

## **SCHEDULE**

### **HIGH COURT OF RIVERS STATE**

#### **CIVIL PROCEDURE RULES**

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#### ORDER 1

## APPLICATION AND INTERPRETATION

1 (1) These Rules shall apply to all proceedings including all par causes and matters.

(2) In respect of causes and matters already pending, the rules shall apply to every further step to be taken in respect of such causes and matters.

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

2. In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the following meanings, as the case may be.

"Claimant" shall include a claimant in a counter-claim;

"Court" means the High Court of Rivers State;

"Court Process" or "Process" includes writ of summons, originating summons, originating process, notices, petitions, pleadings, orders, motions, summons, warrants and all documents or written communication of which service is required;

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

"Defendant" shall include a defendant to a counter-claim;

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

"Law" means the High Court Law, Cap. 62 Laws of Rivers State, 1999 or any re-enactment thereof;

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

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

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

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

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

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

"Taxing Officer" means the Chief Registrar or such other officer of the Court as the Chief Judge may appoint to tax costs.

These Rules may be cited as the Rules of the High court 2010 and shall come into force on the 1<sup>st</sup> day of September, 2010.

## ORDER 2

### PLACE OF INSTITUTING AND TRIALS OF SUITS

1. All suits relating to land or any mortgage or charge on or any other interest or injury to land and also all actions relating to personal property distrained or seized for any cause, shall be commenced and determined in the Judicial Division in which the land is situated, or the distraint or seizure took place.
2. All actions for recovery of penalties, forfeitures, and 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, or upon the breach of any contract, may 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. (1) All other suits may be commenced and determined in the Judicial Division in which the defendant resides or carries on business or in which the cause of action arose.  
  
(2) Where there are several defendants who reside or carry on business in different Judicial Divisions, the suit may be commenced in anyone of those Judicial Divisions subject to any order or direction a Judge may make or give as to the most convenient arrangement for trial of the suit.
5. (1) If any suit is commenced in the wrong Judicial Division, it may be tried in that Division unless the Chief Judge otherwise directs.  
  
(1) A suit commenced in a Judicial Division may be determined in another Judicial Division by the same Judge on the directive of the Chief Judge.

## ORDER 3

### FORM AND COMMENCEMENT OF ACTION

1. Subject to the provisions of these rules or any applicable law requiring any proceedings to be begun by originating summons, originating motion or petition, a writ of summons shall be the form of commencing all proceedings:
  - (a) where a claimant claims:
    - (i) any relief or remedy for any civil wrong or
    - (ii) damages for breach of duty, whether contractual, statutory or otherwise, or
    - (iii) damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or property.
  - (b) where the claim is based on or includes an allegation of fraud, or

(c) where an interested person claims a declaration.

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

(a) statement of claim;

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

(c) written statements on oath of the witnesses; provided that in the case of a witness under subpoena a witness summary shall be sufficient.

In this rule witness summary means:

(i) Evidence if known which would otherwise be included in a witness statement, or

(ii) if the evidence is not known, the matters about which the part serving the witness summary proposes to question the witness.

(d) copies of every document to be relied on at the trial; provided that dispute survey plans need not be filed at the commencement of the suit, but shall be filed within such time as may be ordered by the Court upon any application made under sub rule 2 of this rule.

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

(3) where a claimant fails to comply with Rule 2 (1) above, his originating process shall not be accepted for filing by the Registry.

3. Except in the cases in which any different forms are provided in these rules, the writ of summons shall be in Form 1 with such modifications or variations as circumstances may require.

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

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

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

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

8. (1) An originating summons shall be in the Forms 3, 4 or 5 to these Rules, with such variations as circumstances may require. It shall be prepared by the applicant or his Legal Practitioner, and shall be signed, stamped and filed in the Registry, and when so signed, stamped and filed shall be deemed to be issued.

(2) An originating summons shall be accompanied by;

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

(b) all the exhibits to be relied upon;

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

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

9. Where the defendant is challenging the jurisdiction of the court to entertain the suit, he may apply to the court for an order striking out the suit or setting aside the proceeding.

10. The preliminary objection shall be by motion on notice and filed with the counter affidavit to the main suit.

11. On the hearing date, the preliminary objection shall be heard with the main suit.

12. The court after hearing the application may make an order:

(a) striking out the suit for want of jurisdiction, or

(b) setting aside the service of the originating summons.

13. Where the court does not decline jurisdiction, it shall proceed to give its judgment on the substantive suit.

14. Subject to the provisions of the Sheriffs and Civil Process Act, a writ of summons or other originating process issued by the Court for service in Nigeria outside Rivers State shall be endorsed by the Registrar of the Court with the following notice:

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

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

(2) An originating process shall not be altered after it is signed and stamped except upon application to a Judge.

#### ORDER 4

#### INDORSEMENT OF CLAIM AND OF ADDRESS

1. Every originating process shall contain the claim, the relief or remedy sought and the full names and address of the claimant.

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

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

4. (1) Where the claim is for debt or liquidated demand only, the originating process shall state the amount claimed for debt or in respect of such demand with costs and shall further state that the

defendant may pay the amount with costs to the claimant's Legal Practitioner within the time allowed for appearance and that upon such payment the proceedings shall terminate.

(2) The defendant may notwithstanding payment under this rule, have the costs taxed and if more than one sixth of the costs shall be disallowed, the claimant's Legal Practitioner shall pay the costs of taxation.

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

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

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

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

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

#### ORDER 5

##### EFFECT OF NON-COMPLIANCE

1. (1) Where at any stage in the course of or in connection with any proceedings there has by reason of anything done or left undone been a failure to comply with the requirements as to time, place, manner, or form, the failure shall be treated as an irregularity and may not nullify such step taken in the proceedings. The Judge may give any direction as he thinks fit to regularise such steps;

(2) The Judge shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed.

2. (1) An application to set aside for irregularity any step taken in the course of any proceedings may be allowed where it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) An application under this Rule may be made by summons or motion and the grounds of objection shall be stated in the summons or notice of motion.

#### ORDER 6

##### ISSUANCE OF ORIGINATING PROCESS

1. Originating process shall be prepared by a claimant or his Legal Practitioner, and shall be clearly printed on good quality white opaque paper.
2. (1) The Registrar shall sign and stamp every originating process whereupon it shall be deemed to be issued.  
  
(2) A claimant or his Legal Practitioner shall, on presenting any originating process for signing and stamping, leave with the Registrar as many copies of the process as there are defendants to be served and one copy for endorsement of service on each defendant.  
  
(3) Each copy shall be signed and stamped by the Legal Practitioner or by a claimant where he sues in person and shall be certified after verification by the Registrar as being a true copy of the original process filed.
3. The Registrar shall after signing and stamping an originating process, file it and note on it the date of filing and the number of copies supplied by a claimant or his Legal Practitioner for service on the defendants. The Registrar shall then make an entry of the filing in the Cause Book and identify the action with a suit number that may comprise abbreviation of the Judicial Division, a chronological number and the year of filing.
4. The Registrar shall promptly arrange for personal service on each defendant of a copy of the originating process and accompanying documents duly certified as provided by Rule 2 (3) of this Order.
5. The originating process in probate actions shall be accompanied by an affidavit sworn to by a claimant or one of several claimants verifying the contents of the process.
6. (1) The life span of every originating process shall be 6 months.  
  
(2) If a Judge is satisfied that it has proved impossible to serve an originating process on any defendant within its life span and a claimant applies before or after its expiration for renewal of the process, the Judge may renew the original or concurrent process for 3 months from the date of such renewal. A renewed originating process shall be in Form 6 with such modifications or variations as circumstances may require.
7. A Judge may order two renewals in each case strictly for good cause and upon prompt application, provided that no originating process shall be in force for longer than a total of 12 months. The Registrar shall state the fact, date, and duration of renewal on every renewed originating process.
8. Where an originating process is lost, and a copy of it exists, the Judge may, upon being satisfied of the correctness of the copy, make an order that the existing copy be filed, signed and stamped in place of the lost originating process.
9. A claimant may at the issuance of an originating process or at any time during its life span, cause to be issued one or more concurrent originating processes each of which shall bear the same date as the initial process marked 'CONCURRENT' and have stated on it the date of issue.
10. An originating process for service within jurisdiction may be issued and marked as a concurrent originating process with one for service out of jurisdiction and an originating process for service out of jurisdiction may be issued and marked as a concurrent originating process with one for service within jurisdiction.

## ORDER 7

### SERVICE OF PROCESS

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

(2) A person given the responsibility of serving court processes under sub-rule 1 of this Rule shall be called a process server.

(3) Where a party is represented by a Legal Practitioner service of court process of which personal service is not required may be made on such Legal Practitioner or on a person under his control.

(4) Where parties agree, service of Court processes of which personal service is not required, may be made by electronic means.

(5) The process server shall serve an originating process by delivering to the party to be served a copy of the process duly certified as prescribed by Order 6 Rule 2 (3).

6. No personal service of an originating process shall be required where the defendant has authorised his Legal Practitioner in writing to accept service and such Legal Practitioner enters appearance.

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

All processes in respect of which personal service is not expressly required by these Rules or any applicable law shall be sufficiently served if left with an adult person resident or employed at the address for service given under Order 4 Rule 6.

(1) Where personal service of an originating process is required by these Rules or otherwise and a Judge is satisfied that prompt personal service cannot be effected, the Judge may upon application by the claimant make such order for substituted service as may seem just.

(2) Every application to the Judge for substituted service shall be supported by an affidavit setting forth the grounds upon which the application is made.

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

(2) The Judge may order that personal service

(3) The Judge may order that personal service on a person under legal disability shall be deemed good and sufficient.

7. Where a detainee or prisoner is a defendant, service on the head or other officer in-charge of the station, facility or prison where the defendant is, or officer of the agency in charge of the station, facility or prison shall be good and sufficient personal service on the defendant.

8. Where persons are sued as partners in the name of their firm the originating process shall be served upon anyone or more of the partners within the jurisdiction or upon any person having control or management of the partnership business and such service shall be deemed good service upon the firm whether any of the partners are out of the jurisdiction or not, and no leave to issue an originating process against them shall be necessary:

Provided that in the case of a partnership that has been dissolved to the knowledge of the claimant before the commencement of the action, the originating process shall be served upon every member of the dissolved partnership within the jurisdiction sought to be made liable.

9. Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process or other process requiring personal service may be served on the organisation by delivery to a director, secretary, trustee or other senior, principal or responsible officer of the organisation, or by leaving at the registered, principal or advertised office or place of business of the organisation within the jurisdiction:

Provided that where service cannot be effected as required above, the Judge may upon application by the claimant make such Order for substituted service as he deems fit.

10. (1) When the suit is against a foreign corporation or company within the meaning of Section 54 of the Companies and Allied Matters Act having an office and carrying on business within the jurisdiction, and such suit is limited to a cause of action which arose within the jurisdiction, the originating process or other documents requiring personal service may be served on the principal officer or representative of such foreign corporation or company within the jurisdiction:

Provided that where a foreign company has complied with the provision of Chapter 3 of the Companies and Allied Matters Act, personal service shall be effected on one of the persons authorised to accept service on behalf of the said company.

(2) Where service cannot be effected as required in Rule (10); the Judge may upon application by the Claimant make such order for substituted service as may seem just.

11. Where a contract has been entered into within the jurisdiction by or through an agent residing or carrying on business within the jurisdiction on behalf of a principal residing or carrying on business out of the jurisdiction, an originating process in an action relating to or arising out of such contract may, before the determination of such agent's authority or of his business relations with the principal, be served on such agent. A copy of the originating process shall be sent promptly by the claimant by a courier company registered as a process server under Rule 1 of this order, at the principal's address out of jurisdiction.

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

13. (1) After serving any process, the process server shall promptly depose to and file an affidavit setting out the fact, date, time, place, mode of service and description of the process served and shall, except in the circumstance mentioned in Rules 5, 9, 10 and 12 of this Order, exhibit the acknowledgement of service.

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

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

(2) The rate for service shall be as prescribed by the High Court Rules Committee from time to time.

15.(1) Service of originating and other processes, pleadings, notices, summons, orders, and documents whatsoever shall be effected between the hours of six in the morning and six in the evening.

(2) Save in exceptional circumstances and as may be authorised by a Judge, service shall not be affected on a Sunday or on a public holiday.

16. (1) A register shall be kept at the Registry in such form as the Chief Judge may direct for recording service of processes by any process server. The Registrar shall record therein the names of the claimant and defendant, the method of service, whether personal or otherwise, and the manner used to ascertain that the right person was served.

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

#### ORDER 8

#### SERVICE OUT OF NIGERIA AND SERVICE OF FOREIGN PROCESS

1. A Judge may allow any originating or other process to be served outside Nigeria where:

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

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

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

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

(e) the claim is 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 contract:

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

(iii) which by its terms or by implication is to be governed by the applicable law in Rivers State, or the parties have agreed that the court shall have jurisdiction to entertain any claim in respect of such contract, or is brought against the defendant in respect of a breach committed within jurisdiction, of a contract wherever made notwithstanding that such breach was preceded or accompanied by a breach out of jurisdiction which rendered impossible the performance of the contract which ought to have been performed within jurisdiction.

- (f) the claim is founded on a tort or other civil wrong committed within jurisdiction, or
- (g) an injunction is sought in respect of anything to be done within jurisdiction, or any nuisance within jurisdiction is sought to be prevented or removed, whether or not damages are sought in respect thereof, or
- (h) any person out of the jurisdiction is a necessary or a proper party to an action properly brought against some other person duly served within jurisdiction, or
- (i) the claim is by a mortgagee or mortgagor in relation to a mortgage of property situate within jurisdiction and seeks relief of the nature or kind following, that is: sale, foreclosure, delivery of possession by the mortgagor; redemption, reconveyance, delivery of possession by the mortgagee; but does not seek (unless and except so far as permissible under paragraph (e) of this Rule) any judgment or order for payment of any monies due under the mortgage, or
- (j) the proceedings relate to a person under legal disability, or
- (k) the proceedings relate to a probate matters, or
- (l) where any proceedings under any law or rule of court have been instituted by any originating process.

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

(1) Where leave is granted to serve an originating process in any foreign country with which no convention in that behalf has been made, the following procedure may be adopted:

(a) the process to be served shall be sealed with the seal of the Court for Service out of Nigeria, and shall be transmitted to the Solicitor-General of the Federation by the Chief Registrar, together with a copy translated into the language of that country if not English, and with a request for its further transmission to the appropriate authority in that country. The request shall be in Form 7 with such modifications or variations as circumstances may require;

(b) a party wishing to serve a process under this Rule shall file a praecipe in Form 8 with such modifications or variations as circumstances may require;

(c) a certificate, declaration, affidavit or other notification of due service transmitted through diplomatic channels by a court or other appropriate authority of the foreign country, to the Court, shall be deemed good and sufficient proof of service;

(d) where a certificate, declaration, affidavit or other notification transmitted as aforesaid states that efforts to serve a process have failed, a Judge may, on an ex parte application, order substituted service whereupon the process and a copy as well as the order for substituted service shall be sealed and transmitted to the Solicitor-General of the Federation together with a request in Form 9 with such modifications or variations as circumstances may require:

Provided that notwithstanding the foregoing provision a claimant may with leave of a Judge serve any originating process by courier. Nothing herein contained shall in any way affect any power of a Judge in

cases where lands, funds, choses in action, rights or property within "the jurisdiction are sought to be dealt with or affected. The Court may, without assuming 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.

4. (1) Where leave is granted or is not required in a civil suit and it is desired to serve any process in a foreign country with which a Convention in that behalf has been made, the following procedure shall, subject to any special provisions contained in the Convention, be adopted:

(a) the party desiring such service shall file in the Registry a request in Form 10 with such modifications or variations as circumstances may require and the request shall state the medium through which it is desired that service shall be effected, either:

(i) directly through diplomatic channels, or

(ii) through the foreign judicial authority.

