfied—

(a)that there will be no appeal;

(b) that the exhibit will be kept duly marked and lebelled 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 a 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 such exhibit is granted by the Court of Appeal.

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

purpose of 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 that Court for the purpose of the appeal.

21. In cases where written pleadings have not been filed, or the parties or either of them are in capable of understanding

their effect with sufficient accuracy, the proceeding at the hearing shall be varied by the Court so far as may be necessary.

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 shall direct otherwise.

22.The Judge may in all cases disallow any question put in cross-examination which may appear to him to be vexatious and not

relevant to any matter to be inquired into in the action.

ORDER 38

ORIGINATING SUMMONS PROCEEDINGS

1.Any 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.Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled

to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination

of such question of construction, and for a declaration as to the right claimed.

3.The Court or a Judge in Chambers may direct such persons to be served with the summons as it or he may think fit.

4.The application shall be supported by such evidence as the Court or a Judge in Chambers may require.

5.The Court or a Judge in Chambers shall not be bound to determine any such question of construction if in its or his opinion

it ought not to be determined on originating summons.

6.The Court by whom an originating summons is heard 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 such terms as it thinks just.

7.Where in an action begun by originating summons an application is made to the Court for an order affecting a party who has

failed to enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit

that the party was served and is in default of appearance.

8.(1)A defendant to an action begun by originating summons who has entered an appearance to the summons and who alleges that

he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (whenever and however

arising) may make a counter-claim in the action in respect of that matter instead of bringing a separate action.

(2)A defendant who wishes to make a counter-claim under this rule shall at the first or any resumed hearing of the

originating summons by the Court but, in any case, at as early a stage in the proceedings as is practicable, inform the Court

of the nature of his claim and without prejudice to the powers of the Court under paragraph (3), the claim shall be made in

such manner as the Court may direct.

(3)If it appears on the application of the plaintiff against whom a counter -claim is made under this rule that the subject

matter of the; counter-claim ought for any reason to be disposed of by a separate action, the 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 39

PROCEDURE RELATING TO EVIDENCE

1.Subject to the provisions of these rules and of the Evidence Witnesses to Act, and any other enactment relating to

evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be

proved by the examination of the witnesses orally and in open court.

2.(1) The Court or a Judge in Chambers may at or before the trial of an action, order or direct that all or any of the

evidence therein shall be given by affidavit.

(2) An order or direction under this rule may be made or given 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 as the Court or Judge in

Chambers may think fit but, subject to any such terms and to any subsequent order or direction of the Court or a Judge in

Chambers, the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.

3. (1) Without prejudice to rule 2, the Court or a Judge in Chambers may, at or before the trial of an action, order or

direct that evidence of any particular fact shall be given at the trial in such a manner as may be specified by the order or

direction.

(2) The power conferred by paragraph (1) of this rule extends in particular to ordering or directing that evidence of any

particular fact may be given at the trial—

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

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

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

(d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the

production of a specified newspaper which contains a statement of that fact.

4.The Court or a Judge in Chambers may, at or before the Limitation trial of an action order or direct that the number of

medical or expert witnesses who may be called at the trial shall be limited as specified by the order or direction.

5. Unless, at or before the trial, the Court or a Judge in Chambers for special reasons otherwise 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 to

agree to the admission thereof Without further proof.

6.In an action, of whatever nature, 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 receivable in evidence unless, at or

before the trial, the Court or Judge in Chambers authorises the reception thereof;

(b) unless, at or before the trial the Court or Judge in Chambers otherwise 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.

7. Any 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 the Court or a Judge in Chambers, made or given at or before the trial.

8.The preceding provisions of this Order shall apply to trials of issue, references, inquiries and assessments of damages as

they apply the trial of action.

9.Office copies of all writs, records, pleadings and documents filed in the Court shall be admissible in evidence in all

causes and matters and between all persons or parties, to the same extent as the original would be admissible.

10. (1) The Court or Judge in Chambers may, in any action where it appears necessary for the purpose of justice, make an

order for the examination upon oath before the Court or a Judge in Chambers or any officer of the Court, or any other person,

and at any place, of any witness or person and may empower any party to any such action to give on deposition any evidence

therein.

(2)Any order under paragraph (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 m Chambers may think fit. The Court or a Judge in Chambers may

order the party who has applied for the appointment of an examiner to pay the tees and expenses of such examiner (without

prejudice to any question as to the party by whom the costs of the examination should eventually be borne):

Provided that, where the examiner is a Government servant not entitled to receive fees, such fees shall be paid into Revenue,

11.The Court may in any cause or matter where it shall appear necessary for the purposes of Justice, make any order for the

examination before any officer of the Court or other person and at any place, of any witness or person, and may order any

deposition so taken to be filed in the Court, and may empower any party to any such cause or matter to give such deposition

in evidence therein on such terms if any as the Court may direct.

12.If in any case the Court shall so order, there shall be issued a letter of request to examine witnesses outside Nigeria in

lieu of a commission

13.Where an order is made for the issue of a request to examine a witness or witnesses in any foreign country with which a

Convention in that behalf has been or shall be made, the following procedure shall be adopted—

(1)The party obtaining such order shall file in the Registry an undertaking in Form 65 which Form may be varied as may be

necessary to meet the circumstances of the particular case in which it is used.

(2)Such undertaking shall be accompanied by-

(a) a request in Form 66, with such variation as may be directed in the order for the issue thereof, together with a

translation of such request in the language of the country in which the same is to be executed;

(b) a copy of the interrogatories (if any) to accompany the request, and a translation thereof ;and

(c) a copy of the cross-interrogatories (if any), and translation thereof.

14.Where an order is made for the examination of a witness or witnesses before the Nigerian Diplomatic Agent in any foreign

country with which a Convention in that behalf has been or shall be made, such order shall be in Form 67 which Form of order

may be varied as may be necessary to meet the circumstances of the particular case in which it is used.

15.The Court or a Judge in Chambers may in any action at any stage of the proceedings order the attendance of any person for

the purpose of producing any writings or other documents named in the order which the Court or Judge in Chambers may think

fit to be produced:

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

be compelled to produce at the hearing or trial.

16.Any persons wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any

document shall be deemed guilty of contempt of Court, and may be dealt with accordingly.

17. Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to the

like conduct money and payment for expenses and loss of time as upon attendance at a trial in Court.

18.Where any witness or person is ordered to be examined before any officer of the Court, or before any person apppointed for

the purpose, the person taking the examination shall be furnished by the party on whose application the order was made 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 at issue between the parties.

19.The examination 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.

Provided that where parties, their legal practitioners or agents fail to attend, without good cause, the examination may be

proceeded with in their absence.

20.The depositions 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 present

as nearly as may be the statement of the 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. If the witness shall refuse to sign the depositions,

the examiner shall sign the same. The 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. Any questions which may be objected to shall be taken down by the examiner in the

depositions, and he shall state his opinion thereon to the legal practitioners or parties, and shall refer to such statement

in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question.

21.If any person duly summoned by subpoena to attend for examination shall refuse to attend, or if, having attended, he shall

refuse to be sworn or to answer any lawful question, a certificate of sworn, such refusal, signed by the examiner, shall be

filed at the Registry, and thereupon 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.

22. If any witness shall object to any question which may be put to him before an examiner, the question so put and the

objection of the witness thereto, 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.

23.In any case under the two last preceding rules, the Court or a Judge in Chambers shall have power to order the witness to

pay any refusal or costs occasioned by his refusal or objection.

24.When the examination of any witness before any examiner shall have been concluded, the original depositions

authenticated by the signature of the examiner, shall be transmitted by him to the Registry, and there filed.

25.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 such examination and the conduct or absence of any witness or other person thereon, and the Court or a Judge in

Chambers may direct such proceedings and make such order as upon the report the Court or Judge in Chambers may think just.

26. Except where these rules otherwise provide, or the Court or a 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 same may be offered, unless

the Court or Judge in Chambers is satisfied that the deponent is dead, or beyond the jurisdiction of the Court, or unable

from sickness or other infirmity to attend the hearing or trial, in any of which 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.

27 Any officer of the Court, or other person directed to take the examination of any witness or person, or any person

nominated or appointed to take the examination of any witness or person pursuant to the provisions of any Convention now made

or which may hereafter be made with any foreign country, may administer oaths.

28 Any party in any action may by subpoena ad testificandum or ducestecum require the attendance of any witness before an

officer of the Court, or other person appointed to take the examination for the purpose of using his evidence upon any

proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or

trial; and any party or witness having made an affidavit to be used 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.

29. The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall

extend and be applicable to evidence taken in any action at any stage.

30 The practice of the court with respect to evidence at a trial when applied to evidence to be taken before an officer of

the Court or other person in any action after the hearing or trial, shall be subject to any special directions which may be

given in any action.

31 No affidavit or deposition filed or made before issue joined in any action shall, without special leave of the Court or a

Judge in Chambers, be received at the hearing or trial thereof, unless within one month after issue joined, or within such

longer time as may be allowed by special leave of the Court or a Judge, notice in writing shall have been given by the party

intending to use the same to the opposite party of intention in that behalf.

