



MAGISTRATES' COURTS [CIVIL PROCEDURE]

RULES OF EDO STATE 2018

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Edo State Judiciary
By
Dele Igbinedion Chambers
14, Aimure Avenue
Opposite Ebenezer Private School
Off Ihama Road, G. R. A.
Benin City, Edo State.
Tel: 08059863558

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The Chief Registrar
Edo State Judiciary
High Court of Justice Complex
Sapele Road
Benin City, Edo State

**MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES OF EDO STATE,
2018**

In exercise of the power conferred on me by Section 60 (1) (a) of the Magistrates Courts Law, Cap. 97, Volume IV, Laws of Bendel State of Nigeria 1976 applicable in Edo State of Nigeria, and by virtue of all others laws enabling me in that behalf, I, HONOURABLE JUSTICE ESOHE FRANCES IKPONMWEN, the Chief Judge of Edo State hereby make these Rules:

1. Rules of Civil Procedure

- (1) The Civil Procedure Rules set out and hereinafter called "The Rules" shall be the Rules of procedure to be applied to all civil cases in the Magistrates Courts of Edo State.
- (2) Where no rules exist: Where a matter arises in which no provisions or no adequate provisions exist in these Rules, a court shall adopt a procedure as may do substantial justice between the parties concerned.

2. Construction of references under these Rules

- (1) A reference in these Rules to anything done under these Rules includes a reference to anything done before the commencement of these Rules under any enactment or rule of court ceasing to have effect on the commencement of these Rules.
- (2) Except where the context otherwise requires, any reference in these Rules to any enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment.

3. Forms

The forms set out in the Appendix shall be used where applicable with such variations as the circumstances of a particular case may require.

4. Short title and commencement

These Rules may be cited as the Magistrates' Courts (Civil Procedure) Rules of Edo State, 2018 and shall come into effect on the 1st November, 2018.

5. Cessation of application

The Magistrates' Courts (Civil Procedure) Rules 1959 shall cease to apply to Edo State upon the coming into effect of these Rules.

Dated this 1st day of November, 2018.

HONOURABLE JUSTICE ESOHE FRANCES IKPONMWEN



Chief Judge of Edo State

**MAGISTRATES' COURTS (CIVIL PROCEDURE)
RULES OF EDO STATE 2018**

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**MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES
OF EDO STATE 2018**

PREAMBLE

1. The overriding objectives of these Rules in the Magistrates' Courts of Edo State shall be as follows:
 - (a) To promote a just determination of every civil proceeding;
 - (b) To construe these Rules to secure simplicity in procedure, fairness in administration, elimination of unjustifiable expense and delay, efficient and speedy dispensation of justice.
 - (c) Amicable resolution of disputes by use of Alternative Dispute Resolution (ADR) mechanism.

ORDER 1

CITATION, APPLICATION AND INTERPRETATION OF MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES OF EDO STATE 2018

Citation.

SHORT TITLE AND COMMENCEMENT

These Rules may be cited as Magistrates' Courts (Civil Procedure) Rules of Edo State 2018 and shall come into force on the 1st day of November 2018

Application

1. These Rules shall apply to all civil proceedings in the Magistrates' Courts of Edo State including all pending part-heard causes and matters, before these Rules came into force in respect of steps to be taken or further taken in such causes or matters.
- (2) Where a matter arises in respect of which no adequate provisions are made in the Rules, the Court shall adopt such procedure as will in its view do substantial justice between the parties concerned.

Interpretation of terms

2. (1) These Rules shall be interpreted in accordance with the Interpretation Law, Cap.76 Laws of defunct Bendel State 1976 (as applicable to Edo State) or any re-enactment thereof.
- (2) Where in these Rules depositions and affidavits are required to be made, such depositions or affidavits shall be made in accordance with the provisions of the Evidence Act.
- (3) In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the following meanings:
 - “Action” means a civil proceeding commenced by a claim, originating application etc. but does not include a criminal proceeding.
 - “Appeal court” means a High Court of Edo State sitting as an appellate court;
 - “Cause” includes any action, suit, or other original proceeding between a claimant and defendant.
 - “Chief Judge” means the Chief Judge of Edo State.
 - “Claimant” is any person seeking any relief against any other person in any proceeding and shall include a Claimant in a Counter Claim;