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

(c) 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 Chief Registrar to the Permanent Secretary, Federal Ministry of Foreign Affairs for onward transmission to the foreign country;

(d) an official certificate, transmitted through the diplomatic channel by the foreign judicial authority, or by a Nigerian diplomatic agent to the Court, establishing the fact and the date of the service of the document shall be deemed to be sufficient proof of service within the requirements of these Rules.

(2) A Judge, in granting leave to serve a process out of jurisdiction under this Order, may upon request therefore in appropriate cases direct that a courier company as in Order 7 Rule 1 be used for effecting service.

6. Where in any civil cause or matter pending before a court or tribunal of a foreign country, a written request from such court or tribunal for service on any person or citation in such matter is transmitted to the Court by the Rivers State Attorney-General with intimation that it is desirable that effect be given to the same, the following procedure shall be adopted:

(a) the written request for service shall be accompanied by a translation in the English Language, and by two copies of the process or citation to be served, and two copies thereof in English Language;

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

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

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

(e) the Chief Registrar shall examine and verify the process server's particulars of charges and may approve it or approve some lesser figure, whereupon the Chief Judge shall forward to the Attorney-General a copy of the request for service, the approved amount for service, evidence of service and a certificate appended to it.

Rule 4 of this Order shall not apply to or render invalid, defective or insufficient any otherwise valid or sufficient mode of service in any foreign country with which a Convention has been made, provided that no mode of service expressly excluded by the Convention shall be allowed.

7. Where in any civil suit pending before a court or tribunal in a foreign country with which a Convention in that behalf has been made, request for service of any process or document on any person within the jurisdiction is received by the Chief Judge from the appropriate authority in that country, the following procedure shall, subject to any special provisions in the Convention, be adopted:

(a) the process server shall deliver the original or a copy thereof, along with a copy of its translation to the party to be served;

(b) the process server shall submit the particulars of the costs and expenses of service to the Chief Registrar who shall certify the amount payable in respect of the service;

(c) the Chief Registrar shall transmit to the appropriate foreign authority a certificate establishing the fact and date of service, or indicating reasons for failure to serve, and also notify the authority as to the amount certified under paragraph (b) of this rule.

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

## ORDER 9

### APPEARANCE

1. (1) A defendant served with an originating process shall, within the period prescribed in the process for appearance, file in the Registry the original and copy of a duly completed and signed memorandum of appearance as in Form 11 with such modifications or variations as circumstances may require.

(2) On receipt of the memorandum of appearance, the Registrar shall make entry thereof, sign and stamp the copy indicating the date he received it and return the signed and stamped copy to the person making the appearance.

(3) A defendant entering appearance shall not later than 5 days thereafter serve a signed and stamped copy of the memorandum of appearance on a claimant's Legal Practitioner or on the claimant if he sues in person.

2. (1) A defendant appearing in person shall state in the memorandum of appearance an address for service which shall be within Rivers State.
- (2) Where a defendant appears by a Legal Practitioner, the Legal Practitioner shall state in the memorandum of appearance his place of business and an address for service which shall be within Rivers State, and where any such Legal Practitioner is only the agent of another Legal Practitioner he shall also insert the name and place of business of the principal Legal Practitioner.
3. The Registrar shall not accept any memorandum of appearance which does not contain an address for service. If any such address is illusory, fictitious or misleading, the appearance may be set aside by a Judge on the application of a claimant.
4. If two or more defendants in the same action appear through the same Legal Practitioner the memorandum of appearance shall include the names of all defendants so appearing.
5. If a defendant files an appearance after the time prescribed in the originating process, he shall pay to the Court an additional fee as may have been approved by the High Court Rules Committee in a schedule of fees for each day of default. If the defendant appears late but within the time prescribed for filing his defence, he shall file his defence within that time.
6. In probate matters any person not named in the originating process may intervene and appear in the matter on filing an affidavit showing his interest in the estate of the deceased.
7. Any person not named as a defendant in an originating process for recovery of land may with leave of a Judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or through his tenant.
8. Any person appearing to defend an action for the recovery of land as landlord, in respect of property of which he is in possession only through his tenant, shall state in his appearance that he appears as landlord.
9. A person under legal disability shall enter an appearance by his guardian.
10. In this order the word "Tenant" includes a sub-tenant or any person occupying any premises whether on payment of rent or otherwise.

#### ORDER 10

##### DEFAULT OF APPEARANCE

1. Where no appearance has been entered for a person under legal disability, a claimant shall apply to a Judge for an order that some person be appointed guardian for such defendant and when appointed the person may appear and defend. The application shall be made after service of the originating process. Notice of the application shall be served on the person intended to be appointed the guardian of the defendant.
2. Where any defendant fails to appear, a claimant may proceed upon default of appearance under the appropriate provisions of these Rules upon proof of service of the originating process.

3. Where the claim in the originating process is a liquidated demand and the defendant or all of several defendants fail to appear, a claimant may apply to a Judge for judgment for the claim on the originating process or such lesser sum and interest as a Judge may order.

4. Where the claim in the originating process is a liquidated demand and there are several defendants of whom one or more appear to the process and another or others fail to appear, a claimant may apply to a Judge for judgment against those who have not appeared and may execute the judgment without prejudice to his right to proceed with the action against those who have appeared.

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

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

7. Where the claim in the originating process is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any of the defendants fail to appear, a claimant may apply to a Judge for judgment. The value of the goods and the damages, or the damages only as the case may be, shall be ascertained in such manner and subject to the filing of such particulars as a Judge may direct before judgment in respect of that part of the claim.

8. If no appearance is entered within the time prescribed in the originating process in a claim for recovery of land or if appearance is entered but the defence limited to part only, a claimant may apply to a Judge for judgment stating that the person whose title is asserted in the originating process shall recover possession of the land, or of that part of it to which the defence does not apply.

9. Where in an originating process for recovery of land a claimant claims mesne profits, arrears of rent, damages for breach of contract or wrong or injury to the premises, he may apply for judgment as in Rule 8 of this Order for the land, and may proceed to prove the other claims.

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

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

11. Where judgment is entered pursuant to any of the preceding Rules of this Order, a Judge may set aside or vary such judgment on such terms upon an application by the defendant. The application shall be made within 7 days, showing a good defence to the claim and a just cause for the default.

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

13. Notice of any application under this Order shall be served on the other party.

#### ORDER 11

#### SUMMARY JUDGMENT

1. Where a claimant believes that there is no defence to his claim, he shall file with his originating process the statement of claim, the exhibits, the depositions of his witnesses and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief and a written brief in respect thereof.

2. A claimant shall deliver to the Registrar as many copies of all the processes and documents referred to in Rule 1 of this Order as there are defendants.

3. Service of all the processes and documents referred to in Rule Order shall be effected in the manner provided under Order 7.

4. Where a party served with the processes and documents referred to in Rule 1 of this Order intends to defend the suit he shall, not later than the time prescribed for defence, file:

- (a) his statement of defence;
- (b) depositions of his witnesses;
- (c) exhibits to be used in his defence, and
- (d) a written brief in reply to the application for summary judgment.

5. (1) Where it appears to a Judge that a defendant has a good defence and ought to be permitted to defend the claim he may be granted leave to defend.

(2) Where it appears to a Judge that the defendant has no good defence the Judge may thereupon enter judgment for a claimant.

(3) Where it appears to a Judge that the defendant has a good defence to part of the claim but no defence to other parts of the claim, the Judge may thereupon enter judgment for that part of the claim to which there is no defence and grant leave to defend that part to which there is a defence.

6. Where there are several defendants and it appears to a Judge that any of the defendants has a good defence and ought to be permitted to defend the claim and other defendants have no good defence and ought not to be permitted to defend the former may be permitted to defend and the Judge shall enter judgment against the latter.

7. Where provision is made for written briefs under these Rules, each party shall be at liberty to advance before a Judge oral submission of not more than 10 minutes to expatiate his written brief.

#### II UNDEFENDED LIST

8. (1) Where a claimant in respect of a claim to recover a debt or liquidated money demand believes that there is no defence to his claim, he shall commence the action to recover such debt or liquidated money demand by a writ of summons marked "undefended list" and shall support the writ with an affidavit setting forth the grounds upon which the claim is based and stating that in the deponent's belief there was no defence thereto.

(2) The Writ of Summons shall be as in form 1B with such modifications or variations as circumstances may require and shall exclude compliance with Order 3 Rule 2.

9. There shall be delivered by the Claimant 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 hearing notice and forward same for assignment.

10. If the party served with the writ of summons and affidavit delivers to the Registrar, not less than five days before the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the merit the Court shall, if satisfied, remove the suit from the undefended list and place it on the General Cause List and the Claimant shall comply with Order 3 Rule 2 and the case shall proceed in the normal way.

11. Where any defendant neglects to deliver the notice of intention to defend and affidavit prescribed by Rule 10 or the affidavit does not disclose a defence on the merit and the Court is satisfied that the suit is one that ought to be heard under the Undefended List, it shall be heard as an undefended suit, and judgment given thereon, without calling upon the claimant to prove his case formally.

12. 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 11.

#### ORDER 12

##### APPLICATION FOR ACCOUNT

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

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

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

#### ORDER 13

##### PARTIES GENERALLY

1. All persons may be joined in one action as claimants in whom any right to relief is alleged to exist whether jointly or severally and judgment may be given for such one or more of the claimants as may be found to be entitled to relief and for such relief as he or they may be entitled to, without any amendment.
2. Where an action has been commenced in the name of the wrong person as claimant or where it is doubtful whether it has been commenced in the name of the right claimant, a Judge may order the substitution or addition of any other person as claimant on such terms as may be just.
3. Where in commencing an action any person has been wrongly or improperly included as a claimant and a defendant has set up a counterclaim or set-off, such defendant may establish his counterclaim or set-off as against the parties other than a claimant so included; notwithstanding the inclusion of such claimant or any proceeding based thereon.
4. Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. Judgment may be given against one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.
5. Where an action has been instituted against a wrong defendant or where the name of a defendant has been incorrectly stated, a Judge may upon application order a substitution or addition of any person as defendant or correction of any such name on any term as may be just.
6. (1) it shall not be necessary that every defendant shall be interested as to all the reliefs prayed for, or as to every cause of action included in any proceeding against him.  
(2) A Judge upon considering the defence filed by any defendant may on application by that defendant make such order as may appear just to prevent him from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.
7. A claimant may at his option join as parties to the same action all or any of the persons severally, or jointly and severally, liable on anyone contract, including parties to bills of exchange and promissory notes.
8. Where a claimant is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable and to what extent, may be determined as between all parties.
9. Persons under legal disability may sue by their guardians or defend by guardians appointed for that purpose.
10. Where any person's name is to be used in any action as guardian of a person under legal disability or other party or as relator, a written authority for that purpose signed by that person shall be filed in the Registry.
11. (1) Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate which they represent without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such person, but a Judge may, at any stage of

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

(2) This Rule shall also apply to trustees, executors and administrators in proceedings to enforce a security by foreclosure or otherwise.

12. (1) Where more persons than one have the same interest in one suit, one or more of such persons may sue or be sued on behalf of or for the benefit of all persons so interested."

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

13. (1) Where in any proceedings concerning:

(a) the administration of an estate or

(b) property subject to a trust or

(c) land held under customary law as family or community property or

(d) the construction of any written instrument, including a statute, a Judge is satisfied that:

(i) the person, the class or some members of the class interested cannot be ascertained or cannot readily be ascertained;

(ii) the person, the class or some members of the class interested if ascertained cannot be found;

(iii) though the person or the class and the members thereof can be ascertained and found;

It is expedient for the purpose of efficient procedure that one or more persons be appointed to represent that person or class or member of the class, the Judge may make the appointment. The decision of the Judge in the proceedings shall be binding on the person or class of persons so represented.

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

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

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

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

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

(b) the absent persons are represented by a person under Rule 13 of this Order who so assents;

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

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

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

(3) In default of such application or where the person substituted fails to proceed, judgment may be entered for the defendant or as the case may be, for the person against whom the proceedings might have been continued.

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

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

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

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

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

17. (1) Any application to add or strike out or substitute or vary the name of a claimant or defendant may be made to a Judge by motion.

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

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

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

All parties in the action shall also amend all pending processes and serve the same on the new defendant.

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

(2) The order and existing processes shall be served on the Third Party within the time prescribed for delivering the defence.

20. Where a party is joined to any proceeding as a Third Party he may after service enter appearance within 8 days or within 30 days if he resides or carries on business outside jurisdiction or within such further time as a Judge may order.

21. If a Third Party duly served with the order and all existing processes does not enter an appearance or makes default in filing any pleading, he shall be deemed to admit the validity of and shall be bound by any judgment given in an action, whether by consent or otherwise.

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

23. A Defendant may in his pleading make a claim against a co- defendant.

24. Actions against Firms and Persons carrying on Business in names other than their own.

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

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

(2) Where the claimants or their Legal Practitioner fail to comply with such demand, the action may upon an application for that purpose, be struck out or dismissed as the Judge may consider appropriate.

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

(1) Where persons are sued as partners in the name of their firm, they may enter appearance individually in their own names; but all subsequent proceedings shall continue in the name of the firm.

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

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

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

28. Change of Parties by Death or Otherwise, etc.

29. No proceedings shall abate by reason of death or bankruptcy of any of the parties, if the cause of action survives and shall not become defective by the assignment, creation or devolution of any estate or title pendente lite, and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the finding on issues of fact and judgment, but judgment may in such case be entered notwithstanding the death.

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

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

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

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

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

32. Where any person who is under no legal disability or being under any legal disability but having a guardian in the proceedings is served with an order under Rule 30, such person may apply to a Judge to discharge or vary such order at any time within 14 days from the service of the order.

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

#### IV. Legal Practitioners or Agents

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

#### ORDER 14

##### JOINDER OF CAUSES OF ACTION

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

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

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

3. Claims by or against an executor or administrator as such may be joined with claims by or against him personally provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the claimant or defendant sues or is sued as executor or administrator.

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

#### ORDER 15

##### PLEADINGS GENERALLY

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

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

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

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

2. (1) Every pleading shall contain a statement in summary form of the material facts on which the party pleading relies for his claim or defence as the case may be but not the evidence by which they are to be proved and shall, when necessary, be divided into paragraphs, numbered consecutively.

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

(3) Pleadings shall be signed by a Legal Practitioner, or by the party if he sues or defends in person.

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

3. (1) In all cases in which the party pleading relies on any misinterpretation, 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 claimant alleges that the words or matter complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matter: on which he relies in support of his allegation.

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

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

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

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

7. (1) All grounds of defence or reply which make an action or counterclaim not maintainable or if not raised will take the opposite party by surprise or will raise issues of facts not arising out of the preceding pleadings shall be specifically pleaded.

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

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

9. A party may by his pleadings join issues upon the pleadings of the opposing party and such joinder of issues shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined except any fact which the party may be willing to admit.
10. Wherever the contents of any documents are material it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the documents or any part thereof are material.
11. Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice or the circumstances from which such notice is to be inferred are material.
12. Wherever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. If in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.
13. A party may not allege in any pleadings any matter 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 had first been specifically denied.
14. In every case in which the cause of action is a stated or settled account the same shall be alleged with particulars but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings.
15. No technical objection shall be raised to any pleading on the ground of any alleged want of form.
16. A Judge may at the pre-trial conference in any proceedings order to be struck out or amended, any matter in any indorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the action; and may in any such case, if the Judge shall deem fit, order costs of the application to be paid as between Legal Practitioner and client.
17. (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) 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 claimant shall, if he intends to allege that the defendant was actuated by express malice, deliver a reply giving particulars of the facts and matters which such malice is to be inferred.  
(3) Where in an action for libel or slander the defendant alleges that in so far as the words complained of consist of statement of fact, they are true in substance and in fact, and in so far -as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he shall give particulars stating which of the facts and matters he relies on in support of the allegation that the words are true.