32.All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same

cause or matter.

33. Where it is intended to sue out a subpoena, a praecipe for that for purpose, in Form 86, containing the name or firm and

the place of business or residence of the legal practitioner intending to sue out the same, and where the legal practitioner

is agent only, then also the name or firm and place or business or residence of the principal legal practitioner, shall in

all cases be delivered and filed at the Registry. No subpoena shall be issued unless all court fees have been paid (including

fee for service) and unless sufficient conduct money on the prescribed scale is deposited to cover the first days attendance.

34. A writ of Subpoena shall be in one of Forms 40, 41 of 42, with such variations as circumstances may require.

35. Where a subpoena is required for the attendance of a witness for the purpose of proceedings in Chambers, such subpoena

shall issue from the Registry upon a note from the Judge.

36.In the interval between the suing out and service of any n subpoena, the party suing out the same may correct any error in

the names of parties or witnesses, and may have the writ re-sealed upon leaving a corrected praecipe of such subpoena marked

with the words “altered and re-sealed", and signed with the name and address of the legal practitioner suing out the same.

37. A subpoena shall be served personally unless substituted Service of service has been ordered by the Court or a Judge in

Chambers in cases where a person evades service. The provisions of Order 12 shall, so far as possible, apply to service and

proof of service of a subpoena.

38. Any subpoena shall remain in force from the date of issue until the conclusion of the trial of the action or matter in

which of subpoena, it is issued.

39. Any 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 such deed or instrument, and requiring the opposite party to admit that the same was

executed as it purports to have been, saving all just exceptions as to its admissibility, validity and contents and if at or

before the hearing of the suit the party notified shall neglect or refuse to give such admission, the Court may adjourn the

hearing in order to enable the party tendering such deed or instrument to obtain proof of the due execution thereof and upon

production of such proof the Court may order the costs of such proof to be paid by the party so neglecting or refusing,

whether he be the successful party or not.

40. Where any civil or criminal matter is pending before a court or tribunal of a foreign country, and it is made to appear

to the Court by commission rogatoire, or letter of request, or other sufficient evidence that such court or tribunal is

desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction, the Court

may, on the ex-parte application any person shown to be duly authorised to make the application on behalf of such foreign

court or tribunal, and on production of the commission rogatoire, or letter of request, or such other evidence as the Court

may require or consider sufficient, make such order or orders as may be necessary to give effect to the intention of the

commission rogatoire, or letter of request.

41. On the application of any party to a legal proceeding, the Court may order that such party be at liberty to inspect and

take copies of any entries in a banker's book for any of the purposes of such proceeding. An order under this rule may be

made either with or without summoning the bank or any other party; and shall be served on the bank three days before the same

is to be obeyed, unless the Court otherwise directs.

42. Where a document is produced and tendered in evidence and rejected by the Court, the document shall be marked as having

been so tendered and rejected.

43. (1) It shall be lawful for the Court to issue an order to bring up any person confined as a prisoner under any sentence

or order of commitment for trial, or otherwise, or under civil process, to be examined as a witness in proceedings pending,

or to be inquired of in any Court.

(2) The Order shall not be made of course, unless the Court shall have reasonable grounds for delivering that evidence of the

prisoner is likely to be material.

(3) The Officer in charge of the prison or person on whose custody such prisoner may be shall forthwith obey such order by

bringing the prisoner in his custody to the Court, or by delivering to an officer of the Court as the order may direct, and

if the prisoner shall under the terms of the Order be delivered to any officer of the Court, the officer in charge of the

prison or other person shall not be liable for the escape of such prisoner.

ORDER 40

JUDGEMENTS AND ORDERS

1.The decision or judgement in any suit shall be delivered in open Court, unless the Court otherwise directs for sufficient

cause.

2. If the Court reserves judgement at the hearing, parties to the suit shall be served with notice to attend and hear

judgement, unless the Court at the hearing states the day on which judgement will be delivered, in which case there shall be

no further notice.

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

served with notice to attend and hear judgement shall be deemed to have notice of the judgement when pronounced.

4. A minute of every judgement, whether final or interlocutory, shall be made, and every such minute shall be a decree of the

Court, and shall have the full force and effect of a forma, decree. A formal decree or order may be drawn up on the

application of either party.

5. If the defendant shall have been allowed to set off any demand or counter-claim against the claim of the plaintiff, the

judgement shall state what amount is due to the plaintiff, and what amount, if any, is due to the defendant, and shall be for

the recovery of any sum which shall appear to be due to either party. The judgement of the Court, with respect to any sum

awarded to the defendant, shall have the same effect, and be subject to the same rules, as if such 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 the decree or order without any

demand for payment or performance, and if no time is therein expressed he is bound to do so immediately after the decree or

order has been made (except as to costs the amount whereof may requite to be ascertained by taxation), unless the court shall

enlarge the time by any subsequent order.

7. The Court at the time of making any judgement or order, or Court may at any time afterwards, may direct the time within

which the payment direct time or other act is to be made or done, reckoned from the date of the judgement or order, or from

some other point of time, as the Court thinks fit, and may order interest at the rate not exceeding ten naira per centum per

annum to be paid upon any judgement, commencing from the date thereof or afterwards, as the case may be.

8. When any judgement or order directs the payment of money, payment by the Court may, for any sufficient reason, order that

the amount shall instalment, be paid by instalments, with or without interest. Such order may be made at the time of giving

judgement, or at any time afterwards, and may be rescinded upon sufficient cause at any time.

9. Every order, if and when drawn up, shall be dated the day of the week, month and year on which the same was made, unless

the Court or a Judge in Chambers shall otherwise direct, and shall take effect accordingly.

10. Where an order has been made not embodying any special terms, nor including any special directions, but simply enlarging

time for taking any proceeding or doing any act, or giving leave—

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

(b) for the amendment of any writ or pleadings.-

(c) for the filing of any document; or

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

It shall not be necessary to draw up such order unless the Court or a Judge in Chambers shall otherwise direct; but the

production of a note or memorandum of such order signed by a judge shall be sufficient authority for such enlargement of

time, issue, amendment, filing or other act. A direction that the costs of such order shall be costs in any cause or matter

shall not be deemed a special direction within the meaning of this section.

11. (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) Every order so filed shall be deemed to be duly entered, and the date of such filing shall be deemed the date of entry.

In the case of procedure orders drawn up in Chambers, no entry thereof shall be necessary before an attachment can be issued

for disobedience hereof.

12. Unless otherwise ordered by the Court interest shall be paid on outstanding judgement debts at the rate of 10% from the

date of the judgement whether or not the judgement debtor is allowed time to pay by instalment.

ORDER 41

HABEAS CORPUS PROCEEDINGS

1. 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, or upon such terms and condition as the Court may decide.

2. (1) No application under rule 1 shall be made unless leave therefor has been granted in accordance with this rule.

(2) Application for such leave shall be made ex-parte to the Court and shall be supported by a statement setting out the

names and description of the applicant, the relief sought, and the grounds on which it is sought, it shall also be supported

by an affidavit verifying the facts relied upon.

(3) The affidavit verifying the facts relied upon 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 acompanied by an

affidavit sworn to by some other person stating that the person detained is unable to make the affidavit himself.

(4) The applicant shall file in the Court, the application for leave not later than 24 hours preceding the date of the

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) The Court in granting leave may impose such terms as to giving security for costs as it deems fit.

(6) The Court may—

(a) make an order forth-with for the release of the person being detained notwithstanding the provision of paragraph 1 above;

(6) direct that an originating summons be issued in form 2 of the Fundamental Rights (Enforcement) Rules 1979, or that the

application be made by motion on notice in Form 3 of the Fundamental Rights (Enforcement) Rules 1979; or

(c) adjourn the motion 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 motion on notice shall be served on the person against whom the order for the release of the person

detained is sought and on such other persons as the Court may direct, and unless the Court so directs, there shall be at

least five clear days between the service of the summons or motion and the date named for the hearing or the application.

(8) Every party to an application under rule 1 shall supply to every affected party copies of the affidavit which he proposes

to use at the hearing, of the application.

3. (I) Without prejudice to rule 2 (6) the Court hearing the application may at its own discretion order that the person

detained be produced in Court.

(2) An order under paragraph 1 above shall be sufficient warrant to any superintendent of a prison, police officer in charge

of a police station, police office or constable in charge of the person detained or any other person who is in custody of the

person detained, for the production of that person.

(3) Where an order is made for the production of a person detained, the Court by whom the order is made shall give directions

as to the Court before which and the date on which the order is returnable.

4. (1) Subject to paragraph (2) and (3) of this rule an order for Service of production of the person detained shall be

served personally on the person to whom it is directed.

(2) If it is not possible to serve such an order personally, or if it is directed to a police officer or a prison

superintendent or other public official, it shall be served by leaving it with any officer in charge or working at the police

station or any person working in the prison or office of the Superintendent of prison or the office of the public official to

whom it is directed.

(3) If the order is made against more than one person, it shall be served in the manner provided by the rule on the person

first named and copies shall be served on each of the other persons in the same manner.