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"Court" means a Magistrates court established under the Magistrates Courts Law Cap 97 Laws of defunct Bendel State(as applicable to Edo State);

"Court Process" or "Process" includes a claim, complaint, originating application, notices, petitions, orders, motions, summons, warrants and all documents or written communication of which service is required;

"Decision" means any determination of the 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 Magistrates Courts Law Cap 97 laws of defunct Bendel State (as applicable to Edo State); or any re-enactment thereof;

"Legal Practitioner" means a legal practitioner or counsel within the definition or meaning in the Legal Practitioners' Act;

"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;

"Registrar" includes Assistant Chief Registrar, Principal Registrar, Senior Registrar, Higher Registrar, Registrar, Assistant Registrar or any other Officer acting or performing the functions of a Registrar;

"Registry" means the Registry of the Magistrates' Courts of Edo State in the appropriate magisterial district or jurisdiction;

"State" means Edo state;

"Suit" includes an action;

"the prescribed form" means and includes any form now in use in the court or in the schedule hereto, with such modification and adaptations as the circumstances may require, and any form which may hereinafter be provided by Rules of Court.

✱ 3. The Magistrates Courts (Civil Procedure) Rules Cap 97 Laws of defunct Bendel State (as applicable to Edo state) shall cease to be operational from the date of commencement of these Rules.

ORDER 2

FORMS AND COMMENCEMENT OF ACTION

1. Action that may be commenced in Edo State.

(1) Except where any Law or Rule is otherwise provided, an action may be commenced by claim in a Magistrates' Court if—

(a) the defendant or one of the defendants resides or carries on business in Edo state ; or

(b) the cause of action arose wholly or in part in Edo state.

(2) Where the claimant sues as assignee of a debt or other thing in action, the action may be commenced in Edo state if the assignor might have commenced it in Edo state but for the assignment.

2. Originating application that may be commenced in Edo State

Subject to any Law or Rule, an originating application may be commenced in the Magistrates' Courts—

(a) if the applicant or one of the applicants resides or carries on business in Edo state;

(b) the subject matter of the application is situated in Edo state;

(c) if the respondent or one of the respondents resides or carries on business in Edo state;

(d) if the cause of action arose wholly or in part in Edo state.

Instances where court may appoint a Guardian.

3. Where proceedings in which a guardian is required are commenced without one, a Court may -

(a) appoint as a guardian, any person who consents to act and gives an undertaking;

(b) order the proceedings to be struck out.

(c) On giving the undertaking the guardian shall be liable for costs in the same manner and to the same extent as if he were himself a claimant; and,

(d) if the proceedings fail or are discontinued, an order for payment of costs may be made against the guardian whether or not an order for costs is or is not made against the infant, and proceedings may be taken on order for the recovery of the costs as for the recovery of any amount payable under a judgment.

Civil proceedings to be commenced by claim.

4. (1) Any person (referred to as "a claimant") desirous of instituting civil proceedings shall deliver to the Registrar for filing, a claim together with the particulars of his claim.
- (2) The particulars shall be signed by the claimant or his legal practitioner
- (a) 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.
- (b) Where a legal practitioner sues on his behalf, the legal practitioner shall provide an address at which he will accept service of documents on behalf of the claimant as well as a telephone number or in addition, an e-mail address at which the court and the other party may direct communications.
- (3) The claim, summons or other originating process shall be accompanied by the following:
 - (a) the list of witnesses to be called at the trial;
 - (b) written statements on oath of the witnesses, provided the identity of the witnesses may be concealed by the use of alphabet;
 - (c) list of non documentary exhibits; and
 - (d) copies and list of every document to be relied on at the trial provided that a litigation survey plan need not be filed at the commencement of the action.

Provided that where the parties have no legal representation, this rule shall not be mandatory; subject to the directions of the court as the justice of the case demands.

Where claim discloses no cause of action.