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

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

(b) It may prejudice, embarrass or delay the fair trial of the action or and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

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

(3) This Rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

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

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

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

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

#### ORDER 16

#### STATEMENT OF CLAIM

1. (1) Every statement of claim or counterclaim shall state specifically the relief claimed either singly or in the alternative, and it shall not be necessary to ask for general or other relief, which a Judge may think just.

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

2. Where a statement of claim is filed, the claimant may alter, modify or extend his claim without any amendment of the indorsement of the writ:

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

#### ORDER 17

## DEFENCE AND COUNTERCLAIM

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

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

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

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

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

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

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

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

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

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

#### ORDER 18

#### REPLY

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

2. Where a counterclaim is pleaded, a reply thereto is called a defence to counterclaim and shall be subject to the Rules applicable to defences.

## ORDER 19

### ADMISSIONS

1. 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 facts of the case of any other party.
2. (1) Either party may, not later than 7 days before the first pre-trial conference, by notice in writing filed and served, require any other party to admit any document and the party so served shall not later than 4 days after service give notice of admission or non-admission of the document, failing which he shall be deemed to have admitted it unless a Judge otherwise orders.  
(2) When a party decides to challenge -the authenticity of any document, he shall not later than 7 days of service of that document give notice that he does not admit the document and requires it to be proved at the trial.  
(3) Where a party gives notice of non-admission and the document is proved at the trial, the cost of proving the document, which shall not be less than a sum of five thousand naira, shall be paid by the party who has challenged it, unless at the trial or hearing, the Judge shall certify that there were reasonable grounds for not admitting the authenticity of the document.
3. (1) Either party may not later than 7 days before the first pre-trial conference by notice in writing filed and served require any other party to admit any specific fact or facts mentioned in the notice, and the party so served shall not later than 4 days after service, give notice of admission or non-admission of the fact or facts failing which he shall be deemed to have admitted it unless a Judge otherwise orders.  
(3) Any admission made pursuant to such notice shall be deemed to be made only for the purposes of that particular proceedings and not as an admission to be used against the party or any other party than the party giving the notice.  
(4) Where there is a refusal or neglect to admit the same within 4 days after service of such notice or within such further time as may be allowed by the Judge, the cost of proving such fact or facts which shall not be less than a sum of five thousand naira, shall be paid by the party so refusing or neglecting, whatever the result of the proceedings, unless the Judge certifies that the refusal to admit was reasonable or unless the Judge at any time otherwise orders or directs.
4. The Judge may, on application, at a pre-trial conference or at any other stage of the proceedings where admissions of facts have been made, either on the pleadings or otherwise, make such orders or give such judgment as upon such admissions a party may be entitled to, without waiting for the determination of any other question between the parties.
5. Where a notice to admit or produce comprises documents that are not necessary, the costs occasioned thereby which shall not be less than five thousand naira shall be borne by the party giving such notice.

## ORDER 20

### DEFAULT OF PLEADING

1. If the claim is only for a debt or liquidated demand, and the defendant does not within the time allowed for the purpose, file a defence, the claimant may, at the expiration of such time, apply for final judgment for the amount claimed with costs.
2. When in any such action as in Rule 1 of this Order there are several defendants, if one of them makes default as mentioned in Rule 1 of this Order, the claimant may apply for final judgment against the defendant making default and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.
3. If the claimant's claim be for pecuniary damages or for detention of goods with or without a claim for pecuniary damages only, and the defendant or all the defendants, if more than one, make default as mentioned in Rule 1 of this Order, the claimant may apply to a Judge for interlocutory judgment against the defendant or defendants and the value of the goods and the damages, or the damages only as the case may be, shall be ascertained in any way which the Judge may order.
4. When in any such action as in Rule 3 of this Order there are several defendants, if one or more of them make default as mentioned in Rule 1 of this Order, the claimant may apply to a Judge for interlocutory judgment against the defendant or defendants so making default and proceed with his action against the others. In such case the value and amount of damages against the defendant making default shall be assessed at the trial of the action or issues therein against the other defendants, unless the Judge shall otherwise order.
5. Where the claim is for debt or liquidated demand and also for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any defendant makes default as mentioned in Rule 1, the claimant may apply to a Judge for final judgment for the debt or liquidated demand, and may also apply for interlocutory Judgment for the value of the goods and damages, or the damages only as the case may be, and proceed as mentioned in Rules 3 and 4.
6. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 1, the claimant may apply for a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land with his costs.
7. Where the claimant has indorsed a claim for mesne profit or arrears of rent in respect of the premises claimed, or any part of them, or damages for breach of contract or wrong or injury to the premises claimed upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 1, or if there be more than one defendant, some or one of the defendants makes such default, the claimant may apply for final judgment against the defaulting defendant or defendants and proceed as mentioned in Rules 3 and 4.
8. If the claimant's claim is for a debt or liquidated demand or for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, or for any such matters, or for the recovery of land, and the defendant files a defence which purports to offer an answer to part only of the claimant's alleged cause of action, the claimant may apply for judgment, final or interlocutory, as the case may be, for the part unanswered:
9. Provided that the unanswered part consists of a separate cause of action or is severable from the rest, as in the case of part of a debt or liquidated demand:

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

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

10. Where in any such action as mentioned in Rule 9 of this Order, there are several defendants, if one of such defendants makes such default as aforesaid, the claimant may apply for judgment against the defendant so making default, and proceed against the other defendants.

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

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

#### ORDER 21

##### PAYMENT INTO AND OUT OF COURT

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

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

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

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

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

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

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

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

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

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

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

3. If the whole of the money in court is not taken out under Rule 2, the money remaining in court shall not be paid out except in satisfaction of the claim or specified cause or causes of action in respect of which it was paid in pursuance of an order of a Judge which may be made at any time before, at or after trial.

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

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

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

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

against the defendant who has made such payment in accordance with Rule 2(3) of this Order and the action shall abate against that defendant.

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

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

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

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

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

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

#### ORDER 22

##### PROCEEDINGS IN LIEU OF DEMURRER

1. No demurer shall be allowed.

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

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

#### ORDER 23

##### DISCONTINUANCE

(1) The claimant may at any time before receipt of the defence or after the receipt thereof, before taking any other proceeding in the action, by notice in writing duly filed and served, wholly discontinue

his claim against all or any of the defendants or withdraw any part or parts of his claim. He shall thereupon pay such defendant's costs of the action, or if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn.

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

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

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

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

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

#### ORDER 24

#### AMENDMENT

1. A party may with leave of Court amend his processes at anytime before Judgment.

2. Application to amend may be made to a Judge. Such an application shall be supported by an exhibit of the proposed amendment and may be allowed upon such terms as to costs or otherwise as may be just

3. Where any originating process, pleading or other process is to be amended a list of any additional witness to be called together with his written statement on oath and a copy of any document to be relied upon consequent on such amendment, shall be filed with the application.

4. If a party who has obtained an order to amend does not amend accordingly within the time limited for that purpose by the order or if no time is thereby limited then within 7 days from the date of the order, such party shall pay an additional fee as the High Court Rules Committee may fix in a schedule of fees payable in court for each day of default.

5. Whenever any originating process, pleading or other process is amended, a copy of the document as amended shall be filed in Registry and additional copies served on all the parties to the action.

6. Whenever any originating process, pleading or other process is amended, it shall be marked in the following manner:

"Amended day of pursuant to Order of (name of Judge) dated the day of"

7. A Judge may at anytime correct clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission upon application without an appeal being filed.

8. Subject to the provisions of Rule 1 of this Order, a Judge may at any time and on such terms as to costs or otherwise as may be just, amend any defect or error in any proceedings and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

#### ORDER 25

#### PRE-TRIAL CONFERENCE AND SCHEDULING

(1) Within 14 days after close of pleadings, the claimant shall apply to the Registrar for the issuance of a pre-trial conference Notice as in Form 17.

(2) (i) Upon application by a claimant under sub-rule 1 above, the Registrar shall cause to be issued to the parties and their Legal Practitioners (if any) a pre-trial conference notice as in Form 17 accompanied by a pre-trial information sheet as in Form 18 for the purposes set out hereunder:

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

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

(c) promoting amicable settlement of the case or adoption of alternative dispute resolution.

(ii) All parties shall, not later than 7 days before the first pre-Trial conference, file and serve on all parties answers to the Pre-Trial information questions.

(3) If the claimant does not make the application in accordance with sub-rule 1 of this Rule, the defendant(s) may do so within 14 days or apply for an order to dismiss the action.

(4) (i) If neither the claimant nor the defendant makes an application in accordance with sub-rules 1 and 3 of this Rule, the Registrar shall by a certificate to the Judge notify the Judge of the fact.

(ii) The Judge upon receipt of the certificate of the Registrar shall cause the case to be listed for striking out and the parties to the case shall be so notified.

(5) (i) Upon the case coming up for striking out, the Judge shall strike out the case unless good cause be shown why the case should not be struck out.

(ii) A claimant who does not want his case to be struck out under paragraph (i) of this Rule shall file in court within 3 days of the service upon him of the notice of striking out, an application containing the reasons for his failure to comply with sub-rule 1 or sub-rule 3 as the case may be of this Rule.

2. At the pre-trial conference, the Judge shall enter a scheduling Order for:

(a) joining other parties;

(b) amending pleadings or any other processes;

(c) filing motions;

(d) further pre-trial conferences;

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

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

- (a) formulation and settlement of issues;
- (b) amendments and further and better particulars;
- (c) the admissions of facts, and other evidence by consent & the parties;
- (d) control and scheduling of discovery, inspection and production of documents;
- (e) narrowing the field of dispute between expert witnesses, by their participation at pre-trial conference or in any other manner;
- (f) hearing and determination of objections on points of law;
- (g) giving orders or directions for separate trial of a claim, counterclaim, set-off, cross-claim or third party claim or of any particular issue in the case;
- (h) settlement of issues, inquiries and accounts under Order 27;
- (i) securing statement of special case of law or facts under Order 28;
- (j) determining the form and substance of the pre-trial order;
- (k) referring the matter for amicable settlement or Alternative Dispute Resolution; and
- (l) such other matters as may facilitate the just and speedy disposal of the action.

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

5. After a pre-trial conference or series of pre-trial conferences, the Judge shall issue an order giving direction for further proceedings in the matter. The order shall guide the subsequent course of the proceedings unless modified by the trial Judge.

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

- (a) in the case of the claimant dismiss the claim; or
- (b) in the case of a defendant enter final judgment against him.

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

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

(2) Where on application, a case comes before a Judge before the close of pleading the Judge may upon the close of pleading fix a date for pre-trial conference notwithstanding the provisions of Rule 1 above.

## ORDER 26

### DISCOVERY AND INSPECTION

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

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

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

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

5. Interrogatories shall be answered by affidavit to be filed within 7 days, or within such other time as the Judge may allow. Two copies of the affidavit in answer shall be supplied to the Registrar.

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

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

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

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

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

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

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

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

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

(3) Where, on a request or application for inspection, privilege is claimed for any document, the Judge may inspect the documents for the purpose of deciding the validity of the claim of privilege.

(4) The Judge may, suo motu or on application, and whether or not an affidavit of documents has already been ordered or made, make an order requiring any party to state by affidavit whether any particular document or documents, or any class or classes of documents is or are or has or have at any time been in the possession, custody, power or control, of that party when that party parted with the same and what has become of same.

(5) The Judge may, suo motu or otherwise, at pre-trial conference, order or direct or require a party (including a defendant who is not disputing the claim or otherwise defending) a counsel, a witness or a prospective witness, or even a non party, to answer such interrogatories and furnish such discovery and inspection as the Judge may direct, in the interest of justice.

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

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

13. Any party may, at the trial of a cause, matter or issue, use in evidence anyone or more of the answers or any part of an answer of the opposite.

14. Party to interrogatories without putting in the others or the whole of such answer;

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

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

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

#### ORDER 27

#### ISSUES, INQUIRIES, ACCOUNTS AND REFERENCES TO REFEREES

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

(2) If the parties differ on or fail to define and file the issues the pre-trial Judge may settle the issues.

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

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

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

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

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

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

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

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

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

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

(b) vary the report:

(c) require an explanation from him;

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

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

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

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

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

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

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

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

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

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

13. If it shall appear to the Judge that there is any undue delay in the prosecution of any proceedings under this Order, the Judge may require the party having the conduct of the proceedings under this Order or any other party to explain the delay and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof and as to the costs of the proceedings as the circumstances of the case may require, and for the purposes aforesaid any party may be directed to summon the persons whose attendance is required and to conduct any proceeding and carry out directions which may be given.

14. Reference to a Referee under this Order includes a reference to an alternative dispute resolution body ordered by the Court.

#### ORDER 28

##### SPECIAL CASE

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

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

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

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

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

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

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

#### ORDER 29

##### CAUSE LISTS

1. (1) The Registrar shall keep a list (hereinafter called the Pre-Trial List) of actions directed to be set down for pre-trial conference under Order 25 Rule 3.

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

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

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

3. Where any Friday is a public holiday, the Pre-Trial and Weekly Cause List shall be posted up on the day last preceding which is not a public holiday.

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

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

#### ORDER 30

#### TRIAL PROCEEDINGS

1. When a cause on the Weekly Cause List has been called for hearing and neither party appears, the Judge shall, unless he sees good reason to the contrary, strike the cause out.

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

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

4. (1) Where a cause is struck out under Rule 1 of this Order either party may apply that the cause be restored on the cause list on such terms as the Judge may deem fit.

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

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

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

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

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

8. The party on whom the burden of proof lies by the nature of the issues or questions between the parties shall begin.
9. Documentary evidence shall be put in and may be read or taken as read by consent.
10. (1) A party who desires to call any witness not being a witness whose deposition on oath accompanied his pleading shall apply to the Judge for leave to call such witness.  
(2) An application for leave in sub-rule 1 above shall be accompanied by the deposition on oath of such witness.
11. (1) A party shall close his case when he has concluded his of evidence. Either the claimant or defendant may make oral application to have the case closed.  
(2) Notwithstanding the provisions of sub-rule 1 above, the Judge may suo-motu where he considers that either party fails to conclude his case within a reasonable time, close the case for the party.
12. (1) The Registrar shall take charge of every document or object put in as 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 exhibits is proved) and with a number, so that all the exhibits put in by a party (or proved by a witness) are numbered in one consecutive series.  
(2) The Registrar shall cause a list of all the exhibits in the action to be made.  
(3) The list of exhibits when completed shall form part of the record of the action.  
(4) For the purpose of this Rule a bundle of documents may be treated and counted as one exhibit.  
(5) In this Rule a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.
13. When the party beginning has concluded his evidence, the Judge shall ask the other party if he intends to call evidence. If the other party does not intend to call evidence, the party beginning shall within 21 days after close of evidence file a written address. Upon being served with the written address, the order party shall within 21 days file his own written address.
14. Where the other party calls evidence he shall within 21 days after the close of evidence file a written address.
15. Upon being served with other party's written address the party beginning shall within 21 days file his own written address.
16. The party who files the first address shall have a right of reply on points of law only. The reply shall be filed within 7 days after service of the other party's address.
17. (1) An exhibit shall not be released after trial to the person who has put it in unless the period during which notice of appeal may be given has elapsed without such notice having been given, and then only if the trial Judge (or in his absence, another Judge) grants leave to release such exhibit on being satisfied:

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

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

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

18. (1) Any party may apply for and on payment of the prescribed fee obtain 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 an office copy of the list of exhibits shall be included amongst the documents supplied for the purpose of the appeal.

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

#### ORDER 31

#### FILING OF WRITTEN ADDRESS

1. This order shall apply in all causes and matters where written addresses are required.

2. A written address shall be printed on good quality white opaque paper and set out in paragraphs numbered serially and shall contain:

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

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

(iii) the issue arising from the evidence; and

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

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

4. Oral argument of not more than twenty (20) minutes on the written address filed shall be allowed for each party. Provided that if any party or legal practitioner appearing for him does not appear to present the oral argument then the application or case or matter shall be treated as having been argued on the basis of the written address and shall be considered as such.