(4) There shall be served with the order (in form 4 in the Fundamental Rights (Enforcement) Rules 1979 for the production of

the person detained a notice (in Form 5 of the Fundamental Rights (Enforcement) Rule 1979 stating the Court before which the

detained person is to be brought.

5. The return to an order for the release of a person detained

the order 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) The return may be amended or on other return substituted, by leave of the Court before whom the order is returnable.

6. When a return to the order has been made, the return shall first be read in open court and an oral application then be

made for discharging or remanding the person detained or amending or quashing the return, and where the detained person is

brought to the court his legal representative shall be heard first, then the legal representative for the State or for any

other official or person detaining him. The legal representative for the person detained will then be heard in reply.

7. An order for the release of a person detained shall be made in clear and simple language having regards to all the

circumstances of the case.

8. (1) An application for a writ of habeas corpus ad testif- candum or of habeas corpus 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 or matter, civil or criminal before any Court, tribunal or justice shall be made on affidavit.

9. Writ of habeas corpus shall be in forms 95, 96 or 91 in the appendix to these rules, whichever is appropriate.

ORDER 42

COMMITTAL FOR CONTEMPT OF COURT

1. (1) The power of the Court to punish any person or group of persons for contempt of Court may be exercise by an order of

Committal.

(2) An order for committal may be made where contempt of court—

(a) is committed in connection with any civil or criminal proceedings before the Court, or before any inferior court;

(b) is committed in the face of the Court or consists of disobedience to an order of the Court or 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 motion on notice together with the affidavit shall be served personally on the person sought to be committed, but the

Court may dispense of personal service where the justice of the case so demands.

3. Nothing in rules 1 and 2 of this order shall be taken as affecting the power of the Court to make an order of committal of

its own motion against a person guilty of contempt of Court.

4. (1) Subject to paragraph (2) the Court hearing an application for an order of committal may sit in private in the

following circumstances that is to say—

(a) where the application arises out of proceedings relating to wardship or adoption of an infant or to the guardianship,

custody, maintenance or up-bringing of an infant or rights of access to an infant;

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

disorder;

(c) where the application arises out of proceedings in which secret process, discovery or invention is in issue;

(d) where it appears to the Court that in the interest of justice or national security the application shall be heard in

private, but in all other cases the application shall be heard in an open Court.

(2) If the Court hearing an application in private by virtue of paragraph 1 above decides to make an order of committal

against the person sought to be committed, it shall in open Court state—

(a) the name of that person;

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

(c) the length of the period he is being committed.

(3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at

the hearing except the grounds set out under rule 2.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own

behalf he shall be entitled to do so.

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

the Court.

6. (1) The Court by whom an order of committal is made may by order direct that the execution of the order shall be suspended

for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph 1 above the applicant for the order,

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.

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

(2) Where a person has been committed for failing to comply with a judgement or order requiring him to deliver anything to

some other person or to deposit it in Court or elsewhere, and a writ of sequestration has also been issued to enforce the

judgement, or order then, if the thing is in the custody or power of the person committed, the sheriff may take possession of

it as if it were the property of that person and without prejudice to the generality of paragraph (1) the Court may discharge

the person committed and may give such directions for dealing with the thing or things taken by the sheriff as it thinks fit.

8. Nothing in the foregoing provisions of this order shall betaken as affecting the power of the Court to make an order

requiring a person guilty of contempt of Court, or a person punishable in the like manner by virtue of any enactment as if he

had been guilty of contempt of Court to pay a fine or give security for his good behaviour, and these provisions, so far as

applicable, 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. If a

return of non estinventus is made, one or more writs may be issued on the return of the previous writ.

ORDER 43

APPLICATION FOR JUDICIAL REVIEW

1. (1) An application for—

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

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

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

(2) An application for a declaration or an injunction (not being an injunction mentioned in paragraph (1)(b)) may be made by

way of an application for judicial review, and on such an application the Court may grant the declaration or injunction

claimed if it considers that having regard to—

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

certiorari;

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

(c) all the circumstances of the case, 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 relief mentioned in rule 1 (1) or (2) may be claimed as an alternative or in

addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

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

this rule.

(2) An application for leave shall be made ex-parte to the 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) The applicant shall file the application not later than 2 clear days 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) The Court hearing an application 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) The 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 judgement,

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) If the 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 paragraph (8) shall be made within 10 days after the judge's refusal to give

leave.

(10) Where leave to apply for judicial review 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; and

(b) if 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 begun by writ.

4. (1) Subject to the provisions of this rule, 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

paragraph (2) below 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 judgement, order, conviction or other proceeding

for the purpose of quashing it, the relevant period for the purpose of paragraph (1) is three months after the date of the

proceedings.

(3) Paragraph (1) is without prejudice 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 paragraph (2), when leave has been granted to make an application for judicial review, the application

shall be made by originating motion, except when the Court is on 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 the Court or an officer of the Court to do any act

in relation to the proceedings or to quash them or any order made therein, the notice or summons shall also be served on the

clerk or registrar of the Court and, where any objection to the conduct of the Judge is to be made, on the Judge.

(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 addresses of, and the places and dates of service on, all persons who have been served

with the notice of motion or summons shall be filed before the motion or summons is entered for hearing and, if any person

who ought to be served under this rule has not been served, the affidavit shall state that fact and the reason for it, and

the affidavit shall be before the Court on the hearing of the motion or summons.

(7) If on the hearing of the 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, the 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 the statement in support of an application for leave under rule 3 shall be served with the notice of motion

or summons and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing except the

grounds and relief set out in the statement.

(2) The 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 or any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give

notice of his intention and of any proposed amendment to every other party.

(4) Each party to the application shall supply to every other party 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 paragraph (2), award damages to the applicant if—

(a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from

any matter to which the application relates; and

(b) the Court is satisfied that if the claim had been made in an action begun by the applicant at the time of making his

application, he could have been awarded damages.

8. Unless the Court otherwise directs, any interlocutory application in proceedings on an application for judicial review may

be made to any judge notwithstanding that the application for judicial review has been made by motion and is to be heard by

the Court.

9. (1) On the hearing of any motion or summons under rule 5, any 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, notwithstanding that he has not been

served with notice of the motion or the summons.

(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them,

the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless

before the hearing of the motion or summons he has filed a copy thereof verified by affidavit or 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 any such case as is referred to in paragraph (2), the order shall, subject to

paragraph (4), below direct that the proceedings shall be quashed forthwith 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 begun by Writ by the

applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to

continue if as they had been begun by writ.

10. No action or proceeding shall be begun 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 44

APPEALS FROM MAGISTRATE'S COURT, ETC.

1. Every appeal shall be brought by notice of appeal which shall be of be lodged in the lower Court within 30 days of the

decision appealed from and served on all other parties affected by the appeal within that period.

2. (l) The notice of appeal shall set out the reference number of the proceedings in which the decision complained of was

given, the names of the parties, the date of such decision and the grounds for appeal in

(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 Judicial, Division in which is situated the lower court appealed

from, to which notices may be sent for the appellant, and such notices may be sent to him by registered post.

(4) The notice of appeal shall be in Form107 in the appendix and may be varied to suit the circumstances of the case so that

no variation of substance shall be made.

3. The Registrar of the Lower Court shall, within three months of the decision appealed from, prepare as many certified

copies of the proceedings required for the consideration^ the appeal as there are parties on record. Save where the fees for

preparing such copies are remitted, a deposit decided upon by the Registrar as likely to cover such fees, shall be made by

the appellant before the preparation of such copies.

4. The Registrar of the Lower Court shall within 7 days of preparing the copies aforesaid send the same to the Registrar of

the Court in the Judicial Division in which the lower court is situated, and the appeal shall be decided by the Judge of that

Division.

5. When notifying a party of the day fixed for the hearing of the appeal, the Registrar of the Court shall send him a copy

ofthe 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 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 put,, or enlarge time for sufficient reason shown.

8. All civil appeals from lower Courts shall be heard by two Judges of the 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.

10. (1) If, on the day of hearing or at any adjournment 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) If in any such case the respondent appears, the judgement shall be with costs of the appeal against the appellant, unless

the Court expressly orders otherwise; but if the respondent does not, appear, the costs of the appeal shall be in the

discretion of the Court

11. (1) If, on the day of hearing and at any adjournment 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

judgement according to the merits of the case without regard, to any imperfection or defect of form:

(2) 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 hereinbefore contained the court shall dismiss the appeal and affirm the decision, with or without costs

of appeal against the appellant.

12. On the hearing, it shall not be competent for the appellant to go into any other reasons for appeal than those set forth

in his notice of grounds for appeal, and where, in the opinion of the Court, other grounds for appeal than those set forth in

the memorandum grounds for 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 grounds for appeal upon such conditions as to service upon the

respondent and as to costs as it may think fit.

13. (1) The respondent may give notice that he intends at the hearing to ask the Court to confirm the judgement of the Lower

Court on grounds other than those stated by the 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 judgement 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.

14. (1) The respondent may file grounds for appeal against any Counterpart of the judgement of the lower court.

(2) Such 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.