5. (1) The Magistrate shall strike out any action which on the face of it discloses no cause of action, or is in respect of a matter not within the actual jurisdiction of the Court, or the claimant fails to supply any or one or more of the statements required by the Court.
- (2) The claimant shall be at liberty to file a fresh action.

Entry of claims.

6. On the filing of the documents prescribed by this Rule and on payment of the required fees, the Registrar shall, subject to the provisions of these Rules as to giving security when required –
 - (a) enter a claim in the Court Book kept for that purpose in his office, stating the names and places of residence or of business of the parties and the substance of the action intended to be brought;
 - (b) number the action every year in the order in which it is entered;

- (c) direct service on the opposing parties; and
- (d) deliver such claims on the day of filing to the office of the Designating Magistrate.

Causes of action may be joined.

7. (1) A claimant may unite in the same claim several causes of action. The Court, if it thinks that such cause of action or some of them cannot be conveniently tried together, may order separate trials.
- (2) Where a claimant seeks to obtain payment or relief upon more than one cause of action, he shall in his particulars; state the grounds of each cause of action separately, and shall also state separately the payment or relief which he claims in respect of each.

Originating applications.

8. (1) Any proceeding authorised to be commenced in Court and which are not applications required by any Law or Rule to be commenced otherwise, may be commenced by originating application and shall be referred to as an "action".
- (2) An originating application shall be in writing and shall state the –
- (a) order applied for and sufficient particulars to show the grounds on which the applicant claims to be entitled to the Order;
 - (b) names and addresses of the persons intended to be served, referred to in this Rule as "the respondents"; and
 - (c) applicant's address for service where no person is intended to be served; .
- (3) The applicant shall deliver the application to the Registry for filing together with as many copies as there are respondents.
- (4) On the filing of the application –**
- (a) the Registry shall enter the application in the records kept for that purpose and fix a day for the hearing of the application, and deliver to the applicant a claim; and
 - (b) a copy of the application shall be served on each respondent in the manner prescribed by the Rules for service of an ordinary summons.
- (5) The application may be heard in chambers.**

ORDER 3

ORDINARY SUMMONS, PARTICULARS, DEFENCE, COUNTER-CLAIMS AND ADMISSION.

1. Summons to issue

(1) After a claim has been entered, the Magistrate or the Registrar, on the directive of the Magistrate, shall issue an ordinary summons directed to the defendant unless a summary summons has been applied for.

(2) A copy of the particulars shall also be annexed to every summons for service.

2. Court to fix time for appearance of defendant.

Subject to the provisions of the Magistrates' Courts Law, and of these Rules, the Registrar shall, where an ordinary summons is issued on the defendant, fix the date for the defendant to appear in Court to answer the claim:

Provided that such date shall not be less than five (5) days after ensuring service of claims has been effected on the defendant.

3. Service to be effected within time.

In case where an ordinary summons issued for the commencement of a cause within time is not served within three (3) months from the date of issue it shall become void with liberty to file fresh action subject to any statute of limitation.

4. Further particulars.

(1) If the defendant requires further particulars, he or his legal practitioner may within six (6) days of the service of the summons on him, file a notice and a copy of the notice, specifying what further particulars he requires and request the Magistrate in chambers to cause such copy to be served on the claimant or his legal practitioner and such notice shall give the defendant or his legal practitioner's address for service in Edo State.

(2) The claimant or his legal practitioner shall, within two (2) days of the service of the notice for further particulars, file the further particulars together with a copy of it, and request the Magistrate in chambers to cause such copy to be served on the defendant or his legal practitioner as the case may be at the address for service given in accordance with the provisions of the last preceding paragraph.

(3) If the notice is not complied with, the Court before or at the trial, if satisfied that the defendant is prejudiced in his defence, may

(a) order further particulars to be filed and served; and

(b) stay all proceedings until the order has been obeyed, and order the action to be dismissed

unless the order is obeyed within such further time as the Court may allow.

(4) This Rule shall apply to a counterclaim as it applies to an action, with the necessary modifications.



Counter claim or defence.