5. Each party shall file copies of his written address in court and shall serve a copy thereof on every party.

6. Unless the Court orders otherwise, each party shall file with his final address a bundle containing copies of his current pleadings, witness statements and a schedule of exhibits.

## ORDER 32

### EVIDENCE GENERALLY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) such undertaking shall be accompanied by-

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

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

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

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

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

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

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

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

Provided that a witness who testifies at the instance of the court acting on its own motion shall be paid out of public revenue.

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

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

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

15. Any officer of the Court or other person directed to take the examination of any witness or person or any person nominated or appointed to take the examination of any witness or person

pursuant to the provisions of any Convention now made or which may hereafter be made with any foreign country, may administer oaths.

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

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

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

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

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

21. A subpoena shall be in one of Forms 27, 28, or 29 with such variations as circumstances may require.

22. Where a subpoena is required for the attendance of a witness for the purpose of proceedings in Chambers, such subpoena shall issue from the Registry upon the Judge's directive.

23. In the interval between the issue and service of any subpoena the Legal Practitioner issuing it may correct any error in the names of parties or witnesses, and may have the writ resealed upon leaving a corrected praecipe of the subpoena marked with the words "altered and resealed", with the signature, name and address of the Legal Practitioner.

24. A subpoena shall be served personally unless substituted service has been ordered by a Judge in a case where a person persistently evades service. The provisions of Order 7 shall so far as possible apply to service and proof of service of a subpoena.

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

26. Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity or office, or to any estate or interest in any property, real or personal the right or claim to which cannot be brought to trial by him before the

happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim.

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

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

#### ORDER 33

#### AFFIDAVITS

1. Upon any motion, petition, summons or other application, evidence 11 may be given by affidavit, but the Judge may, suo motu or on application order the attendance for cross-examination of the deponent and where, after such an order has been made the person in question does not attend, his affidavit shall not be used as evidence save by special leave.

2. Every affidavit shall bear the title in the cause or matter in which is sworn but in every case in which there is more than one claimant or defendant, it shall be sufficient to state the full name of the first claimant or defendant respectively, and that there are other claimants or defendants, as the case may be.

3. The Judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

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

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

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

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

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

9. 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.

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

11. 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 34

#### NON - SUIT

1. Where satisfactory evidence is not given entitling the claimant or defendant to the judgment of the Court, the Judge may suo motu or on application non-suit the claimant, but the parties' Legal Practitioners shall have the right to make submissions about the propriety or otherwise of making such order.

2. The Judge may upon a motion for a new trial or review of judgment, order a non-suit or judgment to be entered, although no leave has been reserved at the trial.

#### ORDER 35

#### JUDGMENT, ENTRY OF JUDGMENT

1. The Judge shall, at the pre-trial conference or after trial, deliver judgment in open court, and shall direct judgment to be entered.

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

3. Any judgment is directed to be entered by an order made on application for judgment, the judgment shall, unless the Judge otherwise orders, be dated as of the day on which the order is made and take effect from that date:

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

4. The Judge at the time of making any judgment or order or at any time afterwards, may direct the time within which the payment is to be made or other act is to be done, reckoned from the date of the judgment or order, or from some other point of time, as the Judge deems fit and may order interest at a rate not less than 10% per annum to be paid upon any judgment.

5. Every judgment or order made in any cause or matter requiring any person to do an act shall state the time or the time after service of the judgment or order, within which the act is to be done; there shall be indorsed on the judgment or order a memorandum by the Registrar in the following words, viz:

"If you, the within-named A. B., neglect to obey this judgment (or order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the said judgment (or order)" and same shall be served upon the person required to obey the judgment or order.

6. In any cause or matter where the defendant has appeared by a Legal Practitioner, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his Legal Practitioner or agent.

7. Where the defendant has no Legal Practitioner such order shall not be made unless the defendant gives his consent in person in open court.

#### ORDER 36

##### DRAWING UP OF ORDERS

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

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

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

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

(c) for the filing of any document; or

(d) for any act to be done by any officer of the court other than a Legal Practitioner, it shall not be necessary to draw up such order unless the Judge otherwise directs; but the production of a note or memorandum of such order signed by a Judge shall be sufficient authority for such enlargement of time, issue, amendment, filing or other act.

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

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

#### ORDER 37

##### TRANSFERS AND CONSOLIDATION

###### I TRANSFERS

1. (1) Where the Chief Judge has in exercise of any powers conferred on him by any relevant law, ordered the transfer of any action or matter from a lower court to the Court, a copy of the order duly certified by the Registrar shall forthwith be sent to the Registrar of the lower court and the latter shall forthwith transmit to the Court the processes and proceedings in every such action or matter and other necessary documents and processes.

(2)(a) Where a Judge finds that he has no jurisdiction over a matter pending before him and jurisdiction lies with another Court or tribunal, the Judge shall remit the case file to the Chief Judge for transfer to that Court or Tribunal of competent jurisdiction.

(b) The Chief Judge shall direct the Registrar of Court to transmit a copy of the order duly certified together with the case file and other process therein to the Court or tribunal of competent jurisdiction.

2. (1) On receipt by the Court of the relevant proceedings documents and processes, the Registrar shall notify the party who applied for the transfer, or where the transfer was not made on the application of any party, the claimant, to attend at the Registry and pay the fees for filing the documents. Such payment shall be without prejudice to the question of how the costs shall ultimately be borne.

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

3. (1) The Registrar shall on payment of the prescribed fees, in any case not later than 7 days:

(a) file the documents received from the Lower Court;

(b) make an entry of the filing in the Cause Book, and

(c) transmit the documents to the Chief Judge or such other Judge appointed by the Chief Judge.

(2) The Registrar shall then give notice to the parties to attend in person or by counsel before a named Judge on the day and at the time specified in the notice. The fees for the service of this notice shall be borne in the first instance by the party who has paid the fees for filing as provided by Rule 2 of this Order.

4.(1) The Chief Judge or such other Judge appointed by him shall, not later than 14 days after receiving the documents referred to in Rule 3 of this Order:

(a) hear the parties or their Legal Practitioners;

(b) take cognisance of the documents, and

(c) give directions for the trial or hearing of the action or matter.

(2) Directions given under this Rule may include directions for the filing and service of pleadings.

5. (1) If the claimant fails to attend in compliance with a notice given under sub-rule 2 of Rule 3 of this Order, the Judge shall record his default and may, suo motu or on application, dismiss the action or matter. Upon an application by a defendant to dismiss the action or matter, the Judge may either dismiss the action or matter upon such terms as may be just or make such other order on such terms as he deems just.

(2) If the defendant fails or all of several defendants fail to attend in compliance with a notice given under sub-rule 2 of Rule 3 of this order, the Judge shall record the default and may enter judgment with costs for the Claimant or grant the order prayed for in the transferred proceedings.

(3) Where both parties fail to attend in compliance with a notice given under sub-rule 2 of Rule 3 of this order, the Judge shall record the default and dismiss the suit accordingly.

6. In the preceding Rule of this Order, the references to the claimant and defendant shall, in relation to proceedings commenced otherwise than by writ, be construed as references to the applicant and the respondent.

## II CONSOLIDATION

7.(1) The Judge may on application consolidate several actions pending before him where it appears that the issues are the same in all the actions, and can therefore be properly tried and determined at the same time.

(2) Where actions are pending before different Judges, a party desiring consolidation shall first apply to the Chief Judge for transfer of the matter to a Judge before whom one or more of the matters is pending.

(3) An order to consolidate may be made where two or more actions are pending between the same claimant and the same defendant or between the same claimant and different defendants or between different claimants and the same defendant or between different claimants and different defendants:

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

(4) Where an order for consolidation has been made the Judge shall give such directions as may be necessary for the trial or hearing of the action or matter.

(5) An order for consolidation shall be drawn up at the expense of the party or parties who applied for consolidation and shall be recorded in the Cause Book.

#### ORDER 38

#### INTERLOCUTORY ORDERS, ETC.

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

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

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

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

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

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

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

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

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

(2) The money paid after disposal of any such property shall be withdrawn from the bank by the successful party who shall present to the Chief Registrar a certified true copy of the enrolled judgment.

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

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

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

9. In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Judge in determining whether it is just or convenient that such appointment should be made shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver and to the probable costs of his appointment and may if the Judge shall deem fit, direct any inquiries on these or other matters before making the appointment.

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

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

12. When a receiver is appointed with a direction that he shall pass accounts, the Judge shall fix the days upon which he shall (quarterly or at shorter periods) leave and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part of them as shall be certified as proper to be paid by him. With respect to any such receiver as neglects to leave and pass his accounts and pay the balances at the times fixed for the purpose as aforesaid the Judge may from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary claimed by such receiver and may also charge him with interest at a rate not exceeding twenty-five per cent per annum upon the balances so neglected to be paid by him during the time the same appears to have remained in his hands.

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

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

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

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

#### ORDER 39

#### MOTIONS AND OTHER APPLICATIONS

(1) Where by these Rules any application is authorised to be motion made to a Judge, such application shall be made by motion which may be supported by affidavit and shall state under what rule of Court or law the application is brought. Every motion shall be served within 5 days of filing.

(2) Every such application shall be accompanied by a written address in support of the relief sought.

(3) Where the other party intends to oppose the application, he shall within 7 days of the service on him of such application, file his written address and may accompany it with a counter affidavit.

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

2. No motion or application for a rule nisi or order to show cause shall be made in any action.

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

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

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

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

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

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

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

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

(3) An award made by an arbitrator or a decision reached at the Multi-Door Court House may by leave of a Judge be enforce: in the same manner as a judgment or order of Court.

(4) An application to set aside or remit any award may be made at any time within 6 weeks after such award has been made, and publish to the parties:

Provided that a Judge may by order extend the said time either before or after the same has elapsed.

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

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

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

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

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

9. Where the relationship of Legal Practitioner and client exists or has existed, a summons may be issued by the client or his representative for the delivery of a cash account or the payment of moneys or the delivery of securities, and a Judge may from time to time order the respondent to deliver to the applicant a list of the moneys or securities which he has in his custody or control on behalf of the applicant or to bring to court the whole or any part of the same, within such time as the Judge may order. In the event of the respondent alleging that he has a claim for costs, the Judge may make such provision for the taxation and security thereof or the protection of the respondent's lien (if any) as he may deem fit.

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

#### ORDER 40

#### JUDICIAL REVIEW AND APPEALS

#### JUDICIAL REVIEW

1. An application for an order of certiorari, mandamus or prohibition or an injunction restraining a person from acting in any office in which he is not entitled shall be by application for judicial review in accordance with the provisions of this order.

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

2 (1) No application for judicial review shall be made unless the application is by motion on notice or originating summons.

(2) An application for judicial review shall be made to the court and shall be supported by:

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

(b) An affidavit verifying the facts relied on; and

(c) A written address.

(3) Where judicial review is sought for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the court may adjourn the application until the appeal is determined or the time has expired.

4. Where an application for judicial review is pending, then:

(a) If the relief sought is an order of prohibition or certiorari the applicant may apply *ex parte* for an order of a stay of the proceedings to which the application relates until the determination of the application or until the court otherwise orders;

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

(c) The court may impose such terms as to costs and as to giving security as it deems fit.

5. An application for judicial review shall be brought within 30 days of the date of occurrence of the subject matter of the application.

(1) The notice of motion or summons shall be served on all persons directly affected and where it relates to any proceedings before a lower court or tribunal and the object of the application is either to compel the court or an officer of the court or tribunal to do any act in relation to the proceedings, or to quash it or any order made therein, the notice or summons shall also be served on the clerk or registrar of the court or tribunal.

(2) There shall be at least 7 days between the service of the Notice of Motion or Summons and the day named therein for the hearing.

(3) The motion or summons shall be entered for hearing within 14 days of filing.

(4) The motion or summons shall be served in accordance with Order VI.

(5) If on the hearing of the motion or summons the court is of the opinion that any person who ought, whether under this Rule or otherwise, to have been served has not been served, then 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. 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 deems fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

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

(a) He has included in the statement in support of his application 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.(1) On the hearing of any motion or summons under rule 5, any person who desires to be heard on the motion or summons, and appears to the 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.

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

(4) Where the relief sought is an order of certiorari and the 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 below 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 as if they had been begun by writ.

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

10. 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.

11. Where the respondent is challenging the jurisdiction of the court to hear the application, he may apply to the court for an order striking out the suit or setting aside the proceeding.

12. The preliminary objection shall be by motion on notice and filed with the counter affidavit to the main application.

13. On the hearing date, the preliminary objection shall be heard with the main application.

14. The Court after hearing the application may make an order -

(a) Striking out the application for want of jurisdiction, or

(b) Setting aside the service of the originating application.

15. Where the court does not decline jurisdiction, it shall proceed to give its ruling on the substantive application.

APPEALS FROM MAGISTRATE'S COURT, ETC.

16. Every appeal shall be brought by Notice of Appeal which shall 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.

17. (1) The Notice of Appeal shall set out the reference number of the proceedings in which the decision complained of was given, the names of the parties, the date of the decision and the grounds for appeal in full.

(2) Where the appellant complains only of a part of the decision, the Notice of Appeal shall specify the part complained of; otherwise the appeal shall be taken to be against the decision as a whole.

(3) The Notice of Appeal shall give an address within the Judicial Division in which is situated the lower Court appealed from, to which notices may be sent for the appellant.

(4) The Notice of Appeal shall be in Form 40 in the Appendix and may be varied to suit the circumstances of the case but so that no variation of substance shall be made.

18. (1) The Registrar of the lower Court shall, within 3 months of the decision appealed from, prepare as many certified copies of the record of proceedings, including the Notice of Appeal, required for the consideration of the appeal as there are parties on record.

(2) The Registrar shall within 7 days of preparing the certified copies of the record of proceedings and Notice of Appeal referred to in sub-rule 1 of this Rule notify the parties to come forward and collect their own copies upon payment of necessary fees, and shall send copies also 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 the Division.

(3) Except where the fees for- preparing the copies are remitted, a deposit decided upon by the Registrar as likely to cover the fees, shall be made by the appellant before the preparation of the copies.

19. (1) The appellant shall within 30 days of the receipt of the Record of Proceedings from the lower Court file in the Court a written brief which shall contain a succinct statement of his argument in the appeal.

(2) The respondent shall also within 30 days of the service of the written address of the appellant on him file the respondent's written address, which shall answer all material points of substance contained in the appellant's written address and contain all the points raised therein which the respondent wishes to concede as well as reasons why the appeal ought to be dismissed.

(3) The appellant may if necessary, within 14 days of the service on him of the respondent's written address file and serve a reply written address which shall deal with all new points arising from the respondent's written address.

(4) All parties, whose interests are identical or joint, shall file joint written address, and separate written address may be filed only by those parties whose interests are separate or in conflict.

20. The times prescribed in Rules 12 to 15 and Rules 24 may be enlarged at any time by the Court on such terms (if any) as may seem fit, after notice for enlargement of time.

21. Where the time available to the appellant for the taking of any step has expired before such step has been taken or completed, the respondent may, on notice to the appellant, apply to the Court to strike out the appeal, and the Court may strike out, or enlarge the time for sufficient reason shown.

22. All civil appeals from the lower Court shall be heard by one Judge of the Court.

23. The appeal shall come on for hearing at such time and at such places as the Registrar of the Court shall notify to the parties.

24.(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 judgment 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 at the discretion of the Court.

25. 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 judgment according to the merits of the case without regarding any imperfection or defect of form; but if it appears or is proved to the Court that the appellant has not complied with the requirements precedent to the hearing of an appeal hereinbefore contained, the Court shall dismiss the appeal and affirm the decision, with or without costs of appeal against the appellant.

26. 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 of appeal; but where, in the opinion of the Court, other grounds of appeal than those set forth in the memorandum of grounds of 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 of appeal upon such conditions as to service upon the respondent and as to costs as it may think fit.