15. (1) No objection on account of any defect in the form of setting forth any ground for appeal shall be allowed, unless the

Court is of opinion that the ground of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the

respondent to enquire into the subject matter thereof or to prepare for the hearing.

(2) In any case where the Court is of opinion that any objection to any reason for appeal ought to prevail, the Court may, if

it thinks fit, cause the reason for appeal forthwith to be amended upon such terms and conditions, if any, as the Court may

think just.

16. (1) On any appeal, from a decision of a lower Court, no objection shall be taken or allowed to any proceeding in such

Court for any defect or error which might have been amended by that Court, or to any complaint, summons, warrant, or other

process to or of such Court for any alleged defect therein in substance or in form, or for any variance between any complaint

or summons and the evidence adduced in support thereof in such Court.

(2) If any 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 the same or to reverse the decision appealed from, or to make such other

order for disposing of the case as justice may require.

17. No objection shall be taken or allowed, on any appeal, to any notice of appeal which is in writing or to any recognizance

entered into under this order for the due prosecution of such appeal for any alleged error or defect therein; but if any such

error or defect appears to the Court to be such that the respondent on such appeal has been deceived or misled, it shall be

lawful for the Court to amend the same and, if it is expedient to do so, also to adjourn further hearing of the appeal, the

amendment and the adjournment, if any, being made on such terms as the Court may deem just.

18. The Court may, in any case where it may considers necessary that evidence should be adduced, either—

(a) order such evidence to be adduced before the Court on some day to be fixed; or

(b) refer the case back to the lower court to take such evidence, and may in such case either direct the lower court to

adjudicate a fresh after taking such evidence and subject to such directions in law, if any, as the Court may think fit to

give, or direct, 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.

19. (1) When additional evidence is to be taken by the lower Court and specific findings of fact reported, it shall certify

such evidence to the Court which shall thereupon proceed to dispose of the appeal.

(2) The appellant or his legal practitioner shall be present the additional evidence is taken.

(3) Evidence taken in pursuance of rule 18 shall be regarded as if it were evidence taken at the trial before the lower

Court.

(4)When forwarding to the Court any additional evidence taken by a lower Court in pursuance to 18, (above) 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.

20. The fees in the First Schedule shall be chargeable in civil

Appeals where the same 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 same on the ground of the

poverty of the person chargeable therewith where it appears that there are substantial grounds of appeal.

21. Allowance may be made to witness in accordance with the provision of the Third Schedule.

22. (1) On application being made for stay of execution under any enactment establishing the lower Court, the lower Court or

the Court may impose one or more of the following conditions: -

(a) that the appellant shall deposit a sum fixed by the Court nor exceeding the amount of the money or the value of the

property affected by the decision or judgement 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 judgement

appealed from relates to possession of lands or house, 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 appellant's property shall be seized and attached pending

the making of a deposit or the giving of security as aforesaid, including a deposit or security for the security for the

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) Any order made on any such application shall limit the time (not being more than 30 days) for the performance of the

conditions imposed, and direct that in default of such 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

lodgement of the notice of appeal and shall in the first instance be made to the lower Court.

(4) Where execution has been ordered by the Court the application shall not be made to the lower court but to the Court.

(5) The application may be ex-parte but the Court may direct notice thereof to be given to the other party to the appeal.

Where an order is made ex-parte the Registrar of the Court shall notify the other party of the order made.

(6) Where the 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).

(7) Any 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 thereupon make such

order as may seem just.

(8) An appeal shall not operate as a stay of execution under the decision or judgement appealed from except so far as the

lower court or the Court may order; and no intermediate act or proceeding shall be invalidated except so far as either court

may direct.

23 The Court may make such order as to the payment of costs by or to the appellant as it may deem to be just and such order

may be made also in any case where an appeal has not been entered into or prosecuted.

24. (1) The Court may, in special circumstances, upon application on notice by motion (original' or interlocutory as the case

may require), supported by affidavit, order the appellant to deposit such sum or give such security as may seem fit for the

respondent s costs of appeal including the costs incidental to the application.

(2) The order shall limit the time (not exceeding thirty days) within which the deposit or security shall be made or given

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 so stands dismissed the respondent shall be entitled to all reasonable costs occasioned by the appeal and

the amount of such costs as may be stated in the order in anticipation or may be assessed at any time by the Court of its own

motion or on application made ex-parte or on notice, as the Court may deem fit.

(4) Where an appeal so stands dismissed the appellant shall take no further step or proceeding therein save by leave ofthe

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 (but not otherwise).

(5) Subject and without prejudice to the discretion of the Court to grant costs where it seems proper on an application made

under paragraph (1), costs shall not normally be granted to the applicant save where the net proceeds of execution levied on

the appellant's goods are insufficient to satisfy the amount payable under the judgement or decision appealed from.

25. (1) When a case is decided on appeal the Court shall certify its judgement or order to the lower Court in which the

decision appealed against was pronounced.

(2) The lower court to which the Court certifies its judgement or order shall thereupon make such orders as are conformable

to the judgement or order of the Court, and, if necessary, the records shall be amended in accordance therewith.

26. After the pronouncement of the judgement 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 judgement which may have been pronounced by the Court, in the same manner in all respects as

if such decision or judgement had been pronounced by it.

27. Any order given or made by the Court may be enforced by the Court or by the lower Court as may be most expedient.

28. The Court may, if it deems fit, enlarge any period of time prescribed by this order.

29. In this order—

"the lower court" means the Court whose judgement is appealed against, and includes a Magistrate's Court but does not include

an arbitrator, a referee or an auditor ;

"judgement" includes an order or a ruling.

ORDER 45

APPEALS TO THE HIGH COURT EPOM DECISION OF AUDITORS

1. This Order shall apply to any appeal to the Court from a decision of an auditor made under the provision 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 in so far as the Court at the hearing may direct

oral evidence to be given.

4. The notice of motion shall be served, before the expiration of six weeks after the date of the decision to which it

relates, upon the auditor in charge of the audits in respect of which the decision has been made and also upon local

government or other body in relation to whose accounts of whose accounts or to the accounts of whose officers the decision

was given, if that local government or the 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 twenty-eight days after service of the notice.

6. (1) The appellant shall within seven days after service on the auditor of the notice of motion, file with the Registrar a

copy of such notice and an affidavit setting out the reason stated by the auditor for his decision and the facts upon which

the appellant intends to rely at the hearing and thereupon the motion shall be set down for hearing.

(2) If the notice of motion is not set down in accordance with this provision, 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

cost of application.

7. The appellants shall deliver forthwith to the local government or other body and to the auditor a copy of ant 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 any affidavit intended to be filed by him in opposition to the motion.

8. Where under rule 4 notice of motion is served on an auditor other than the auditor who gave the decision, that auditor may

appear in thereto in all respect as if he were the auditor by whom the decision was given, and these provisions shall apply

accordingly.

ORDER 46

STAY OF EXECUTION PENDING APPEAL TO THE COURT OF APPEAL

1. Where any application is made to the Court for a stay of execution or of proceedings under any judgement or decision

appeal from, such application shall be made by notice of motion supported by affidavit setting forth the grounds upon which a

stay of execution or of proceedings is sought.

2. (1) The Court may make or refuse an order for a stay of execution or of 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 judgement appealed from.

3. Where any application is made to the Court under this order, a formal order shall be drawn up embodying the terms of the

decision of the Court and bearing the date upon which the order is made.

ORDER 47

MISCELLANEOUS PROVISIONS

1. Subject to particular rules the Court may in all causes and matters make any order which it considers necessary for doing

justice, whether such order has been expressly asked for by the person entitled to the benefit of the order or not.

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 publication of any notice is required the same may be made by advertisement in the State Gazette,

unless otherwise provided in any particular case by any rule of Court or otherwise ordered by the Court.

4. A document shall not be filed unless it has endorsed on it the name and number of causes, the date of filing, and whether

filed

by defendant or plaintiff; and on being filed such endorsement shall be initialled by the Registrar.

5. The Forms prescribed by the various orders and rules shall be used wherever applicable with such variations as

circumstances may require.

6. No Form shall be varied in such a way as to impose on any party, officer of the Court or other person on obligation to

which he is not subject by virtue of the High Court Law or these rules or otherwise by law.

7. In proceedings for which forms are not provided or pre-scribed by any subsequent rules or orders of Court the Chief

Registrar may subject to the approval of the Court from time to time frame the forms required.

8. All warrants and writs of whatever description shall be sufficiently addressed for execution by being directed to the

Sheriff; but this provision shall not prevent any writ or warrant from being addressed to a person by name or to a person

named, and to officers of Court generally to an Area Court.

9. The sealing of any writ or process shall not be necessary in addition to signature of the judge or other officer by whom

the same shall be signed, except in cases where sealing may be expressly directed by any written law or by any prescribed

form.

10. The fees set out in the fourth Schedule may be charged in respect of the duties of a notary public or of a notorial act.

ORDER 48

SITTINGS OF THE COURT AND VOCATION

1. Subject to the provision of the High Court Law the Court may at its discretion appoint any day or days for the hearing or

places from time to time for the hearing of actions as the circumstances may require.