5. (1) Where a defendant on whom an ordinary summons has been served and intends to set up a counter claim or set-off or a defence, he shall within six (6) days of the service of the summons on him file with the Registry for service on the claimant the counter claim or defence.

(2) Such counterclaim shall be accompanied by the following:

- (a) the list of witnesses to be called at the trial;
- (b) written statements on oath of the witnesses, provided the identity of the witnesses may be concealed by the use of alphabet;
- (c) list of non documentary exhibits; and
- (d) copies and list of every document to be relied on at the trial.

Provided that where the parties have no legal representation, this rule shall not be mandatory

(3) The Registrar shall cause a copy of such counterclaim together with the aforesaid processes to be served on the claimant.

(4) Where a defendant has set up a counterclaim or set-off or a defence after the period of six (6) days prescribed above, the Court may, if satisfied that the claimant has been prejudiced, adjourn the trial and order the defendant to pay the costs properly incurred as a result of his delay.

6. Counter-claim against person other than claimant.

Where the defendant desires to set up a counterclaim against a claimant and some other person, he may apply to the Court for an order that the other claimant person be added as a defendant to the counterclaim, and the Court may make an order accordingly, and may give all such directions as may be necessary to enable the questions at issue between all the parties be determined at the trial of the action.

7. Admission and request for time.

(1) A defendant who has been served with an ordinary summons and who admits liability for the whole or part of any claim but desires time for payment, shall, within six (6) days of the service of the summons on him, deliver to the Registry, an admission as in form in the First schedule hereto

(2) The Registrar shall upon the receipt by him of the admission send notice to the claimant.

(3) If the claimant elects to accept the amount admitted in satisfaction of his claim and the proposal as to time of payment, he shall send notice of acceptance to the Registrar within three (3) days of the receipt of the notice of admission and thereafter judgment shall be entered accordingly.

(4) If the claimant does not accept the amount admitted and the proposal as to time of payment, he shall within three (3) days of the receipt of the notice of admission send notice of non-acceptance to the Registrar.

(5) If a defendant or claimant fails to deliver an admission or a notice of acceptance within the prescribed time by this Rule, the action may be set down for trial and the Court may order him to pay any costs properly incurred as a result of his delay.

(6) The delivery by a defendant of an admission containing a proposal as to time of payment shall relieve him from the obligation imposed by the summons to appear in Court on the return day.

ORDER 4

SUMMARY SUMMONS.

1. Conditions for summary summons.

In any action in a Magistrates' Court for a debt or liquidated money demand, summary summons with or without a claim for interest, the claimant may file a claim and request in writing to the Registrar for the endorsement of the claim as a summary summons:

Provided that no summary summons shall be issued –

- (a) against an infant or a person of unsound mind or a person adjudged as a lunatic;
- (b) to recover money lent by a moneylender within the meaning of the Moneylenders Law, or interest on money so lent, or to enforce any agreement made or security taken in respect of money so lent;
- (c) on behalf of an assignee of a debt or other thing in action;
- (d) to recover money secured by a mortgage or charge; or
- (e) against a defendant who has to be served outside jurisdiction.

2. Issue of summary summons.

The Registrar shall endorse the claim to issue a summary summons.

3. Defence, request for time.

A defendant in a summary action, who disputes his liability for the whole or part of any claim or desires time for payment or desires to set up a counterclaim, shall within five (5) days of the service of the summons on him, inclusive of the day of service, deliver to the Registrar –

- (a) the form appended to the summons completed according to the circumstances of his case and stating the address for service and signed by him or by some person on his behalf; or
- (b) a defence or an admission and a request for time for payment (in this Order called an admission) or a counterclaim, signed and accompanied by as many copies as there are claimants.

4. Judgment in default.

If the defendant does not within five (5) days of the service of the summons on him, inclusive of the day of service, pay into Court the total amount of the claim and costs or deliver at the Registry of the Court, a defence or an admission or a counterclaim, the service

being duly proved, the claimant may have judgment entered against the defendant for the amount of the claim and costs, and the order shall be for payment immediately, or at such time or times as the court may direct:

Provided that if the defendant delivers at the registry of court a defence or an admission or a counterclaim after the said period of five (5) days has expired and before judgment has been entered, judgment shall not be entered under this paragraph but the procedure prescribed by Rule 5 or Rule 6 of this Order shall be followed.