27. (1) The respondent may give notice that he intends at the hearing to ask the Court to confirm the judgment of the lower Court on grounds other than those stated by that Court.

(2) The notice shall be accompanied by a clear statement of the grounds on which the respondent intends to ask the Court to confirm the judgment of the lower Court.

(3) Such notice and grounds shall be filed in Court within 14 days of service on the respondent of the notice and grounds of appeal, and shall be served on the appellant or his Legal Practitioner.

28.(1) The respondent may file grounds of appeal against any part of the judgment of the lower Court.

(2) The grounds shall be filed by the respondent within 30 days of service on him of the appellant's notice and grounds of appeal, and shall be served on the appellant or his Legal Practitioner before the hearing.

29. (1) No objection on account of any defect in the form of setting forth any ground of 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 ground of appeal ought to prevail, the Court may, if it thinks fit, cause the ground of appeal forthwith to be amended upon such terms and conditions, if any, as the Court may think just.

30. 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:

Provided, however, that 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 it or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.

31. No objection shall be taken or allowed, on any appeal, to any Notice of Appeal or to any recognizance entered into under this Order for the due prosecution of the appeal for any alleged error or defect therein; but if the error or defect appears to the Court to be such that the respondent on the appeal has been thereby deceived or misled, it shall be lawful for the Court to amend it and, if it is expedient to do so, also to adjourn the further hearing of the appeal, the amendment and the adjournment, if any, being made on such terms as the Court may think just.

32. The Court may, in any case where it considers it necessary that evidence should be adduced, either-

(a) order such evidence to be adduced before the Court on some day to be fixed in that behalf; or

(b) refer the case back to the lower Court to take such evidence, and may in such case either direct the lower Court to adjudicate afresh after taking such evidence and subject to such directions in law, if any, as the Court may think fit to give, or direct it, after taking such evidence, to report specific findings of fact for the information of the Court, and on any such reference, the case shall, so far as may be practicable and necessary, be dealt with as if it were being heard in the first instance.

33.(1) When additional evidence is to be taken by the lower Court and specific findings of fact reported, it shall certify the evidence to the Court which shall thereupon proceed to dispose of the appeal.

(2) The appellant or his Legal Practitioner shall be present when the additional evidence is taken.

(3) Evidence taken in pursuance of Rule 28 shall be taken as if it were evidence taken at the trial before the lower Court.

(4) When forwarding to the Court any additional evidence taken by a lower Court in pursuance of Rule 28 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.

34. The fees in the First Schedule shall be chargeable in civil appeals save where they would have to be paid by a Government officer acting in his official capacity or where the lower Court or the Court waives or remits the fees on the ground of the poverty of the person chargeable therewith where it appears that there are substantial grounds of appeal.

35. Allowances may be made to witnesses in accordance with the provisions of the Third Schedule.

36. (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 not exceeding the amount of the money or the value of the property affected by the decision or judgment appealed from, or give security to the satisfaction of the Court for the said sum;

(b) that the appellant shall deposit a sum equal to the amount of the costs allowed against him or give security to the satisfaction of the Court for the said sum;

(c) that the appellant shall, where the decision or judgment appealed from relates to possession of lands or houses, give security to the satisfaction of the Court for the performance of the decision or judgment in the event of the appeal being dismissed;

(d) that the appellant's property shall be seized and attached pending the making of a deposit or the giving of security as aforesaid, including a deposit or 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 thirty days) for the performance of the conditions imposed, and direct that in default of the performance within the time so limited, execution may issue or proceed.

(3) An application for stay of execution under the enactment establishing the lower Court may be made at any time after lodgement of the Notice of Appeal and shall in the first instance be made to the lower Court; but where execution has been ordered by the Court the application shall not be made to the lower Court but to the Court.

(4) The application may be ex-parte but the Court may direct notice thereof to be given to the other party to the appeal; and where an order is made ex-parte the Registrar of the Court shall notify the other party of the order made.

(5) Where 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).

(6) 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.

(7) An appeal shall not operate as a stay of execution under the decision or judgment 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.

37. The Court may make such order as to the payment of costs by or to the appellant as it may consider to be just and the order may be made also in any case where an appeal has not been entered into or prosecuted.

38. (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 30 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 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 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 see fit.

(4) Where an appeal so stands dismissed the appellant shall take no further step or proceeding therein save by leave of the Court for reinstatement of the appeal, which may be granted on such terms (if any) as may seem fit upon application by motion on notice given within a month of such dismissal (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 sufficient to satisfy the amount payable under the judgment or decision appealed from.

39. (1) When a case is decided on appeal the Court shall certify its judgment or order to the lower Court in which the decision appealed against was pronounced.

(2) The lower Court to which the Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the Court, and, if necessary, the records shall be amended in accordance therewith.

40. After the pronouncement of the judgment of the Court, the lower Court from which the appeal came shall have the same jurisdiction and power to enforce, and shall enforce, any decision which may have been affirmed, modified, amended, or substituted by the Court or any judgment which may have been pronounced by the Court, in the same manner in all respects as if such decision or judgment had been pronounced by itself.

41. Any order given or made by the Court may be enforced by the court or by the lower Court as may be most expedient.

42. The Court may, if it thinks fit, enlarge any period of time prescribed by this Order.

43. In this Order -

"the lower Court means the Court whose judgment is appealed against; "judgment" includes an order or a ruling.

ORDER 41

#### JURISDICTION OF CHIEF REGISTRAR

1. In this Order, any reference to the Chief Registrar means the Chief Registrar of the Court and includes the Deputy Chief Registrar.

2. The Chief Registrar may transact all such business and exercise all such authority and jurisdiction as may be transacted or exercised by a Judge in respect of the following matters:

(a) applications for the taxation and delivery of bills of costs and applications for the delivery by any Legal Practitioner of deeds, documents and papers;

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

(c) the taxation of bill of costs; and

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

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

4. Any person affected by an order or decision of the Chief Registrar in the exercise of the jurisdiction conferred upon him by this Order may appeal therefrom to a Judge. Such appeal shall be by notice in writing to attend before the Judge without a fresh summons within 5 days after the decision complained of or such further time as may be allowed by the Judge. Unless otherwise ordered, there shall be at least 2 clear days between service of the notice of appeal and the day of hearing. An appeal from the decision of the Chief Registrar shall not operate as a stay of proceedings unless so ordered by the Judge.

5. Lists of matters to be heard by the Chief Registrar shall be made out and published by being posted on the Courts' notice boards.

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

#### CHIEF REGISTRAR'S CERTIFICATE

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

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

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

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

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

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

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

#### ORDER 42

#### HABEAS CORPUS, ATTACHMENT FOR CONTEMPT

##### I - HABEAS CORPUS

An application for an Order of Habeas Corpus Ad Subjiciendum shall be made to the Court, except that:

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

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

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

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

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

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

(1) A Judge to whom the application is made may adjourn 1 so that notice thereof may be given to the jailer.

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

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

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

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

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

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

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

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

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

## II ATTACHMENT FOR CONTEMPT

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

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

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

- (a) in connection with the proceedings to which this Order relates;
- (b) in connection with criminal proceedings;
- (c) subject to the provisions of the Sheriff and Civil Process Act, any proceedings in the High Court or where the contempt consists of disobedience to an Order of the Court;
- (d) in connection with the proceedings in an inferior Court.

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

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

Notice of Consequence of Disobedience to Court Order.

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

DATED this.....day of.....20.....

Registrar

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

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

ORDER 43

INTERPLEADER

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

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

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

- (a) claims no interest in the subject matter in dispute other than for charges or costs;
- (b) does not collude with any of the claimants; and

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

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

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

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

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

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

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

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

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

#### ORDER 44

#### COMPUTATION OF TIME

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

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

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

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

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

3. No pleading, summons, motions, orders, originating process, documents and other processes shall be served before 6.00a.m. or after 6.00p.m. Service effected after 6.00p.m. shall be deemed to have been effected the following day, provided that service effected after 6.00p.m. on Friday shall be deemed to have been effected on the next following working day.

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

Provided that any party who defaults in performing an act within the time authorised by the Judge or under these Rules, shall pay to the Court an additional fee of N200.00 (two hundred naira) for each day of such default at the time of compliance.

#### ORDER 45

#### MISCELLANEOUS PROVISIONS

##### Court Sittings and Vacations

1. Subject to the provision of the Law, the Judge may, in his discretion, appoint any day or days and any place or places from time to time for the hearing of causes as circumstances require.

2. The sittings of the Judge for the hearing of causes shall be public, subject to the provisions of the Constitution of Federal Republic of Nigeria.

3. The several offices of the Court shall be open at such times as the Chief Judge shall direct.

4. Subject to the directions of the Chief Judge, sittings of the High Court for the despatch of civil matters shall be held on every week day except:

(a) on any public holidays;

(b) during the week beginning with Easter Monday;

(c) during the period beginning on Christmas eve and ending on the 2nd January next following; and

(d) during the long vacation, i.e. the period beginning on a date in August and ending on a date not more than 6 weeks later as the Chief Judge may by notification in the Gazette appoint.

5.(1) Notwithstanding the provisions of Rule 4, any cause or matter may be heard by a Judge during any of the periods mentioned in paragraphs (b), (c) or (d) of Rule 4 (except on a Sunday or public holiday) where such cause or matter is urgent or a Judge, at the request of a the parties concerned, agrees to hear a cause or matter.

(2) An application for an urgent hearing shall be made by motion on notice and the decision of the Judge on such an application shall be final.

6. The time for filing and service of pleadings shall not run during the annual vacation unless otherwise directed by the Judge General

7. All fines, forfeitures, pecuniary penalties and costs ordered to be paid may be levied by distress, seizure and sale of the movable and immovable property of the person making default in payment.

8. When the publication of any notice is required, the same may be made by advertisement in the Gazette, unless otherwise provided in any particular case by any Rule of Court or otherwise ordered by the Judge.

9. A document shall not be filed unless it has indorsed on it the name and number of the cause, the date of filing and whether filed by claimant or defendant; and on being filed such indorsement shall be initialled by the Registrar and recorded in the Process Register.

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

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

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

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

14. Subject to particular Rules, the Court may in all causes and matters make any order which it considers necessary for doing justice, whether the order has been expressly asked for by the person entitled to the benefit of the order or not.

#### ORDER 46

#### ARREST OF ABSCONDING DEFENDANT

1. If in any action the defendant is about to leave Nigeria or has disposed of or removed from Nigeria his property or any part thereof or is about to do so, the claimant may, either at the institution of the suit or at any time thereafter until final judgment, apply by ex-parte motion to the Judge for an order that the defendant do show cause why security should not be taken for his appearance to answer and satisfy any judgment that may be passed against him in the suit.

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

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

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

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

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

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

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

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

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

#### ORDER 47

#### PROCEEDINGS IN FORMA PAUPERIS

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

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

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

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

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

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

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

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

(2) 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.

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

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

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

8. Every order, 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.

9. No person shall be permitted to appeal in forma pauperis except by leave of the trial or the appellate Court and then only on grounds of law; but if so permitted the provisions of this Order shall apply mutatis mutandis to all proceedings on the appeal.

#### ORDER 48

##### CHANGE OF LEGAL PRACTITIONER

Every Legal Practitioner who shall be engaged in any cause or matter shall be bound to conduct same on behalf of the party; by or for whom he shall have been so engaged until final judgment, unless allowed by a Judge for any special reason to cease acting therein.

Notice of change or withdrawal of Legal Practitioner may be made by a party or his Legal Practitioner as the case may be, not less than 3 clear days before the date fixed for hearing.

Notice under this Order shall be served on all parties to the cause or matter and where applicable also on the outgoing Legal practitioner.

#### ORDER 49

##### COSTS

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

(2) When costs are ordered to be paid, the amount of such costs shall, if practicable, be summarily determined by the Judge at the time of delivering the judgment or making the order.

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

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

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

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

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

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

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

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

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

(2) Costs when ordered become payable forthwith and shall be paid within 7 days of the order, otherwise the defaulting party, or his Legal Practitioner may be denied further audience in the proceedings.

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

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

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

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

- (a) the omission to do anything the doing of which would have been calculated to save costs;
- (b) the doing of anything calculated to occasion or in any manner or at any time calculated to occasion unnecessary costs; and
- (c) any unnecessary delay in the proceedings.

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

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

- (a) disallowing the costs as between the Legal Practitioner and his client; and
- (b) directing the Legal Practitioner to pay to his client costs which the client has been ordered to pay to other parties to the proceedings; or
- (c) directing the Legal Practitioner personally to indemnify such other parties against costs payable by them.

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

- (a) because of the failure of the Legal Practitioner to attend in person or by a proper representative; or
- (b) because of the failure of the Legal Practitioner to deliver any document for the use of the Court which ought to have been delivered or be prepared with any proper evidence or account or otherwise proceed.

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

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

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

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

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

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

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

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

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

(c) examine any witness in those proceedings; and

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

18. (1) A taxing officer may:

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

(b) where no period is specified by or under these Rules or the Judge for the doing of anything in or in connection, such proceedings, specify the period within which the thing is to be done.

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

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

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

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

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

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

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

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

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

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

(b) if the Legal Practitioner is the agent of another, with the name or firm and business address of that other Legal Practitioner.

22. (1) If any party entitled to be heard in any taxation proceedings does not attend within a reasonable time after the time appointed for the taxation, the taxing officer, if satisfied by affidavit or otherwise that the party had due notice of the time appointed may proceed with the taxation.

(2) The taxing officer by whom any taxation proceedings are being conducted may, if he deems it necessary, adjourn those proceedings from time to time.

(1) Subject to Rule 20, and the following provisions of this Rule, the scale of fees as shall be contained in any legal notice passed pursuant to a law of the Rivers State House of Assembly shall apply to the taxation of all costs incurred in relation to contentious business done after the commencement of these Rules.

(2) Where the amount of a Legal Practitioner's remuneration in respect of non-contentious business connected with sales, purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is regulated, in the absence of agreement to the contrary, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything in the scale of fees as shall be contained in any legal notice passed pursuant to a law of the Rivers State House of Assembly.

24. Upon the completion of the taxation of any bill of costs the taxing officer shall certify the result of his taxation including the costs thereof.

The fees payable on taxation shall be paid by the party on whose application the bill is taxed and shall be allowed as part of the bill.

26. Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by a taxing officer or with the amount allowed by a taxing officer in respect of any item may apply to a Judge for an order to review the taxation as to that item.

27. (1) An application under the preceding Rules shall be made by summons at any time within 14 days after the taxing officer's certificate.

(2) Unless the Judge otherwise directs, no further evidence shall be received on the hearing of an application under this Rule, and no ground of objection shall be raised which was not raised on taxation but, save as aforesaid, on the hearing of any such application the Judge may exercise all such powers and discretion as are vested in the taxing officer in relation to the subject matter of the application.

(3) On an application under this Rule the Judge may make such order as the circumstances require and in particular may order the taxing officer's decision to be amended or, except where the dispute as

to the item under review is as to amount only, order the item to be remitted to the same or another taxing officer for taxation.

## ORDER 50

### I PROCEEDINGS IN CHAMBERS

1. In any proceeding before a Judge in Chambers, any party may, if he so desires, be represented by a Legal Practitioner.
2. Unless the opposite party or his Legal Practitioner objects, the Judge may, on application, conduct any proceeding, except actual trial, in Chambers, and may also on application, adjourn any such proceeding from Court to Chambers or vice versa.

### II Proceeding Relating to Persons under Legal Disability

1. Upon application for the appointment of guardians of infants and allowance for maintenance, the evidence shall show:
  - (a) the ages of the infants;
  - (b) the nature and amount of the infant's fortunes and incomes; and
  - (c) what relations the infants have.

At any time during the proceeding under any judgment or order, the Judge may, if he deems fit, require a guardian to be appointed for any person under legal disability not adjudged a lunatic, who has been served with notice of such judgment or order.