2. (1) The sittings of the Court for hearing and determination of the rights and obligations shall be in public.

(2) Subject to the provisions of the Constitution of the Federal Republic of Nigeria, the Court may for special reasons, hear

any particular action in the presence only of the parties with their legal practitioners (if any) and the officers of the

Court.

3. The offices of the Court shall be opened at such times and place as the Chief Judge shall direct.

4. (1) Subject to the directions of the Chief Judge, sittings of the Court for dispatch of civil matters shall be held on

every week-day except on public holidays.

(2) There shall be an annual vocation 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 Gazette appoint.

5. (1) Notwithstanding the provisions of rule 4 above any action may be heard by a Judge in Court during any week-day except

on a sunday or public holiday where such action is urgent or a Judge in the interest of all parties concern agrees to hear

the action.

(2) An application for urgent hearing shall be made by summons in chambers, and the decision of the Judge on such application

shall be final.

6. The time for filing and service of pleadings shall not run during the annual vocation unless otherwise directed by the

Court or a Judge in Chambers.

ORDER 49

PROBATE AND ADMINISTRATION

Grant of Probate or Administration in general.

1. (1) Subject to the provisions of rules 39 and 40, when any person subject to the jurisdiction of the Court dies, all

petitions for the granting of any letters of administration of the estate of the deceased person, with or without a will

attached, and all applications on other matters connected therewith shall be made to the Probate Registrar of the Court at

Kano.

(2) In regard to any such application, the Chief Judge shall have power to request the Court of any Judicial Division to take

measures and make such orders as may appear necessary or expedient for the interim preservation of the property of the

deceased within such Judicial Division, for the discovery or preservation of the will of the deceased or for any 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 seven days of the death of the deceased; and no grant

of administration (not with the will annexed) shall issue within fourteen days of such death.

(4) Every applicant for a grant of Probate or administration shall file with his application a true declaration of all

personal properties of the deceased and the value thereof as in form 164 and the Court shall ascertain the value of the

property of the deceased 'as correctly as circumstances allow.

(5) In determining the value of the property of the deceased allowance shall be made for reasonable funeral expenses and for

debts and incumberances; and—

(a) any gratuity payable by the government of the federation of Nigeria or by the government of any State or by any statutory

corporation, to the estate of any person formerly employed by any such government or statutory corporation;

(b) any sum of money payable to an estate from a Provident Fund established under the provisions of any written Law.

12. In no case shall the Court issue letters of administration until all inquiries which the Court sees fit to institute have

been answered to its satisfaction. The Court shall, however, afford as great a facility for the obtaining of letters of

administration as is consistent with due regard to the prevention of error and fraud.

13. A notice to prohibit a grant of administration may be file in the Court.

14. (1) The notice shall remain in force three months on from the day of filing, but it may be renewed from time to time. The

notice shall not affect a grant made on the day on which the notice is filed. The person filing the notice shall be warned by

a 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.

15. Suits respecting administration shall be instituted and carried on as nearly as may be in the like manner and subject to

the same rules of procedure as suits in respect of ordinary claims.

Custody of Wills.

16. Any person may, in his lifetime, deposit for safe custody in the Court at Kano his own will, sealed up under his own seal

and

the seal of the Court.

17. Every original will, of which probate or administration with will annexed is granted, shall be filed and kept in the

Probate Registry in such manner as to secure at once the due preservation and convenient inspection of the same. 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. No original will shall be delivered out for any purpose without the direction in writing of the Court where the will is

filed. A certified transcript, under the seal of the Court of the probate or administration with the will annexed may be

obtained from the Court.

Probate or Administration with will annexed.

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 relative thereto, and shall not proceed further if the will does not appear to

be so signed and subscribed.

(2) If the will appears to be so signed and subscribed, the 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.

20. If 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. The 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. If on perusal of the affidavit it appears that the will was not, in fact, executed in accordance with those enactments,

the Court shall refuse probate.

22. If both the subscribing witnesses are dead, or if from other circumstances such an affidavit cannot be obtained from

either of them, resort for such an affidavit shall be had to other persons (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 hand-writing 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.

23. Where the testator was blind or illiterate, the Court shall not grant administration with the will annexed, unless the

Court is first 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) The Court, on being 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 and requiring to be accounted for.

(2) Interlineations, alterations, erasures, are invalid unless they existed in the will at the time of its execution unless,

if made afterwards, they have been executed and attested in the mode required by the said enactments; or unless they have

been made valid by the re-execution of the will, or by the subsequent execution of some codicil thereto.

(3) Where interlineations, alterations, erasures, or obliterations appear in the will (unless duly executed or recited in or

otherwise identified by the attestation clause), an affidavit in proof of their having existed in the will before its

execution shall be filed.

(4) If 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 any 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. A document cannot form part of a will unless it was in existence at the time when the will was

executed.

(2) If there are vestiges of sealing wax or wafers, or other marks on the will, leading to the inference that some document

has been at some time annexed or attached thereto, a satisfactory account of them shall be proved, or the production of the

document shall be required, and if 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, without 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) Every will or copy of a will to which an administrator with the will annexed is sworn shall be marked by the

administrator and by the person before whom he is sworn.

(2) The provisions respecting wills apply equally to codicils.

28. In every case 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, before the Court, to be examined viva voce respecting the matter of

his affidavit. The examination may take place before any affidavit has been sworn or prepared, if the Court thinks fit.

Administration (not with Will).

29. (1) The Court in granting letters of administration shall proceed as far as may be as in cases of probate

(2) The 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. (l)The 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) The 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) The Court may also in any case direct that more bonds than one shall be given, so as to limit the liability of any surety

to such amount as the Court thinks reasonable.

31. The Probate Registrar may, on being satisfied that the condition of the bond has been broken, assign the same to some

person, and that person may thereupon 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 thereon, as trustee for persons interested, the full amount recoverable in respect of

any breach of the bond.

Administration of Property.

32. Any 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 the Court requiring the executor or administrator (as the case may be) 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 (if any) as the Court may direct, the Court may, if it thinks fit, make an order for the administration of the

property of the deceased.

(2) The Court shall have discretionary power to make or refuse any such order or to give any special directions respecting

the carriage or execution of it, and in the case of applications for such an order by two or more different persons or

classes of persons, to grant the same to such one or more of the claimants or classes of claimants, as the Court thinks fit.

(3) If the Court thinks fit the carriage of the order may subsequently be given to such person, and on such terms, as the

Court thinks fit

34. On making such an order, or at any time afterwards, the Court may, if thinks fit, make any further or other order which

may appear requisite to secure the proper collection, recovery for safekeeping and disposal of the property or any part

thereof.

35. In a case of intestacy, where the special circumstances of the case appear to the Court so to require, the 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 thereby.

(2) The Court shall require and compel him to file in the Court his accounts of his administration at intervals not exceeding

three months.

37. Where a person has died intestate as to his personal estate or leaving a will affecting personal estate, but without

having appointed an executor thereof willing and competent to take probate, or where the executor shall, at the time of the

death of such person, be resident out of the jurisdiction, and it shall appear to the Court to be necessary or convenient in

any such case to appoint some person to be the administrator of the personal estate of the deceased, or of any part thereof

the Court may appoint such person as it shall think fit, to be such administrator upon his giving such security, if any, as

the Court shall direct, and every such administration may be limited as the Court shall think fit.

38. The 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 shall think fit, not exceeding a fee of ten naira and in

addition thereto 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.

Provided that where the Court shall be satisfied that by reason of exceptional circumstances the administration of the

property has required an extra-ordinary amount of labour to be bestowed on it, the Court may allow in respect of such

property a higher rate of remuneration.

Administration of Estate of Foreign Citizens.

39. (1) Where any citizen of any country other than Nigeria dies within the jurisdiction without leaving within the

jurisdiction a widow or next of kin, then, if any such person dies within a Government station, or had his usual place of

residence therein the Magistrate having jurisdiction within such station, or if he does not die within a Government station,

or had not his usual place of residence therein, then the Local Government Secretary in charge of the station 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 such country of the death of the deceased, and transmit to him a

list of the money and property of the deceased.

(2) In the case last mentioned in which it is declared that a Local Government Secretary shall collect and secure all money

and other property of the deceased, such 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 to

act in his place.

40. Application may be made to the Court by any such 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 such order as to security

for payment of debts and the method of administration as the Court shall think fit, vary such order when and so often as is

expedient.

Administration generally.

41. (1) Every person to whom a grant of probate or letters of administration shall have been made, and every administrator

appointed by the Court shall, if called upon by the Court so to do, file in Court the accounts of his administration, and

shall thereafter file such further periodic accounts as the Court may direct until the completion of the administration.

(2) Any such executor or administrator who fails within any such period to file his accounts as aforesaid shall be liable to

such penalty not exceeding one hundred naira as the Court may think fit to impose. 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) When an account is filed in Court under this rule, the Court shall scrutinize such account and if it appears to the Court

that by reason of improper unvouched or unjustifiable entries or otherwise such account is not a full and proper account, the

Court may give written notice to the person filing the account to remedy such defects as there may be within such time as to

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 within the meaning of this rule and proceedings may be taken against such person accordingly.