5. Defence or Counter-claim.

If within the period of five (5) days prescribed by Rule 3 of this Order, or before judgment has been entered, the defendant delivers at the registry of the Court a defence not accompanied by an admission of any part of the claim or delivers a counterclaim, the registry shall fix a day for the trial of the action and shall give not less than five (5) clear days notice to the claimant and defendant annexing to the notice given to the claimant a copy of the defence or counterclaim.

6. Admission.

(1) If within the period of five (5) days prescribed by Rule 3 of this Order, or before judgment has been entered, the defendant delivers at the Registry of the Court an admission of the whole or part of the claimant's claim, not accompanied by a counterclaim, the Registry shall upon the receipt of the admission, send notice of it to the claimant annexing a copy of the defence, if any, as to part of the claim.

(2) If the claimant elects to accept the amount admitted in satisfaction of his claim and the proposal as to mode of payment, he shall, within five (5) days of the receipt of the notice of admission, send notice of acceptance to the Registry, and judgment shall be entered accordingly if the Magistrate is satisfied that the admission bears the defendant's signature.

(3) If the claimant does not elect to accept the amount admitted or the proposal as to mode of payment, he shall, within five (5) days of the receipt of the notice of admission, send notice of non-acceptance to the Registry who shall –

(a) if the whole claim is admitted, fix a day (in these Rules called the day fixed for the disposal of the action) on which the action will be disposed of and the decision of the Court will be given as to the date of payment or the instalments by which payment is to be made, and not less than five (5) clear days' notice of the day so fixed shall be given to the claimant and to the defendant; or

(b) if part only of the claim is admitted, fix a day for the trial of the action and give not less than five (5) clear days' notice to the claimant and the defendant.

7. Power to let defendant defend.

If the Magistrate is satisfied that the defendant when he delivered his admission, intended to dispute the whole or any part of the claim or to set up a counterclaim, he may give the defendant permission to defend the action or to set up a counterclaim on such terms as to costs or otherwise as he thinks fit, and if he gives such permission, he shall fix a day for the trial of the action and give notice of it to the claimant and defendant.

8. Power to Strike Out.

Where three (3) months have expired from the date of service of a summary summons, and

(a) no defence or admission or counterclaim has been delivered and judgment has not been entered against the defendant; or

(b) an admission has been delivered but no notice of acceptance or non acceptance has been received from the claimant by the Registrar who shall forward same to the Magistrate in chambers, the action shall be struck out and no extension of time shall be granted beyond the three (3) months.

9. Exchange of summary summons for ordinary summons.

A summary summons which has not been served may at the request of the claimant, be exchanged after the payment of the prescribed fees for an ordinary summons within three (3) months of the issue of the summons.

10. Provisions common to ordinary and summary actions.

Order 3 rule 6 shall apply to an action in which a summary or ordinary summons has been issued.

ORDER 5

SERVICE

Normal mode of service.

1. (1) Subject to the provisions of any Law or Rule, service of an originating process, summary summons or other processes shall be effected by delivering such processes together with the particulars –

(a) if on an individual to him personally; or

(b) if on a partnership –

(i) to one of the partners personally; or

(ii) to any employee at the principal place of business of the partnership:

Provided that, where the partnership has to the knowledge of the claimant been dissolved before the commencement of the action, the claimant shall apply for substituted service;

(2) Where a person carrying on a business in a name other than his own, issued in that name as if it were the name of a firm, the summons or other originating process shall be served in accordance with the provisions of this Rule as if he were a partner sued in the name of a firm and his business were a partnership.

(3) Where the defendant is a person of unsound mind, whether adjudged a lunatic or not, the summons or other originating process shall be delivered to the person with whom he resides or who has him under his care or control.

SERVICE OF ORIGINATING PROCESS.

2. By whom service is to be effected.

1. (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 and such person shall be called a Process Server.

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

Service of Originating Process, etc., how effected.