### III Further Consideration

Where any matter originating in Chambers shall, at the original or any subsequent hearing have been adjourned for further consideration in chambers, such matter may, after the expiration of 8 days and within 14 days from the filing of the certificate, be brought on for further consideration by a summons to be taken out by the party having the conduct of the matter, and after the expiration of such 14 days by a summons to be taken out by any other party. Such summons shall be in the form following:

"That this matter, the further consideration whereof was adjourned by the order of the on day of 20 may be further considered."

And shall be served 7 clear days before the return:

Provided that this Rule shall not apply to any matter, the further consideration whereof shall, at the original or any subsequent hearing, have been adjourned in Court.

### IV Registering and Drawing up of Orders in Chambers

Notes shall be kept of all proceedings in the Judges' Chambers with proper dates, so that all such proceedings in such cause or matter may appear consecutively and in chronological order, with a short statement of the question or points decided or ruled at every hearing.

Orders made in Chambers shall, unless the Judge otherwise directs, be drawn up by the Registrar and signed by the Judge. Such orders shall be entered in the same manner as orders made in court.

8. Subject to the provisions of the Law and of these Rules the costs of and incident to all proceedings in Chambers shall be at the discretion of the Judge.

(1) Where any party to a proceeding in Chambers does not intend to accept the decision of the Judge in Chambers as final, he shall forthwith request to have the summons adjourned into Court for argument. If such request is refused, the party may proceed by way of motion on notice in Court to discharge, set aside or vary the order made or the judgment given in Chambers.

(2) The notice of motion shall be filed not later than 7 days after the drawing up of the Order made in Chambers unless the Court grants an extension of time on good and sufficient reason being shown, and the motion shall be heard and determined by the Judge who has dealt with the matter in Chambers, unless this proves impossible or inconvenient owing to such Judge's death or retirement or prolonged absence from Rivers State.

(3) This Rule shall apply to decisions given by a Judge in Chambers on appeal from the Chief Registrar under Rule 4 of Order 41

ORDER 51

FORE CLOSURE AND REDEMPTION

1. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out an originating summons, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require; that is:

(a) payment of money secured by the mortgage or charge;

(b) sale;

(c) foreclosure;

(d) delivery of possession, whether before or after foreclosure, to the mortgagee or person entitled to the charge, by the mortgagor or person having the property subject to the charge, or by any other person in or alleged to be in possession of the property;

(e) redemption;

(f) re-conveyance; and

(g) delivery of possession by the mortgagee.

2. Orders for payment and for possession shall be in Forms 35, 36 and 37 of these Rules with such variations as the circumstances of the case may require, and the like forms shall be used under corresponding circumstances in actions for the like relief commenced by writ.

The Judge may give any special directions concerning the execution of the judgment, or the service thereof upon persons not parties to the cause or matter as he deems fit.

## ORDER 52

### I SUMMONS TO PROCEED

Every judgment or order directing accounts or inquiries to be taken or made shall be brought to a Judge by the party entitled to prosecute the same within 10 days after such judgment or order shall have been entered or filed, and in default thereof any other party to the cause or matter shall be at liberty to bring in the same, and such party shall have the prosecution of such judgment or order unless the Judge shall otherwise direct.

Upon a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries directed, and upon the return of such summons the Judge, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to:

(i) the manner in which each of the accounts and inquiries is to be prosecuted;

(ii) the evidence to be adduced in support thereof;

(iii) the parties who are to attend on the several accounts and inquiries; and

(iv) the time within which each proceeding is to be taken and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied by addition thereto or otherwise, as may be found necessary.

Where by a judgment or order a deed is directed to be settled by a Judge in case the parties differ, a summons to proceed shall be issued, and upon the return of the summons, the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the Judge shall deem fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections within 8 days after the delivery of such copy, and the proceeding shall be adjourned until after the expiration of the said period of 8 days.

Where upon the hearing of the summons to proceed, it appears to the Judge that by reason of absence, or for any other sufficient cause, the service of notice of the judgment or order upon any party cannot be made, the Judge may if he shall deem fit, order any substituted service or notice by advertisement or otherwise in lieu of such service.

If on the hearing of summons to proceed it shall appear that all necessary parties are not parties to the action or have not been served with notice of the judgment or order, directions may be given for advertisement for creditors, and for leaving the accounts in Chambers. Adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining notice of the parties to be served, until all necessary parties shall have been served and until directions shall have been given as to the parties who are to attend the proceedings.

Copies, abstracts, extracts of or from accounts, deeds or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the Judge, and where so directed, copies shall be handed over to the other parties:

Provided that no copies shall be made of deeds or documents where the originals can be brought in unless the Judge shall otherwise direct.

## II Summons To Proceed Book

At the time any summons to proceed is obtained, an entry thereof shall be made in Summons Book, stating the date on which the summons is issued the name of the cause or matter, and by what party, and shortly for what purpose such summons is obtained, and at what time such summons is returnable.

### ORDER 53

#### SUMMARY PROCEEDINGS FOR POSSESSION OF LANDED PROPERTY OCCUPIED BY SQUATTERS OR WITHOUT THE OWNER'S CONSENT

(1) This Order shall not apply where the person in occupation of land is:

- (a) a tenant; or
- (b) a tenant holding over after termination of his tenancy; or
- (c) a licensee of the owner or person entitled to possession; or
- (d) a person who had the consent of the predecessor in title of the person who is entitled to possession.

(2) Where a person claims possession of land which he alleges is occupied solely by a person not listed in sub-rule 1 above, proceedings may be brought by originating summons in accordance with the provisions of this Order.

The originating summons shall be in Form 38 and no acknowledgement of service shall be required.

The claimant shall file in support of the originating summons an affidavit stating:

- (a) his interest in the land;
- (b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and
- (c) that he does not know the name of any person occupying the land who is not named in the summons.

(1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit in support shall be served on him:

- (a) personally or in accordance with Order 7 Rule 1 sub-rule 3; or
- (b) by leaving a copy of the summons and of the affidavit or sending them to him at the premises; or
- (c) in such other manner as the Judge may direct.

(2) The summons shall, in addition to being served on the named defendants, if any, in accordance with sub-rule 1 of this Rule be served, unless the Judge otherwise directs by:

- (a) affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises; and

(b) if practicable, inserting through the letter box at the premises, a copy of the summons and a copy of the affidavit enclosed in a sealed envelope addressed to "the occupiers".

(3) Every copy of an originating summons for service under sub rule 1 or 2 of this Rule shall be signed and stamped by the Registrar of the Court.

Without prejudice to Rule 16 of Order 13, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant.

(1) An order for possession in proceedings under this Order shall be in Form 39 with such variations as circumstances may require.

(2) The Judge may forthwith order a writ of possession to be issued.

(3) Nothing in this Order shall prevent the Judge from ordering possession to be given on a specified date, in the exercise of any power which could have been exercised if possession had been claimed in an action begun by writ.

(1) No writ of possession to enforce an order for possession under this Order shall be issued after the expiration of 3 months from the date of the order without the leave of the Judge.

(2) The application for leave may be made ex parte unless the Judge otherwise directs.

8. (1) The Judge may, on such terms as he deems fit, set aside or vary any order made in proceedings under this Order.

(2) In this Order "landed property" means land with or without building thereon.

#### ORDER 54

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

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

(2) The provisions of Order 39 rule 1 shall apply to an application under this Order.

(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 judgment appealed from.

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

#### ORDER 55

##### PROBATE AND ADMINISTRATION

##### Grant of Probate or Administration in General

(1) Subject to the provisions of Rules 44 and 45 of this Order when any person subject to the jurisdiction of the Court dies, all petitions for the granting of any Letters of Administration of the estate of the deceased person, with or without a Will attached, and all applications on other matters connected therewith shall be made to the Registrar of the Court.

(2) The Chief Judge shall request a Judge of any Judicial Division to take measures and make such orders as may appear necessary or expedient for the interim preservation of the property of the deceased within such Judicial Division, for the discovery or preservation of the Will of the deceased or for any other purposes connected with the duties of the Judge under this Order, and every Judge shall carry out any such request as far as practicable and report to the Chief Judge.

(3) No grant of administration with the Will annexed shall be issued within 7 days of the death of the deceased; and no grant of administration, without the Will annexed, shall be issued within 14 days of such death.

(4) The Judge shall, when the circumstances of the case appear so to require, forthwith on the death of a person, or as soon after as may be, appoint and authorise an officer of the Court, or some other fit person, to take possession of his property within its jurisdiction, or put it under seal and so keep it until it can be dealt with according to law.

If any person other than the named executor or administrator, or an officer of the court, or person authorized by the Judge, takes possession of and administers or otherwise deals with the property of any deceased person, he shall, besides the other liabilities he may incur, be liable to a fine of not less than N50,000.00 (fifty thousand naira) as the Judge, having regard to the condition of the person so interfering with the property and the other circumstances of the case, may deem fit to impose.

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 Registrar of the Court. If any person fails to do so within 3 months after having had knowledge of the death of the deceased, he may be liable to a fine of N50,000.00 (fifty thousand naira) as the Judge having regard to the condition of such person in default and other circumstances of the case may deem fit to impose.

Where it appears that any paper of the deceased, being or purporting to be testamentary is in the possession of, or under the control of any person, a Judge may upon an ex parte application, whether a suit or proceeding respecting probate or administration is pending or net order him to produce the paper and bring it into Court.

Where it appears that there are reasonable grounds for believing that any person had knowledge of any paper being or purporting to be testamentary, (although it is not shown that the paper is in his possession or under his control), a Judge may upon an ex parte application, whether a suit or proceedings in respect of probate or administration is pending or not, order that he be examined in respect of the same in Court or on interrogatories, and that he attend for that purpose, and after examination that he produce the paper and bring it into Court.

The Judge may on his own motion or on the application if any person claiming an interest under a Will, give notice to the executors therein named, to come in and prove the Will, or to renounce probate,

and they, or some or one of them, shall within 21 days after notice, come in and prove or renounce accordingly.

If any named executor in the Will of the deceased takes possession and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within 3 months after the death, or after the termination of any suit for or dispute in respect of probate or administration he may, independent of any other liability be deemed to be in contempt of Court, and shall be liable to such fine of not less than N50,000.00 (fifty thousand naira), as the Judge deems fit to impose.

The Judge shall require evidence, in addition to that offered by the applicant, where additional evidence in that behalf seem to the Judge necessary or desirable, in regard to the identity of the deceased or of the applicant, or in regard to the relationship of the applicant to the deceased, or in regard to any person or persons in existence with a right equal or prior to that of the applicant to the grant of probate or administration sought by the applicant or in respect of any other matter which may be considered by the Judge relevant to the question whether the applicant is the proper person to whom the grant should be made.

Provided that the Judge may refuse the grant unless the applicant produces the required evidence on these points or any of them as required by the Judge.

10. Where it appears to the Judge that some person or persons, other than the applicant may have at least an equal right with the applicant to the grant sought, the Judge may refuse the grant until due notice of the application has been given to such person or persons and an opportunity given for such person or persons to be heard in respect of the application:

Provided that the Judge may in his discretion refuse the grant unless and until all persons entitled to the grant in priority to the applicant shall have expressly renounced their prior right.

11. Every applicant for a grant of Letters of Administration shall file in the Court a true declaration of all the personal property of the deceased and the value thereof:

Provided that for the purpose of the 'fees payable on Letters of Administration, the value of the property in respect of which the grant is made shall be deemed not to include:

- (a) any gratuity payable by the Government of the Federation of Nigeria, or of a State, to the estate of any person formerly employed by either of such Governments or by a Statutory Corporation;
- (b) any sum of money payable to an estate from a Provident Fund established under the provisions of any applicable law.

All inquiries a Judge sees fit to institute shall be answered to his satisfaction before the issuance of Letters of Administration. The Judge shall afford as great a facility for the obtaining of Letters of Administration as is consistent with due regard to the prevention of error and fraud.

Suits in respect of administration shall be instituted and carried on as nearly as may be in like manner and subject to the same rules of procedure as suits in respect of ordinary claims.

Any person may deposit his Will for safe custody in the Probate Registry, sealed under his own seal and the seal of the Registry Every original Will, of which probate or administration with Will annexed is

granted, shall be filed and kept in the Probate Registry in such manner as to secure at once its due preservation and convenient inspection. A copy of every such Will and of the probate or administration shall be preserved in the Registry.

No original Will shall be given out for any purpose without the direction in writing of a Judge. A certified transcript under the seal of the Court of the probate or administration with the Will annexed may be obtained from the Court.

(1) On receiving an application for administration with Will annexed, a Judge shall inspect the Will, and see whether it appears to be signed by the testator or by some other person in his presence, and by his direction, and subscribed by two witnesses according to the applicable law, and shall not proceed further if the Will does not appear to be so signed and subscribed.

(2) If the Will appears to be so signed and subscribed, the Judge shall refer to the attestation clause and consider whether the wording thereof states the Will to have been in fact executed in accordance with those enactments.

18. (1) Where a Will contains no attestation clause or the attestation clause is insufficient or where it appears to the Judge that there is some doubt about the due execution of the Will, he shall before admitting it 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 sub-rule 1 of this Rule, the Judge may, if he deems fit having regard to the desirability of protecting the interest of any person who may be prejudiced by the Will,

(a) accept evidence on affidavit from any person he may deem fit to show that the signature on the Will is the handwriting of the deceased: or

(b) accept evidence on affidavit on any other matter which may raise a presumption in favour of the due execution of the Will

(3) If the Judge, after considering the evidence is satisfied that the Will was not duly executed, he shall refuse probate and mark the Will accordingly.

19. Where both subscribing witnesses are dead or if from other circumstances such an affidavit cannot be obtained from either of them, resort for such an affidavit shall be had to other persons present at the execution of the Will; but if no such affidavit can be obtained, proof shall be required of that fact, and of the handwriting of the deceased and of the subscribing witnesses, and also of any circumstances raising a presumption in favour of the due execution of the Will.

20. (1) Where in a Will, there is any obliteration, interlineation or other alteration which is not authenticated in the manner prescribed by the 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 sub-rule shall not apply to any alteration which appears to the Registrar to be of no practical importance.

(2) Where 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 respect of the attachment or incorporation of the document as he may deem fit.

(3) Where there is doubt as to the date on which a Will was executed, the Registrar may require such evidence as he deems necessary to establish the date.

21. Any appearance of attempted revocation of a Will by burning, tearing or otherwise and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the satisfaction of the Registrar.

The Registrar may require an affidavit from any person he may deem fit for the purpose of satisfying himself as to any of the matters referred to in Rules 20, 21 and 27. 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.

Where it appears to the Registrar that there is prima facie evidence that a Will is one to which Section 6 of the Wills Law Cap. 141 Vol. 6 Laws of Rivers State, 1999, 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.

Where evidence of foreign law 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.

25. Where the deceased died after the commencement of this Order, the person or persons entitled to a grant of probate or administration with the Will annexed shall be determined in accordance with the following order of priority:

(a) the executor;

(b) any residuary legatee or devisee holding in trust for any other person;

(c) any residuary legatee or devisee for life;

(d) the ultimate residuary legatee or devisee, including one entitled on the happening of any contingency or where the residue is not wholly disposed of by the Will, any person entitled to share in the residue not so disposed of, or the personal representative of any such person:

Provided that:

(i) unless the Registrar otherwise directs, a residuary legatee or devisee whose legacy or devise is vested in interest shall be preferred to one entitled on the happening of a contingency; and

(ii) where the residue is not in terms wholly disposed of, the 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 to Rule 68 of this Order to

any legatee or devisee entitled to, or to a share in the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the Will;

(e) any specific legatee or devisee or any creditor or, subject to sub- rule 3 of Rule 59, the personal representative of any such person or where the estate is not wholly disposed of by Will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion to it; and

(f) specific legatee or devisee entitled on the happening of any contingency, or any person having no interest under the Will who would have been entitled to a grant if the deceased had died wholly intestate.