(4) The Court may, on the motion of any party interested, or of its own motion, summon any executor or administrator failing

as aforesaid, to show cause why he should not be punished.

(5) The Court may for good cause shown extend the time for such filing of accounts.

(6) Any 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 set out above, and the procedure for bringing him before

the Court shall be as set out above.

(7) It will be 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 opened 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” shall mean and include an inventory, an account of the administration , the vouchers in

the hands of the executor or administrator relating thereto, and an affidavit in verification .

42 The Duties imposed and powers conferred upon the Court by rules 5, 6, 7,9,10, 11, 12, 14, 17, 18, 19, 20, 21, 22, 28, 31,

38,40, and

41 (1), (3), (5), (7) and (8) shall be performed and exercised by the Probate Registrar on behalf of the Court subject to any

directions which the Chief Judge may give restricting or enlarging this delegation to the Probate Registrar of the duties and

powers of the Court under this Order.

Provided always that the Court shall have power, either of its own motion, or on the application of any person interested, to

review any exercise by the Probate Registrar of the powers delegated to him. On such review the Court shall have power to

cancel anything which may have been done by the Probate Registrar in such exercise of his delegated powers or otherwise and

make such order in the premises as may to the Court seem just.

43. The Court may refuse to entertained any application under the last preceding rule if it considers that there has been

unreasonable delay by the applicant in making his application.

44. The grant of letters of administration under this Order shall be signed by the Probate Registrar on behalf of the Court.

ORDER 50

PROBATE (NON-CONTENTIOUS) PROCEDURE

1. Any person having in his possession or under his control any paper or writing of any deceased person, being or purporting

to be testamentary, shall forthwith deliver the original to the Probate Registrar of the Court. If any person fails to do so

for fourteen days after having had knowledge of the death of the deceased, he shall be liable to such fine not exceeding one

hundred naira as the Court having regard to the condition of such person so in default and the other circumstances of the

case, thinks fit to impose.

2. Where it appears that any paper of the deceased, being or purporting to be testamentary, is in the possession, or under

the control of any person, the 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.

3. Where it appears that there are reasonable grounds for believing that any person has knowledge of any paper being or

purporting to be testamentary (although it is not shown that the paper is in his possession or under his control), the Court

may in a summary way, whether a suit or proceeding for probate or administration is pending or not, order that he may be

examined respecting the same in Court, or on interrogatories and that he attends for that purpose, and after examination that

he produces the paper and bring it into Court.

4. The Court may of its own motion, or on the application of any person claiming an interest under a will, give notice to the

executors (if any) therein named, to come in and prove the will, or to renounce probate, and they, or some or one of them,

shall, within fourteen days after notice, come in and prove or renounce accordingly.

5. If any person named executor in the will of the deceased takes possession and administers or otherwise deals with any part

of the property of the deceased, and does not apply for probate within 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 deemed guilty of a

contempt of Court, and shall be liable to such fine, not exceeding one hundred naira, as the Court thinks fit to impose.

6. (1) When any person subject to the jurisdiction of the Court dies, all petitions for the grant of probate of his will and

all applications on other matters connected with it shall be made to the Probate Registrar of the Court at Kano Judicial

Division.

(2) In regard to any such application, the Chief Judge shall have power to request the Court of any Judicial Division to take

measures and make such order as may appear necessary or expedient for the interim preservation of the property of the

deceased within such Judicial Division for the discovery or preservation of the will of the deceased or for any 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.

7. (1) A person applying for a grant through a legal practitioner may apply otherwise than by post at the Probate Registry.

(2) Every 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 otherwise than by post 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 if—

(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;

(c) the Registrar otherwise directs.

(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 directs.

(5) A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as the

Registrar may approved.

(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) Unless the Registrar otherwise directs, every oath, affidavit or guarantee required of a personal applicant shall be

sworn or executed by all the deponents or sureties before an authorised officer.

9. (1) The Registrar shall not allow any grant to issue until all inquiries which he may seem fit to make have been answered

to his satisfaction.

(2) The Registrar may require proof of the

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 annexed shall issue within seven days of the death of the

deceased.

10. (1) Every application for a grant shall be supported by an oath in the form applicable to the circumstances of the case,

which shall be contained in an affidavit sworn by the applicant, and by such other papers as the Registrar may require.

(2) Unless otherwise directed by the 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 oath 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. Every will in respect of which an application for a 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 any affidavit which may be required under this order as

to the validity, terms, condition or date of execution of the will:

Provided that where the Registrar is satisfied that compliance with this rule might result in the loss of the will, he may

allow a photostat copy thereof to be marked or exhibited in lieu of the original document.

13.(1) Where the Registrar considers that in any particular case a photostat copy of the original will would not be

satisfactory for purposes of record he may require an engrossment suitable for Photostat reproduction to be lodged.

(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) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the will

and, if it is one to which paragraph (2) of this rule 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 appears 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 the

Registrar that there is some doubt about the due execution of the will, he 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) If no affidavit can be obtained in accordance with the last foregoing paragraph, the Registrar may, if he thinks fit

having regard to the desirability of protecting the interest of any person who may be prejudiced by the will, accept evidence

on affidavit from any person he may think fit to show that the signature on the will is the hand writing of the deceased, or

of any other matter which may arise a presumption in favour of the due execution of the will.

(3) If the Registrar, after considering the 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 the testator, or which for any other 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, interlineation, or other alteration which is not authenticated in the

manner prescribed by law, or by the re-execution of the will or by the execution of a codicil, the 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:

Provided that this paragraph shall not apply to any alteration which appears to the Registrar to be of no practical

importance.

(2) If from any mark on the will it appears to the 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 may call for such evidence in regard to the attaching or incorporation

of the document as he may think fit.

(3) Where there is doubt as to the date on which a will was executed, the 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 otherwise, and every other circumstances leading

to a presumption of revocation by the testator, shall be accounted for to the Registrar's satisfaction.

18.The Registrar may require an affidavit from any person he may think fit for the purpose of satisfying himself as to any of

the matters referred to in rules 15, 16, and 17, and in any such affidavit sworn by an attesting witness or other person

present at the time of the execution of a will, the deponent shall depose to the manner in

which the will was executed.

19. If it appears to the Registrar that there is prima facie evidence that a will is one to which section 9 of the wills Act

1837, or any provision of the equivalent enactment in force in the State, applies, the will may be admitted to proof if the

Registrar is satisfied that it was made by the testator in accordance with the provisions of that section or enactment, as

the case may be.

20. Where evidence as to the law of any country or territory outside the State is required on any application for a grant,

the Registrar may accept an affidavit from any person whom, having regard to the particulars of his knowledge or experience

given in the affidavit, he regards as suitably qualified to give expert evidence of the law in question.

21. Where the deceased died after the commencement of this Order, the person or persons entitled to a grant of probate or

administration with the wil1 annexed shall be determined in accordance with the following order of priority—

(1) the executor;

(2) any residuary legatee or devisee holding in trust for any other persons;

(3) any residuary legatee or devisee for life;

(4) the ultimate residuary legatee or devisee inculding one entitled on the happening of any contingency, or, where the

residue is not wholly disposed of by the will, any person entitlted to share in the residue not so disposed of, or the

personal representative of any such person:

Provided that—

(a) unless the Registrar otherwise directs, a residuary legatee or devisee whose legally is vested in interest shall be

preferred to one entitled on the happening of a contingency; and

(b) where the residue is not in terms wholly disposed of, the Registrar may, if he is satisfied that the testator has

nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for

the grant, allow a grant to be made (subject however 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 any residue not disposed of by the will:

(5) Any specific legatee or devisee or any creditor or, subject to paragraph (3) of rule 44, the personal representative of

any such person or, where the estate is not wholly disposed of by will, any person who, notwithstanding that the amount of

the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an

accretion thereto.

(6) Any specific legatee or devisee entitled on the happening of any contingency, or any 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.

22. Where a gift to any person fails by reason of the fact that he is an attesting witness or the spouse of an attesting

witness, such person shall not have any right to a grant as a beneficiary named in the will, without prejudice to his right

to a grant in any other capacity.

23. Every applicant for a grant of probate or letters of administration with the will attached shall file in the Court a true

declaration of all personal property of the deceased and the value thereof;

Provided that for the purpose 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) any gratuity payable by the Government of the Federation of Nigeria, or the Government of a State, to the estate of any

person formerly employed by either of such Governments or by Statutory Corporation;

(b) any sum of money payable to an estate from a Provident Fund established under the provisions of any written law.

24. In no case shall the Court issue probate or letter of administration with the will attached until all inquiries which the

Court sees fit to institute have been answered to its satisfaction. The Court shall, however, afford as great a facility for

the obtaining of probate or such letters of administration as is consistent with due regard to 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.

26.(1) The notice shall remain in force three months only from the day of filing, but it may be renewed from time to time.

The notice shall not effect a grant made on the day on which the notice is filed. The person filing the notice shall be

warned by a 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.

27. Suits respecting probate or administration shall be instituted and carried on as nearly as may be in the like manner and

subject to the same rules of procedure as suits in respect of ordinary claims.