3. (1) The bailiff or Process Server shall effect service of an Originating Process on a party by delivering to the party to be served a copy of the process.

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

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

(4) No personal service of an originating process shall be required where the defendant has authorised his Legal Practitioner in writing to accept service, deposes to an affidavit to that effect and the said legal practitioner appears in the case.

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 2 Rule 4 of these rules.

4. Substituted Service

1. Where it appears to the Court, either with or without an attempt at service in accordance with the provisions of Rule 1 of this Order that for any reason, service of any process whatsoever including a judgment summons or other post judgment court processes, cannot conveniently be effected, the Court, after being satisfied by affidavit that it is necessary so to do, may order that service be effected –

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

(b) by delivery of the process through an accredited courier service in accordance to the Law and proof of delivery to the satisfaction of the Court;

(c) by advertisement in some newspaper circulating within the jurisdiction;

(d) by notice affixed in a conspicuous position at the Court house or some other place of public resort in that part of Edo state wherein the proceedings in respect of which the service is made have been instituted;

(e) by affixing the process in a conspicuous position at the usual or last known place of abode or business of the person to be served; or

(f) in such other manner as the Court may direct, and upon compliance with such order, service shall be deemed to be good and sufficient service of the process on the person to be served

2. Any reference in these rules to an address for service includes a physical or postal address within the jurisdiction or an electronic mail address or telephone number or any other mode of communication as may become available where notices and other processes which are not

required to be served personally may be left, sent or posted.

3. Where under these rules, any notice or other process is required to have an address for service endorsed on it; it shall not be deemed to have been properly filed unless such address is endorsed on it.

4. Where under these Rules, any person has given an address for service, any notice or order which is not required to be served personally shall be sufficiently served upon him if:

- (a) Left at that address, or
- (b) Sent by registered post to that address and in which if the date of service by post is material, Section 49 of the Interpretation Law Cap 76 laws of defunct Bendel State (as applicable in Edo State) shall apply, or
- (c) Transmitted by electronic means to the electronic mail address or facsimile number or telephone number or any other mode of electronic communication

5. Persons Under disability

(1) Where a person under disability is a defendant in any action, service on his guardian shall be deemed good and sufficient personal service, unless a Magistrate otherwise orders;

(2) Where a defendant is an infant, the summons shall be delivered to any of his parents or guardian, or, if he has no parent or guardian, to the person with whom he resides –

Provided that the Court may order that personal service on a minor or infant who is over 16 years of age living independently or doing business is good service.

6. Prisoner or detainee

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 an officer of the agency in charge of the station, facility or prison shall be deemed good and sufficient personal service on the defendant.

7. Partners

Where persons are sued as partners in the name of their firm, the originating process shall be served upon any one or more of the partners at the principal place of business within the jurisdiction or upon any person having control or management of the partnership business there; and such service shall be deemed good service upon the firm whether any members 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 person within the jurisdiction sought to be made liable.

8. Corporation or Company

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

9. Local agent of principal who is out of Jurisdiction

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 courier to the defendant at his address out of jurisdiction.

10. Where violence is threatened

Where a person to be served, whether alone or in concert with others, resists service or applies or threatens violence to the process server or court official, the process server or such officer of court 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.

11. Proof of service generally

(1) After serving any process, or unable to serve such process, the Sheriff, bailiff, process server or any other person appointed by the Court shall promptly depose to and file an affidavit stating the date, place, time, method and mode of service or the reason for his inability to serve within 7 days of the process being handed over to him for service.

(2) After serving any process or being unable to serve such process the affidavit shall be prima facie proof of service or inability to serve.

Provided also that proof of service by endorsement on a copy of the summons or process by the person to be served shall also be sufficient proof of such service.

12. Expenses of service

The party requiring service of any process shall pay in advance all costs and expenses of and incidental to such service as stated in the schedule to these rules or as may be directed by the Chief Judge from time to time.

13. Variation of Order

An order for service may be varied from time to time in relation to the mode of service directed by the order.

14. Time for Service

(1) Service of court processes shall be effected between the hours of 6:00am and 6:00pm on any weekday including Saturday.