26. (1) An application to join with a person entitled to a grant of administration, a person entitled in a lower degree, shall, in default of renunciation by all persons entitled in priority to the latter, 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, a person having no right to it, 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;

(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 a minor may nominate for the purpose;

(c) a trust corporation.

Where the testator was blind or illiterate, the Judge shall not grant administration with the Will annexed, unless the Judge 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.

(1) The Judge, on being satisfied that the Will was duly executed, shall inspect it to see whether there are any interlineations, alterations, erasures, or obliterations appearing in it and requiring to be accounted for.

(2) Interlineations, alterations, erasures, and obliterations are invalid unless they existed in the Will at the time of its execution or unless, if made afterwards, they have been executed and attested in the mode required by the said enactments; or unless they have been made valid by the re-execution of the Will or by the subsequent execution of some codicil thereto.

(3) Where interlineations, alterations, erasures, or obliterations appear in the Will, unless duly executed or recited in or otherwise identified by the attestation clause, an affidavit in proof of their having existed in the Will before its execution shall be filed.

(4) Where no satisfactory evidence is adduced respecting the time when an erasure or obliteration was made and the words erased or obliterated are not entirely erased, and can, on inspection of the Will, be ascertained, they shall form part of the probate. Where any words have been erased which might have been of importance, an affidavit shall be required.

(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 Judge 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 production shall be given. 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 sometime annexed or attached thereto, a satisfactory account of them shall be required, and if it is not produced, a satisfactory account of its non production shall be given.

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 Judge to take probate and 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.

Every Will in respect of which an application for a grant is made shall be marked by the signature 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 Judge is satisfied that compliance with this Rule might result in the loss of the Will, he may allow a photocopy to be marked or exhibited in lieu of the original document.

32. In every case where evidence is directed or allowed to be given by affidavit, the Judge may require the personal attendance of the deponent if within the jurisdiction, before the Court, to be examined viva voce respecting the content of his affidavit. The examination may take place before any affidavit has been sworn or prepared if the Judge deems fit.

(1) A Judge in granting Letters of Administration shall proceed as far as may be as in cases of probate.

(2) The Judge shall ascertain the time and place of the deceased's death and the value of the property to be covered by the administration.

(1) The person to whom administration is granted shall give a bond, with two or more responsible sureties, to the Probate Registrar of the Court, condition 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 Judge may if he deems fit take one surety only where the gross value of the estate does not exceed N250,000.00 (two hundred and fifty thousand naira) or where a corporation is proposed as a surety

(3) The bond shall be in form of a penalty which is twice the sum value of the estate of the deceased unless the Judge deems it expedient to reduce the amount.

(4) The Judge 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 Judge deems reasonable.

(1) The Registrar shall not require a guarantee as a condition of making a grant except where it is proposed to make it:

(a) by virtue of Rule 25(e) to a creditor or the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such interest in the event of an accretion to the estate;

(b) under Rule 61 to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate, be entitled to his estate;

(c) under Rule 63 to the attorney of a person entitled to a grant;

(d) under Rule 64 for the use and benefit of a minor;

(e) under Rule 66 for the use and benefit of a person who by reason of mental or physical incapacity is incapable of managing his affairs;

(f) to an applicant who appears to the Registrar to be resident elsewhere than in the State; or

(g) except where the Registrar considers that there are special circumstances making it desirable to require a guarantee.

(2) Notwithstanding that it is proposed to make a grant as aforesaid, a guarantee shall not be required, except in special circumstances, on an application for administration where the applicant or one of the applicants is the Administrator-General or a trust corporation.

(3) Every guarantee entered into by a surety for the purpose of the Order shall be in Probate Form 1 with such variations as circumstances may require.

(4) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an authorized officer, Commissioner for Oaths or other person authorized by law to administer an oath.

(5) Unless the Registrar otherwise directs:

(a) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed N250,000.00 (two hundred and fifty thousand naira) or a corporation is a proposed surety, and in those cases one will suffice;

(b) no person shall be accepted as a surety unless he is resident in the State;

(c) no officer of the judiciary shall be a surety;

(d) the limit of the liability of the surety or sureties under a guarantee shall be the gross amount of the estate as sworn on the application for the grant;

(e) every surety other than a corporation, shall justify his eligibility.

(6) Where the proposed surety is a corporation, there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed the guarantee in the manner prescribed by its constitution, and containing sufficient information as to the financial position of the corporation to satisfy the Registrar that its assets are sufficient to satisfy all claims which may be made against it under any guarantee which it has given or is likely to give.

36. The Registrar may, on being satisfied that the condition of the bond has been broken, assign 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, and may recover thereon, as trustee for persons interested, the full amount recoverable in respect of any breach of the bond.

37. Any person claiming to be a creditor or legatee or the next-of-kin or on a 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 the Court and show cause why an order for the administration of the property of the deceased should not be made.

(1) On proof of service of the summons or on appearance of administration the executor or administrator, and on proof of all such other things as the Judge may direct, the Judge may, if he deems fit, make an order for the administration of the property of the deceased.

(2) The Judge may make or refuse any such order or give any special direction in respect of the carriage or execution of it, and where there are 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 Judge deems fit.

(3) Where the Judge deems fit the carriage of the order may subsequently be given to such person, and on such terms, as he may direct.

A Judge may make an order and at any time afterwards, if he deems fit, make any further or other order which may appear requisite to secure the proper collection, recovery for safe-keeping and disposal of the property or any part thereof.

40. In a case of intestacy, where the special circumstances of the case requires, the Judge may, if he deems fit on the

application of any person having interest in the estate of the deceased or of his own motion, grant Letters of Administration to an officer of the Court, or to a Consular Officer, or to a person the service of the Government.

41. (1) The officer or person so appointed shall act under the of the Judge, and shall be indemnified thereby.

(2) The Judge shall require and compel him to file in Court the accounts of his administration at intervals not exceeding 3 months.

42. Where a person has died intestate as to his personal estate or leaving a Will affecting his 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 Judge to be necessary or convenient in any such case to appoint some person as administrator of the estate of the deceased or any part thereof, the Judge may appoint such person as he shall deem fit to be such administrator upon his giving such security, if any, as the Judge shall direct, and every such administrator may be limited as the Judge shall deem fit.

43. The Judge 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 he shall deem fit not exceeding 10% per-cent 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 Judge is satisfied that by reason of exceptional circumstances the administration of the property has required an extraordinary amount of labour to be bestowed on it, he may allow in respect of such property a higher rate of remuneration.

Where any citizen of any foreign country dies within the jurisdiction without leaving within the jurisdiction a widower, widow or next-of-kin, the Probate Registrar shall collect and secure all moneys and other property belonging to the deceased, and shall then inform the nearest consular officer of such country of the death, and transmit to him a list of the money and property of the deceased.

45. Application may be made to the Court by any such Consular Officer or by any person authorised by him in writing and under the consular seal, for leave to administer the estate of the deceased, and the Judge may make such order as to security for payment of debts and the method of administration as the Judge shall deem fit, and vary such order when and so often as it is expedient.

46. (1) Every person to whom a grant of probate or Letter of Administration shall have been made, and every administrator appointed by the Judge shall, file in Court- the accounts of his administration every 3 months from the date of the grant or the appointment until the completion of the administration.

(2) Any executor or administrator who fails to file his accounts within the prescribed period as aforesaid shall be liable to a penalty of N100.00 (one hundred naira) for every day of default. A fine for non-payment shall be enforceable by distress, and failing sufficient distress, by imprisonment for a term not exceeding 6 months.

(3) When an account is filed in Court under this Rule, the Judge shall scrutinize such account and if it appears to the Judge that by reason of improper, unvouched or unjustifiable entries or otherwise such account is not a full and proper account, the Judge shall require the person filing the account to remedy such defects as there may be within such time as the Judge may deem reasonable for the purpose; and on failure to remedy such defects within such time, the person who filed such defective account shall be deemed to have failed to file an account within the meaning of this rule and proceedings may be taken against such person accordingly.

(4) The Registrar shall bring to the notice of the Judge the fact that any executor or administrator has failed to file his accounts as required by this Rule.

(5) The Judge may, on the motion of any party interested, or SUO motu, summon any executor or administrator failing as aforesaid, to show cause why he should not be punished.

(6) The Judge may for good cause shown, extend the time or such filing of accounts.

(7) Any executor or administrator who has been granted an extension of time to file such accounts, and who fails within such extended times 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.

(8) The accounts shall be open to the inspection of any person who satisfies the Registrar that he is interested in the administration.

(9) In this Rule, the word "account" includes an inventory, an account of the administration, the vouchers in the hands of the executor or administrator relating thereto and an affidavit in verification.

47. The Judge may refuse to entertain any application under rule 2 of this Order if he considers that there has been unreasonable delay by the applicant in making the application.

48. The grant of Letters of Administration under this Order shall be signed by the Probate Registrar on behalf of the Court.

## II Probate (Non-Contentious) Procedure

49. In this Part, Rules 1,4,5,6,7,8,11,12,14,15,16,17,19,26, 27 28, 29 30,31 of this Order shall also apply.

50. Every Legal Practitioner through whom an application for a grant is made shall give the address of his place of business within the jurisdiction.

51. (1) An applicant for a grant may apply in person.

(2) A personal applicant may not apply through an agent, whether paid or unpaid, and may not be represented 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 by 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 as 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 approve.

(6) A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared in the Registry or may himself prepare such papers and lodge them unsworn.

(7) 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 authorized officer.

(1) The Registrar shall not allow any grant to issue until all inquiries which he may deem 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 those contained in the Oath.

(3) No grant of probate or of administration with the Will annexed shall be issued within 3 months of the death of the deceased; and no grant of administration (not with the Will annexed) shall be issued within 3 months of such death.

(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 was domiciled at the time of death.

54. 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.

(1) Where the Registrar considers that in any particular case a photocopy of the original will would not be satisfactory for purposes of record, he may require that an engrossment suitable for Photostat reproduction 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 sub-rule 2 of the 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 appear in pencil in the original.

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.

(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 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 anyone or more but not exceeding four of them.

(3) In any case where probate is applied for by an assignee, copy of the instrument of assignment shall be lodged in the Registry.

58. (1) An application to add a personal representative shall be made to the Registrar and shall be supported by an affidavit by the personal 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 order as the circumstances of the case may require.

(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, administration 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.

60. (1) Nothing in Rules 25, 26 or 59 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 of Rule 62 apply.

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 but 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.

Where the deceased was domiciled outside the State, the Registrar may order that a grant should issue:

(a) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the deceased died domiciled;

(b) to the person entitled to administer the estate by the law :: the place where the deceased died domiciled;

(c) if there is no such person as is mentioned in paragraph (a) or (b) of this Rule or if in the opinion of the Registrar the circumstances so require, to such person as the Registrar may direct;

(d) if a grant 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 (a) or (b) of this rule or with any other person:

(a) probate of any Will which is admissible to proof may be granted:

(i) Where the Will is in English or in the local language to the executor named therein;

(ii) Where the Will describes the duties of a named person in terms sufficient to constitute him executor according to the tenure 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 that would have been applicable if the deceased had died domiciled in the State.

63. (1) Where a person entitled to a grant- resides outside the State, a grant may be made to his lawful attorney for his use and benefit, 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 lawful attorney of a person entitled to a grant and resident in the State, he may direct the grant to be made to the attorney for the use and benefit of such person, until such person obtains a grant or in such other way as the Registrar may direct.

64. (1) Where the person to whom a grant would otherwise be made is a minor, a grant for his use and benefit until he attains the age of 18 years shall subject to sub-rules 3 and 5 of this Rule, be granted:

(a) to both parents of the minor jointly or to any guardian appointed by a Judge; or

(b) where there is no such guardian able and willing to act and the minor has attained the age of 16 years, to any next-of-kin nominated by the minor, or where the minor is a married woman, to any such next-of-kin or to her spouse if nominated by her.

(2) Any person nominated under sub-rule 1 (b) of this Rule may represent any other minor whose next-of-kin he is, being a minor below the age of 16 years entitled in the same degree as the minor who made the nomination.

(3) Notwithstanding anything in this Rule, administration for the use and benefit of the minor until he attains the age of 18 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 sub-rule 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 a minor 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 minor until he attains the age of 18

years shall, unless the Registrar otherwise directs, be granted to the person entitled to the residuary estate.

(6) A minor's right to administration may be renounced only by a person assigned as guardian under sub-rule 3 of this Rule and authorized to renounce by the Registrar.

65. (1) Where one of several executors is a minor, probate may be granted to the adult executor, with power reserved for making the like grant to the minor on his attaining the age of 18 years and administration for the use and benefit of the minor until he attains the age of 18 years may be granted under Rule 64 only if the adult executor renounces or, on being cited to accept or refuse a grant, fails to make an effective application.

(2) A minor executor's right to probate on attaining the age of 18 years shall not be renounced by any person on his behalf.

66. (1) Where the Registrar is satisfied that a person entitled to a grant is by reason of mental or physical infirmity incapable of managing his affairs, a grant for his use and benefit, during his incapacity may be made:

(a) in the case of mental incapacity, to the person authorized by the Judge to apply for the grant;

(b) where there is no person so authorized 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) where 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 considered and excluded.

(3) Where legal disability arises out of unsoundness of mind or insanity notice of intended application for a grant under this rule shall, unless the Registrar otherwise directs, be given to his guardian.

(4) Where there is physical disability notice of intended application for a grant under this Rule shall unless the Registrar otherwise directs be given to the person alleged to be incapable.

67. (1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to grant of administration in some other capacity unless he expressly renounces such right.

(2) Unless the Registrar otherwise directs, no person who has renounced a grant in one capacity may obtain a grant in some other capacity.

(3) A renunciation of probate or administration may be retracted at any time on the order of the Registrar

(4) Provided that only in exceptional circumstances may leave be given to an executor to retract a renunciation of probate after a grant has been made to such other person entitled in a lower degree.

68. Where the State is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Rivers State Attorney-General and the Registrar may direct that no grant shall issue within a specified time after the notice has been given.

69. (1) An application for the resealing of probate or administration with the Will attached granted by a Court outside the State shall be made by the person to whom the grant was made or by any person authorised in writing to apply on his behalf.

(2) On such application:

(a) an Inland Revenue affidavit shall be lodged as if the application were one for a grant in the State;

(b) the application shall be advertised in such manner as the Registrar may direct and shall be supported by an oath sworn by the person making the application.

(3) On application for the resealing of such a grant:

(a) the Registrar shall not require sureties except where it appears to him that the grant is made to a person or for a purpose mentioned in paragraphs (a) to (f) of Rule 35 (1) or except where he considers that there are special circumstances making it desirable to require sureties;

(b) Rule 35(2), (4), (5), (6) and 51 (4) shall apply with any necessary modifications; and

(c) a guarantee entered into by a surety shall be in Probate Form 2 with such variations as circumstances may require.

(4) Except by leave of the Registrar, no grant shall be resealed unless it was made to such a person as is mentioned in paragraph (a) or (b) of Rule 62 or to a person to whom a grant could be made under a proviso to that Rule.

(5) No limited or temporary grant shall be resealed except by leave of the Registrar.

(6) Every grant lodged for resealing shall include a copy of any Will to which the grant relates or shall be accompanied by a copy certified as correct by or under the authority of the Court by which the grant was made.

(7) The Registrar shall send notice of the resealing to the court which made the grant.

(8) Where notice is received in the Registry from outside the State of the resealing of a grant made in the State, notice of any amendment or revocation of the grant shall be sent to the court by which it was resealed.

70. If a Registrar is satisfied that a grant should be amended or revoked, he may make an order accordingly:

Provided that except in special circumstances no grant shall be amended or revoked under this Rule except on the application or with the consent of the person to whom the grant was made.

71. (1) A notice to prohibit a grant of administration may be filed in Court.

(2) Any person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat in the Registry.