Custody of wills

28. Any person may, in his lifetime, deposit for safe custody in the Court at Kano his own will, sealed up under his own seal

and the seal of the Court.

29. Every original will, of which probate or administration with will annexed is granted, shall be filed and kept in the

Probate Registry, in such manner as to secure at once the due preservation and convenient inspection of the same. 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.

30. No original will shall be delivered out for any purpose without the direction in writing of the Court where the will is

filed. A certified transcript, under the seal of the Court of the Probate or administration with the will annexed may be

obtained from the Court.

Probate or administration with will annexed.

31. (1) On receiving an application for Probate or 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 relative thereto, and shall not proceed further if the will

does not appear to be so signed and subscribed.

(2) If the will appears to be so signed and subscribed, the 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. If 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 witnesess, if either of them is living, to prove that the will was, in fact, executed in

accordance with those enactments. The 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. If on perusal of the affidavit it appears that the will was not, in fact, executed in accordance with those enactments,

the Court shall refuse probate.

34. If both the 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 the due execution of the will.

35. Where the testator was blind or illiterate, the Court shall not grant probate of the will, or administration with the

will annexed, unless the Court is first 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 all that time knowledge of its contents.

36. (1) The Court, on being 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, and requiring to be accounted for.

(2) Interlineations, alterations, erasures, and obliterations are invalid unless they existed in the will at the time of its

execution or unless, if made afterwards, they have been executed and attested in the mode required by the said enactments, or

unless they have been made valid by the re-execution of the will, or by the subsequent execution of some codicil thereto.

(3) Where interlineations, alterations, erasures, or obliteration appear in the will (unless duly executed or recited in or

otherwise identified by the attestation clause), an affidavit in proof of their having existed in the will before its

execution shall be filed.

(4) If 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.

37. (1) Where a will contains a reference to any document of such a nature as to raise a 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. A document cannot form part of a will unless it was in existence at the time when the will was

executed.

(2) If there are vestiges of sealing wax or wafers, or other marks on the will, leading to the inference that some document

has been at some time annexed or attached thereto, a satisfactory account of them shall proved, or the production of the

document shall be required, and if not produced, a satisfactory account of its 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 the Court to take probate does not appear, his right in-respect of the executorship wholly ceases,

and without further renunciation, the representation to testator and the administration of his property may go and be

committed as if that person had not been appointed executor.

39.(1) Every will or copy of a will 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 apply equally to codicils.

40. In every case 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, before the Court, to be examined viva voce respecting the matter of

his affidavit. The examination may take place before any affidavit has been sworn or prepared, if the Court thinks fit.

41.(1) Where all the persons entitled to the estate of the deceased under a will have assigned their whole interest in the

estate to one or more persons, the assignee or assignees shall replace in the 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) In any case where probate is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the

Registry.

42. In the absence of a proving executor—

(1) An application to join with a person entitled to a grant of administration with the will attached a person in a lower

degree shall in default of renunciation by all persons entitled in priority to such, last-mentioned person, be made to the

Registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as

personal representative and such other evidence as the Registrar may require.

(2) An application to join with a person entitled to a grant of administration with the will attached a person having no

right thereto shall be made to the Registrar and shall be supported by an affidavit by the person entitled, the consent of

the person proposed to be joined as personal representative and such other evidence as the Registrar may require.

Provided that there may without any such application be joined with a person entitled to administration with the will

attached-

(a) on the renunciation of all other persons entitled to join in the grant, any kin of the deceased having no beneficial

interest in the estate;

(b) unless the Registrar otherwise directs, any person whom the guardian of an infant may nominate for the purpose;

(c) a trust corporation.

43. (1) An application to add a personal representative shall be made to the Registrar and shall be supported by an affidavit

by the applicant, the consent of the person proposed to be added as personal representative and such other evidence as the

Registrar may require.

(2) On any such 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 such other order as the circumstances of the

case may require.

44. (1) A grant may be made to any person entitled thereto 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) If an application under this rule is brought before the Registrar, he shall not allow any grant to be sealed until such

application is finally disposed of.

(4) Unless the Registrar otherwise 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) Nothing in rules 21, 42 or 44 shall operate to prevent a grant being made to any person to whom a grant may, or may

require to be made under any enactment.

(2) The rules mentioned in the last foregoing paragraph shall not apply where the deceased died domiciled outside the State,

except in a case to which the provisions to rule 47 applies.

46. When the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his

right to a grant of administration with the will attached and has consented to such administration being granted to the

person or persons who would be entitled to his estate if he himself had died intestate, administration may be granted to such

person or one or more (not exceeding four) of such persons :

Provided that 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 the deceased died domiciled outside the State, the Registrar may order that a grant do issue—

(1) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the

deceased died domiciled.

(2) to the person entitled to administer the estate by the law of the place where the deceased died domiciled.

(3) if there is no such person as is mentioned in paragraph (1) or (2) of this rule or if in the opinion of the Registrar the

circumstances so require, to such person as the Registrar may direct.

(4) if a grant is required to be made to, or if the Registrar in his discretion considers that a grant should be made to, not

less than two administrators, to such person as the Registrar may direct jointly with any such person as is mentioned in

paragraph (l) or (2) of this rule or with any other person.

Provided that without any such order as aforesaid—

(a) probate of any will which is admissible to proof may be granted -

(i) if the will is in English or in the local vernacular, to the executor named therein;

(ii) if the will describes the duties of a named person in terms sufficient to constitute him executor according to the tenor

of the will, to that person;

(b) where the whole of the estate in the State consists of immovable property, a grant limited thereto may be made in

accordance with the law which would have been applicable if the deceased had died domiciled in the State.

48.(1) Where a person entitled to a grant resides outside the State a grant may be made to his lawfully constituted attorney

for his use and benefit, limited until such person shall obtain a grant or in such other way as the Registrar may direct:

Provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice

to the other executors, if any.

(2) Where the Registrar is satisfied by 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 in the State, he may direct that a grant be made to the attorney for

the use and benefit of such person, limited until such person shall obtain a grant or in such other way as the Registrar may

direct.

49. (1) Where the person to whom a grant would otherwise be made is an infant, a grant for his use and benefit until he

attains the of age of eighteen years shall, subject to paragraphs (3) and (5) of this rule, be granted.

(a) to both parents of the infants jointly, or to any guardian appointed by a court of competent jurisdiction; or

(b) if there is no such 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) Any person nominated under sub-paragraph (b) of the last foregoing paragraph 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) Notwithstanding anything in this rule, 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, any such person as is mentioned in paragraph (1) of this rule; and such an order may be made on 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 foregoing provisions of this rule, a grant may, unless the Registrar otherwise directs, be made to

such person jointly with any other person nominated by him as a fit and proper person to take the grant.

(5) Where an infant who is sole executor has no interest in the residuary estate of the deceased, administration with the

will attached for the use and benefit of the infant until he attains the age of eighteen years shall, unless the Registrar

otherwise directs, be granted to the person entitled to the residuary estate.

(6) An infant's right to administration may be renounced only by a person assigned as guardian under paragraph (3) of this

rule authorised to renounce by the Registrar.

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 the like 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 and only 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 therefore.

(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 the 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 authorised by the court to apply for the grant; or

(b) where there is no person so authorised, or in the case of physical incapacity—

(i) if the person incapable is entitled as executor and has no interest in the residuary estate of the deceased, to the

person entitled to such residuary estate;

(ii) if the person incapable is entitled otherwise than as executor or is an executor having an interest in the 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 as the Registrar may by order direct.

(2) Unless the Registrar otherwise 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, unless the Registrar

otherwise directs, be given to the person alleged to be so incapable.

ORDER 51

PROCEEDINGS UNDER THE LEGITIMACY LAW

1.In this Order "petitioner" means a person applying for a legitimacy declaration, and "petition" has a corresponding

meaning.

2. The practice and rules of the Court shall so far as practicable govern all proceedings under the Legitimacy Law, subject

nevertheless to the particular provisions of this Order.

3. (1) A petition shall be headed "In the matter for the Legitimacy Law", and "In the matter of—(the person to be declared

legitimated)" and shall be according to the prescribed form, with such variations and additions as the 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 of the parents 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 living other issue of the parents of such person as aforesaid and the respective names and dates of the

birth of all such issue;

(d) the person (if any) affected by the legitimation of such person as aforesaid and the value so far as is known of the

property (if any) hereby involved;

(e) whether any and if so what previous proceedings under the Legitimacy Law, or otherwise with reference to the paternity of

such person as aforesaid, or the validity of the marriage leading to his legitimation have been taken in any Court;

(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

costs of the respondents if the Court shall so direct.

(3) If the 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 and there

shall be lodged by him with the petition and undertaking to be responsible for costs.

4. If the petitioner does not reside in the State, the petition shall state an address within the State at which the

petitioner may be served with any summons, notice, order of Court or other process.

5. Where it appears on the presentation of a petition that the petitioner does not reside in the State, the petition shall

not be filed until security for costs, by deposit of money or otherwise, has been given to the satisfaction of the Registrar.