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

15. Recording of Service

(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 or officer of the Court, 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 6

PARTIES

PART 1- GENERAL

Joinder of claimants.

1. (1) All persons may be joined as claimants in an action where right to relief in respect of or arising out of ~~the~~ same transaction or series of transactions is alleged to exist, ~~whether~~ jointly, severally, or in the alternative, where, if they brought separate actions, common question of law or fact would arise:

Provided that if on the application of any defendant it appears that any joinder may embarrass a party or delay the trial, the Court may order separate trials, or make such other order as it thinks fit.

- (2) Judgment may be given to any claimant for the relief to which he is entitled, but any defendant, though unsuccessful, may be awarded any extra costs caused by joining any person who is not found entitled to relief.

Joinder of defendants.

2. (1) All persons may be joined as defendants in an action where the right to any relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate actions were brought any common question of law or fact would arise, the claimant may at his option join as parties to the same action all or anyone of the persons jointly and severally liable on any contract.

- (2) Judgment may be given against one or more of the defendants as may be found to be liable according to their respective liabilities.

- (3) Where two or more persons are made defendants, whether jointly or severally liable, the claimant may have judgment against anyone or more of the defendants and may issue execution, without prejudice to proceed with the action.

- (4) It shall not be necessary that every defendant to an action shall be interested as to all the relief claimed, or as to every cause of action, but the Court may make an order that may prevent any defendant from being embarrassed or put to any unnecessary expense by being required to attend any proceedings in which he has no interest.

Contribution.

3. (1) Where judgment is given against two or more defendants jointly and severally they shall be entitled to contribution among themselves and any defendant who satisfies the judgment may apply to the Court for an order of contribution against any other defendant.

(2) The provisions of this Rule shall not affect the rights and liabilities between joint tortfeasors.

Persons jointly liable.

4. (1) Where a claimant has a demand recoverable against two or more persons jointly liable, it shall be sufficient to serve any of these persons with process, and judgment may be obtained, and execution issued, against any person so served, notwithstanding that others jointly liable may not have been served or sued or may not be within the jurisdiction of the Court.
- (2) Where judgment is obtained against one person, he shall be entitled to recover in the Court contribution from any other person jointly liable with him.
- (3) Where a claimant does not proceed against all or several persons jointly liable, every defendant sued may set up any defence or counterclaim which he would have been entitled to set up if all the persons liable had been made defendants.

Partners.

5. Where partners sue or are sued in the name of their firm, the partners may be ordered by the Court, on application by any other party, to furnish a statement verified by affidavit of the names and addresses of the persons who were partners in the firm when the cause of action arose and, in default of compliance, the proceedings shall be stayed or the partners shall be barred from defending the action, according to whether they are claimants or defendants.

Representative proceedings

6. Where there are numerous persons having an interest in one action or proceedings, one or more of them may sue or be sued, or defend, on behalf of all persons so interested.

Representative capacity to be stated

7. The fact that the claimant sues, or any defendant is sued in a representative capacity, shall be expressed in the title of proceedings.

*** Misjoinder and nonjoinder**

8. (I) The Court may at any stage strike out the names of any party or parties improperly or unnecessarily joined, and may, after due notice given to the parties affected, add the names of parties whose presence is necessary in order to dispose finally the matter in dispute, and on proof of such notice, the parties so served, whether they have appeared or not, shall be bound by the proceedings in the action:

Provided that no person shall be added as a claimant without his consent in writing, or in the case of a person under disability without the consent in writing of the next friend or guardian ad litem or other person acting on behalf of the person under disability.

(2) No action shall be defeated by reason of the misjoinder or nonjoinder of parties.

9. Action in the name of a wrong Claimant

Where an action has been commenced in the name of a wrong person as claimant or where it is doubtful whether it has been commenced in the name of the right claimant, a magistrate may order the substitution or addition of any other person as claimant on such terms as may be just.

10. Action in the name of wrong defendant

Where an action has been instituted against a wrong defendant or where the name of a defendant has been incorrectly stated by a claimant, a Magistrate may upon application, order a substitution or addition of any person as defendant or correction of such name on such terms as may be just.