(3) Any person who wishes to enter a caveat, (in this Rule called "the caveator"), may do so by completing Probate Form 3 in the appropriate book at the Registry and obtaining an acknowledgement of entry from the proper officer, or by sending through the post at his own risk a notice in Probate Form 3 to the Registry in which he wishes the caveat to be entered.

(4) Where the caveat is entered by a Legal Practitioner on behalf of the caveator, the name of the caveator shall be stated in Probate Form 4.

(5) Except as otherwise provided by this Rule, a caveat shall remain in force for 3 months from the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

(6) The Registrar shall maintain an index of caveat entered in the Registry and on receiving an application for a grant in the Registry he shall cause the index to be searched and shall notify the applicant in the event of any caveat having been entered against the sealing of the grant for which application has been made.

(7) The Registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect thereof:

Provided that no caveat shall operate to prevent the sealing of a grant on which the caveat is entered.

(8) A warning in Probate Form 5 may issue from the Registry against a caveator at the instance of any person interested, in this Rule called "the person warning", which shall state his interest and, if he claims under a Will, the date of the Will, and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased; and every warning or a copy thereof shall be served on the caveator.

(9) A caveator having an interest contrary to that of a person warning may, within 8 days of service of the warning upon him inclusive of the day of such service; or at any time thereafter if no affidavit has been filed under sub-rule 12 of this Rule, enter an appearance in the Registry by filing Probate Form 6 and making an entry in the appropriate book, and shall forthwith serve on the person warning a copy of Probate Form 6 sealed with the seal of the Registry.

(10) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the Registry and the caveat shall then cease to have effect and if he has been warned, the caveator shall forthwith give notice of withdrawal of the caveat to the person warning.

(11) A caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to that person may, within 8 days of service of warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under sub-rule 12 of this Rule, issue and serve a notice, which shall be returnable before the Registrar.

(12) If the time limited for appearance has expired and the caveator has not entered an appearance, the person warning may file in the Registry an affidavit showing that the warning was duly served and that he has not received the summons for directions under the last foregoing sub-rule, and thereupon the caveat shall cease to have effect.

(13) Upon commencement of a probate action the Probate Registrar shall, if a caveat is in force, other than a caveat entered by the claimant, give to the caveator notice of the commencement of the action and, upon the subsequent entry of a caveat at any time when the action is pending, shall likewise notify the caveator of the existence of the action.

(14) Unless the Registrar otherwise directs:

(a) any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to sub-rule 10 of this Rule, remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such proceedings, and upon such application any caveat entered by a party who had notice of the proceedings shall cease to have effect;

(b) any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;

(c) the commencement of a probate action shall whether or not any caveat has been entered, operate to prevent the sealing of a grant until application for a grant is made by the person shown to be entitled thereto by the decision of the Judge in such action, and upon such application any caveat entered by a party who had notice of the action, or by a caveator who was given notice under sub-rule 13 of this Rule, shall cease to have effect.

(15) Except with the leave of the Judge, no further caveat may be entered by or on behalf of any caveator whose caveat has ceased to have effect under sub-rule 12 or 14 of this Rule.

72. (1) Every citation shall be settled by the Registrar before being issued.

(2) Every averment in a citation and such other information as the Registrar may require shall be verified by an affidavit sworn to by the person issuing the citation, in this Order called "the citor", or, if there are two or more citors, by one of them:

Provided that the Registrar may in special circumstance accept an affidavit sworn to by the citor's Legal Practitioner.

(3) The citor shall enter a caveat before issuing a citation.

(4) Every citation shall be served personally on the person cited unless a Registrar on cause shown by affidavit directs some other mode of service, which may include notice by advertisement.

(5) Every Will referred to in a citation shall be lodged in the Registry before the citation is issued, except where the Will is not in the citor's possession and the Registrar is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within 8 days service of the citation upon him inclusive of the day of such service, or at any time thereafter if no application has been made by the citor under sub-rule 5 of Rule 73 or sub-rule 2 of Rule 74 of this Order enter an appearance in the Registry by filing Probate Form 6 and making an entry in the appropriate book, and shall thereafter serve on the citor a copy of Form 5 sealed with the seal of the Registry.

73. (1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the Will or the executors of the last survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of 6 months from the death of the deceased:

Provided that no citation to take a grant shall issue while proceedings as to the validity of the Will are pending.

(4) A person cited who is willing to accept or take a grant may apply ex parte to the Registrar for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may:

(a) in the case of a citation under sub-rule 1 of this Rule apply to the Registrar for an order for a grant to himself;

(b) in the case of a citation under sub-rule 2 of this Rule, apply to the Registrar for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights or interest in respect thereof have ceased;

(c) in the case of citation under sub-rule 3 of this Rule apply to the Registrar by summons, which shall be served on the person cited, for an order requiring such person to take a grant within a specified time or for grant to himself or some other person specified in the summons.

(6) An application under sub-rule 5 of this Rule shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance but has not applied for a grant under sub-rule 4 of this Rule, or has failed to prosecute his application with reasonable diligence, the citor may:

(a) in the case of a citation under sub-rule 1 of this Rule, apply by summons to the Registrar for an order for a grant to himself;

(b) in the case of a citation under sub-rule 2 of this Rule, apply by summons to the Registrar for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (b) of sub-rule 5 of this Rule;

(c) in the case of a citation under sub-rule 3 of this Rule, apply by summons to the Registrar for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons;

and the summons shall be served on the person cited in each case.

74. (1) A citation to propound a Will shall be directed to the executors named in the Will and to all persons interested there under, and may be issued at the instance of any citor having any interest contrary that of the executors or such other persons.

(2) Where the time limited for appearance has expired, the citor may:

(a) where no person cited has entered an appearance, apply to the Registrar for an order for a grant as if the Will were invalid;

(b) in the case of a citation under sub-rule 2 of Rule 73 of this Order apply by summons to the Registrar for an order striking out the appearance and for endorsement on the grant of such a note as mentioned in paragraph (b) of sub-rule 5 of Rule 73 of this Order;

(c) in the case of a citation under sub-rule 3 of Rule 73 of this Order apply by summons to the Registrar for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons; and the summons shall be served on the persons cited in each case.

All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

(1) An application for an order requiring a person to bring in a Will or to attend for examination may, unless a probate action has been commenced, be made to the Court by summons, which shall be served on every such person as aforesaid.

(2) An application for the issuance by the Registrar of a subpoena to bring in a Will shall be supported by an affidavit setting out the grounds for the application, and if any person served with the subpoena denies that the Will is in his possession or control he may file an affidavit to that effect.

An application for an order for a grant limited to part of an estate may be made to the Registrar and shall be supported by an affidavit stating:

(a) whether the application is made in respect of the real estate only or any part thereof, or real estate together with personal estate, or in respect of a trust estate only;

(b) whether the estate of the deceased is known to be insolvent;

(c) that the persons entitled to a grant in respect of the whole estate in priority to the applicant have been considered and excluded.

78. An application for an order for grant of administration where the goods in the estate are of perishable nature may be made to the Registrar, and shall be supported by an affidavit setting out the grounds of the application.

79. An application for leave to swear to the death of a person in whose estate a grant is sought may be made to the Registrar and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance affected on the life of the presumed deceased.

80. (1) An application for an order admitting to proof a codicil or a Will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original Will is not available may be made to the Registrar:

Provided that where a Will is not available owing to its being retained in the custody of a foreign court or official, a duly certified copy of the Will may be admitted to proof without any such order as aforesaid.

(2) The application shall be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to:

(a) the due execution of the Will;

(b) its existence after the death of the testator; and

(c) the accuracy of the copy or other evidence of the contents of the Will, together with any consent in writing to the application given by any person not under disability who would be prejudiced by the grant.

81. An application for an order for a grant of special administration where a personal representative resides outside the State shall be made to the Judge by a motion.

82. (1) Where a surviving spouse who is the sole personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to the Registrar by filing a notice in Probate Form 7 with such variations as circumstances may require.

(2) A notice filed under this Rule shall be noted on the grant and the record shall be open to inspection.

83. (1). Where copies are required of original Wills or other documents deposited under the provisions of any written law such copies may be photocopies sealed with the seal of the Registry and issued as office copies and where such office copies are available, copies certified under the hand of a Registrar to be true copies shall be issued only if it is required that the seal of the Court be affixed thereto.

(2) Copies, not being photocopies of original Wills or other documents deposited as aforesaid shall be examined against the documents of which they purport to be copies if so required by the person demanding the copy, and in such case the copy shall be certified under the hand of a Registrar to be a true copy and may in addition be sealed with the seal of the Court.

84. The Registrar may require any application under this Order to be made by motion or summons.

85. (1) A Judge or the Registrar may direct that a notice of motion or summons for the service of which no other provision is made in this Order shall be served on such person or persons as the Judge or Registrar may direct.

(2) Where by the provisions of this Order or by any direction given under sub-rule 1 of this Rule a notice of motion or summons is required to be served on any person, it shall be served not less than 5 days, before the hearing of the motion or summons.

86. Unless the Registrar otherwise directs or this Order provides, any notice or other document required to be given or served on any person may be given or served by leaving it at, or by sending it by courier to that person's address for service, or if he has no address for service, his last known address.

87. Every affidavit used in non-contentious probate business shall satisfy the requirements of Order 33.

88. The provisions of Order 44 shall apply to the computation, enlargement and abridgment of time under this Order.

89. Subject in any particular case to any direction given by a Judge, this Order shall apply to any proceeding which is pending on the date on which these Rules come into operation as well as to any proceeding commenced on or after that date:

Provided that where the deceased died before the commencement of these Rules, the right to a grant shall, be subject to the provisions of any enactment, be determined by the principles and Rules in accordance with which the Court would have acted at the date of the death.

90. Suits in respect of probate shall be instituted and carried on as nearly as possible in the like manner and subject to the same Rules of procedure as suits in respect of civil claims.

### III Proceedings Generally

91. In probate actions, the originating process shall state whether the Claimant claims as creator, executor, administrator, beneficiary, next-of-kin or in any other capacity.

92. In probate actions service of a Writ of Summons may by leave of a Judge be allowed out of Nigeria.

In probate actions a party shall state with regard to every defence which is pleaded, what is the substance of the case on which it 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 a Judge no evidence shall be given of any other instances at the trial.

94. In probate actions where the claimant disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

95. In probate actions 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 finds that there was no reasonable ground for opposing the Will.

96. Every judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for any inquiry as to what parts of such personal estate are outstanding or undisposed of, unless the Judge shall otherwise direct.

97. Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Judge otherwise orders, be entitled to the costs of such proceedings in so far as they are not recovered from or paid by any other person out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Judge may otherwise order only on the ground that the trustee, or personal representative or mortgagee, has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

98. The executors or administrators of a deceased person's estate or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief

sought as creditor, beneficiary, next-of-kin; heir-at-law of a deceased person, or as Cestui que trust under the trust of any deed or instrument, or is claiming by assignment or administration otherwise under any such creditor or other person as aforesaid, may take out an originating summons; for such relief as listed hereunder as may be specified by the summons and as the circumstances of the case may require; that is, the determination without an administration of the estate or trust, of any of the following questions or matters:

- (a) any question affecting the rights or interests of the person claiming to be creditor, beneficiary, next-of-kin, or heir-at-law or cestui que trust
- (b) the ascertainment of any class of creditors, beneficiary, next -of-kin, or others;
- (c) the furnishing of any particular accounts by the executors or administrators or trustees and the vouching, when necessary of such accounts;
- (d) the payment into Court of any money in the hands of the executors or administrators or trustees;
- (e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;
- (f) the approval of any sale, purchase, compromise, or other transaction;
- (g) the determination of any question arising in the administrators of the estate or trust.

Any of the persons named in Rule 98 of this Order may in like manner apply for and obtain an order for:

- (a) the administration of the personal or real estate of the deceased;
- (b) the administration of the trust;
- (c) any act to be done or step to be taken which the Judge could have ordered to be done or taken if any such administration order as aforesaid had previously been made.

100. The persons to be served with the summons under Rules 98 and 99 of this Order in the first instance shall be the following:

Where the summons is taken out by, an executor or administrator or trustee:

- (a) for the determination of any question, under paragraph (a), (c) (f) or (g) of Rule 98 of this Order, the persons, or one of the persons, whose rights or interests, are sought to be affected;
- (b) for the determination of any question, under paragraph (b) of Rule 98 of this Order any member or alleged member of the class;
- (c) for the determination of any question under paragraph (c) of Rule 98 of this Order, any person interested in taking such accounts;
- (d) for the determination of any question under paragraph (d) of Rule 98 of this Order, any person interested in taking such money;
- (e) for relief under paragraph (a) of Rule 99 of this Order, the residuary legatees, or next-of-kin, or some of them, or the residuary devisees, or heirs, or some of them, as the case may be;

- (f) for relief under paragraph (b) of Rule 99 of this Order, the Cestui que trust or some of them;
- (g) if there are more than one executor or administrator or trustee and they do not concur in taking out the summons, those who do concur;
- (h) where the summons is taken out by any person other than the executors, administrators or trustees the executors, administrators or trustees, or some of them must be served.

101. It shall not be obligatory on the Judge to pronounce or make judgment or order, whether on summons or otherwise for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined without such judgment or order.

102. Upon an application for administration or execution of trusts by a creditor or beneficiary under a Will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the Judge may, in addition to the powers already existing:

- (a) order that the application shall stand over for a certain time, and that the executors, administrators or trustees in the meantime shall render to the applicant proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings;
- (b) when necessary, to prevent proceeding, by other creditors, or by persons beneficially interested, make the usual judgment or order for administration with the proviso that no proceedings are to be taken under such judgment or order without leave of the Judge.

103. The issue of a summons under Rule 98 of this Order shall not interfere with or control any power or discretion vested in any executor, administrator or trustee except so far as such interference or control may necessarily be involved in the particular relief sought.

104. Any of the following applications may be made by summons:

- (a) an application for the appointment of a new trustee with or without a vesting or other consequential order;
- (b) an application for a vesting order or other order consequential on the appointment of a new trustee where the appointment is made by a Judge;
- (c) an application for vesting or other consequential order in any case where a judgment or order has been given or made for the sale, conveyance, or transfer of any land or stock or the suing for or recovering of any chose in action;
- (d) an application relating to a fund paid into Court in any case coming within the provisions of this Order.

105. (1) The provisions of the Interpretation Act shall apply to the interpretation of this Order.

(2) In this Order, unless the context otherwise requires:

"authorised officer" means any officer of the Registry who is for the time being authorised by law to administer any oath or to take any affidavit required or for any purpose connected with his duties;

"gross value" in relation to any estate means the value of the estate without deduction for debts, encumbrances, funeral expenses or estate duty;

"oath" means the oath required by this Order to be sworn by every applicant for grant;

"personal applicant" means a person other than a trust corporation who seeks to obtain a grant without employing a Legal Practitioner, and

"personal application" has a corresponding meaning;

"Registrar" means the Probate Registrar;

"Registry" or "Probate Registry" means the Probate Registry of the Court;

"Will" includes a codicil and any testamentary document or copy or reconstruction of it;

(3) Unless the context otherwise requires any reference in this Order to any Rule or enactment shall be construed as a reference to that Rule or enactment as amended, extended or applied by any other Rule or enactment.

#### ORDER 56

#### FEES AND ALLOWANCES

1. Subject to the provisions of any written law and of the foregoing Orders-

(a) the fees set out in the First, Second, Third, and Fourth Schedules hereunder shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in those Schedules:

(b) the allowances set out in Part I of the Third Schedule shall be payable to the various categories of witnesses mentioned therein by any person at whose instance they testify.

Provided that a witness who testifies at the instance of the court acting on its own motion shall be paid out of public revenue.

2. The regulations set out in the Fifth Schedule shall be observed by all officers of Court concerned with the rendering of services, and or collection of fees payable, under the provisions of the foregoing orders.

3. The fees set out in the 6th Schedule relate to fees payable for the service specified therein as may be revised from time to time by an administrative direction of the Chief Judge.