Provided that where the petition is filed through a legal practitioner, an undertaking by him, in 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 State and all persons whose interests may be affected by

the legitimacy declaration asked for, and the Court may at any time 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 that purpose on

such terms as to costs or otherwise as may be just.

7. The petition shall be accompanied by an affidavit made by the petitioner, or by an affidavit made or by his next friend

(if any) verifying the facts of which he has personal knowledge and deposing as to his belief in the truth of the other facts

alleged in the petition, and the affidavit shall be filed with the petition.

8. (1) There shall be filed with the petition as many copies of the petition and the affidavit as there are respondents to be

served and also two copies for the use of the Court.

(2) There shall be lodged with the petition every birth, death or marriage certificate intended to be relied upon at the

hearing.

9.(1) A copy of the petition and a copy of the affidavit shall be delivered or sent by registered post by the petitioner to

the Attorney General at least two months before the petition is presented or file.

(2)Any document or notice address to the Attorney-General shall be addressed to him at Attorney-General's Chambers, Ministry

of Justice, Kano.

10.(1) A sealed copy of the petition and affidavit shall, unless the Court otherwise directs, be served by a bailiff or by a

police constable fifty-six days at least before the hearing on every respondent (other than the Attorney-General) personally

and the petition and every copy to be served on a respondent (other than the Attorney-General) shall be endorsed with a

notice in the prescribed form.

(2) At least fifty-six days' notice of the day whereon the petition will first be heard shall be given by the Registrar to

the Attorney-General.

11.(1) A respondent may within twenty-eight days after service of the petition upon him file an answer to the petition.

(2) Every answer which contains matter other than a simple denial of the facts stated in the petition shall be accompanied by

an affidavit made by the respondent verifying such other matter as far as he has personal knowledge thereof, and deposing to

his belief in the truth of the rest of such other matter.

(3) There shall be filed with the answer as many copies of the answer and the affidavit (if any) as there are other parties

to be served and also two copies for the use of the Court.

(4) The Registrar shall within forty-eight hours of receiving them send by post one sealed copy of the answer and the

affidavit (if any) to the petitioner, the Attorney-General, and any other respondent.

12.Evidence on the hearing of the petition shall be given orally:

Provided that the Court or a Judge in Chambers may, on application made before or at the hearing, for good cause shown,

direct that any particular fact or facts alleged in the petition or answer may be proved by affidavit.

13.The Court may make such orders as to costs as it shall think just.

14.A copy of the order made on the hearing of a petition sealed with the seal of the Court shall be supplied by the Registrar

to any party to the proceedings on payment of the prescribed fee.

ORDER 52

PROCEEDINGS IN FORMA PAUPERIS

1.The provisions of this Order shall remain in force until statutory provisions are made for legal aid in connection with

civil proceedings before the Court and thereupon shall cease to have effect.

2. The Court or a Judge in Chambers may admit a person to sue or depend 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 depending as the case may be.

3. (l)The application shall, if the Court or a Judge in Chambers so directs, be accompanied by an affidavit signed and sworn

by the applicant himself stating that the applicant satisfied the requirements of rule 2 as to his means, and setting forth

all the material facts on which he relies in his desire to sue or depend, distinguishing between those which are within his

personal knowledge and those which he bases on information and belief, and in the latter case, setting forth the sources of

his information and belief.

(2) If the application is, in the opinion of the Court or a Judge in Chambers, worthy of consideration, it shall be referred

to a legal practitioner willing to act, and unless such legal practitioner shall certify 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.

4.Court fees payable by a person admitted to sue or defend in forma pauperis may be remitted either in whole or in part as to

the Court or a Judge in Chambers may seem right; and a person so admitted to sue or defend shall not, unless the Court

otherwise orders be liable to pay or be entitled to receive any costs.

5. On granting the application the Court or a Judge in Chambers may assign to the applicant any legal practitioner willing to

be so practitioner assigned, and any legal practitioner so assigned shall not be discharged by the applicant except with

leave of the Court or of a Judge in Chambers.

6.(1) Neither the legal practitioner whose opinion is sought nor the legal practitioner assigned to the applicant nor any

other person shall, except by leave of the Court, or of a Judge in Chambers, take or agree to take or seek to obtain any

payment whatsoever from the applicant or any other person in connection with the application or the action taken or defended

thereunder.

(2) If the applicant pays or agrees to pay money to any person whatsoever in connection with his application or the action

taken or defended thereunder, his application shall be refused or, if already granted, the order granting it shall be

rescinded.

(3) If the legal practitioner assigned to the applicant discovers that the applicant is possessed of means beyond those

stated in the affidavit, if any, he shall at once report the matter in writing to the Registrar.

7.(1) The Court or a Judge in Chambers may at any time revoke the order granting the application, and thereupon the applicant

shall not be entitled to the benefit of this provision in any proceedings to which the application relates unless otherwise

ordered.

(2) Neither the applicant nor the legal practitioner assigned to him shall discontinue, settle or compromise the action

without the leave of the Court or a Judge in Chambers.

8. The Court may order payment to be made to the legal practitioner assigned out of any money recovered by the applicant, or

may charge in favour of the legal practitioner assigned, upon any property recovered by the applicant, such sum as in all the

circumstances may seem fit.

NOTE

It will not be necessary for you to enter an appearance in the High Court Registry but if you do not attend either in person

or by your legal practitioner, at the time and place above mentioned (or at the time mentioned in the endorsement hereon),

such order will be made and proceedings taken as the Judge may think just and expedient.

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 pauperies except by leave of the trial or the appellate court, and then

only on grounds of law; but if so permitted the provisions of this Order shall apply mutatis mutandis to all proceedings on

the appeal.

ORDER 53#@@

COSTS

Security for costs

1.(1)Where, on the application of the defendant to an action or other proceeding in the Court it appears to the Court—

(a)that the plaintiff is ordinarily resident out of jurisdiction; or

(b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing

for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the

defendant if ordered to do so; or

(c)that subject to paragraph (2), that the plaintiff's address is not stated in the writ or other originating process or is

incorrectly stated therein; or

(d) that the plaintiff has changed his address during the course or the proceedings with a view to evading the consequences

of the litigation,

then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to

give such security for the defendant's costs of the action or other proceeding as it thinks just.

(2)The Court shall not require a plaintiff to give security by reason only of paragraph (1) (c) if he satisfies the Court

that the failure to state his address or the misstatement thereof was made innocently and without intention to deceive.

(3) The references in the foregoing rule to a plaintiff and a defendant shall be construed as references to the person

(howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding

in question, including a proceeding on a counter-claim.

2. Where an order is made requiring any party to give security for costs, the security shall be given in such manner, at such

time and on such terms (if any), as the Court may direct.

Costs Between Patty and Party.

3. In every suit the costs of the whole suit, and of each particular proceeding therein, and the costs of every proceeding in

the Court, shall be in the discretion of the Court as regards the person by whom they are to be paid.

4. The 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, notwithstanding his success in the suit, to pay the costs of any

particular proceeding therein.

5. The Court may order any Costs to be paid out of any fund or property to which a suit or proceedings relates.

6. When the Court adjudges or orders any 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, and named therein.

7. In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for

the expenses to which he has been necessarily put in establishing his fixing costs, claim, defence or counter-claim, but the

Court may take into account

all the circumstances of the case.

8.Where the Court orders costs to be paid, or security to be given for costs by any party, the Court may, if it thinks fit,

order all proceedings by or on behalf of that party in the same suit or proceedings, or connected therewith, to be stayed

until the costs are paid or security given accordingly, but such order shall not supersede the use of any other lawful method

of enforcing payment.

9. When the Court deems it to be impracticable to determine Taxation of summarily the amount of any costs which it has

adjudged or ordered to be paid, all questions relating thereto may either be determined upon taxation by the Court itself or

may be referred by the Court to a taxing master and be ascertained by him and approved by the Court.

10. Upon any taxation of costs, the taxing master may, in determining the remuneration to be allowed, have regard, subject to

any rule of Court, to the skill, labour and responsibility involved.

11.In taxation of costs between party and party, nothing shall Taxation, be allowed in respect of fees paid to the Court

beyond what was necessary having regard to the amount recovered on judgement.

12.If upon the taxation of any bill of costs more than one-sixth of is deduced from the amount claimed, the Court may either

make no of bill of costs 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.

13. Where a plaintiff is successful in any 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 involved to the parties to the action if it had been taken in such

inferior tribunal and may, in its discretion, grant to the successful plaintiff modified costs or no costs and may grant to

any other party such extra costs as the Court is satisfied 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 54

FEES AND ALLOWANCES

1.Subject to the provisions of any written law and of the foregoing Orders—

(1) The fees set out in the First, Second, Third, Fourth and Fifth Schedules hereunder shall be payable by any person

commencing the respective services for which they are specified in those Schedules. ...

(2) The allowances set out in Part II of the Fifth Schedule shall be payable to the various categories of witnesses mentioned

therein by any person at whose instance they testify.

(3)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 Sixth Schedule shall be observed by all officers of Court concerned with the rendering of

services, and of collection of fees payable, under the provisions of the foregoing Orders.