11. Application to add or strike out

(1) Any application to add, strike out, substitute or vary the name of a claimant or defendant may be made to a Magistrate by a motion or as the court may direct.

(2) Where the application is to add a claimant or a defendant and both parties are represented by legal practitioners, such an application shall be accompanied by the originating processes filed in the action, including the exhibits intended to be used and list and deposition of all the witnesses or as the court may direct.

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.

12. Where a claimant or defendant is added

Where a claimant or defendant is added or substituted, the originating process and other previous processes shall be amended accordingly and the claimant shall unless otherwise ordered by the Magistrate file an amended originating process and other processes. In the case of an added defendant, cause the new defendant to be served in the same manner as the original defendant.

PART 2 PERSONS UNDER DISABILITY

Suits by infants and Persons of unsound mind.

13. (1) An infant may sue by his next friend and may defend by his guardian ad litem.

(2) A person who has been adjudged a lunatic may sue or may defend by his guardian ad litem on such terms as to liability for costs as the court shall deem just.

Court may appoint guardians ad litem

14(1) Where a default having been made by a defendant in answering or otherwise defending the suit after service of the summons, it appears to the court that he is an infant or a person of weak or unsound mind so that he is unable to defend the suit personally, the court may, if it thinks fit, on the application of the claimant or of its own motion, appoint by order, some fit person to be the guardian of the defendant for the purposes of the suit.

(2) Before such an order is made, the court shall cause such notice as it thinks reasonable to be served on, or left at the dwelling-house of the person with whom, or under whose care, the defendant is, and also, unless the court sees good reason to the contrary, in the case of an infant not residing with or under the care of his guardian to be served on or left at the dwelling-house of his guardian.

Action by infant for wages.

15. Notwithstanding the provisions of this Order unless otherwise prescribed by law, any person under the age of eighteen (18) years may bring an action in the Court for any sum of money which may be due to him for wages or piece of work or for work as a servant, in the same manner and in all respects as if he were of full age under the law.

Compromise or payment out in case of infants.

16. (1) In any action in which money or damages is or are claimed by or on payment out on behalf of or for the benefit of an infant or a person of unsound mind –

(a) no settlement or compromise or acceptance of money paid into Court, whether before or at or after the trial, shall be valid without the sanction of the Magistrate; and

(b) no money or damages recovered or awarded in any such action whether by settlement, compromise, payment into Court or otherwise before, at, or after the trial shall be paid to the guardian of any party or to any party's legal practitioner, unless the Magistrate so directs.

(2) Where the sole object of the proceedings is to obtain the sanction of the Magistrate to a settlement or compromise, the particulars of claim shall contain a brief statement of the cause of action together with a request for the approval of the settlement or compromise.

(3) The sanction of the Magistrate may be given in chambers, whether Court proceedings are held on that day or not.

(4) All money or damages recovered or awarded shall, unless the Magistrate otherwise directs, be paid into Court to the credit of an account instituted in the action.

(5) An application to the Court as to the mode of dealing with the money and any interest on it may be made by or on behalf of any person interested.

(6) Nothing in this Rule shall prejudice the lien of a legal practitioner for costs.

(7) This Rule shall not apply to any case in which an infant sues as if he were of full age by virtue of Rule 15 of this Order.

Consent for persons under disability.

17. In any proceedings to which –

(a) an infant;

(b) a person of unsound mind, whether adjudged a lunatic or not; or

(c) person under any other disability as to capacity, is a party, any consent as to the mode of taking evidence or as to another procedure given by the guardian or any other person acting on behalf of the person under disability as to capacity shall, with the consent of the Court, have the same force and effect as if the party were under no disability and had given his consent.

PART 3 CHANGE OF PARTIES

When Proceedings do not abate

18. (1) An action shall not abate by reason of the marriage, death or bankruptcy of any party, if the cause of action survives or continues, and shall not become defective by the assignment, creation, change, transmission or devolution of any interest, estate or title during the proceedings.

(2) Whether the cause of action survives or not, an action shall not abate by reason of the death of any party between the findings of fact and the judgment, but judgment may be entered notwithstanding the death.

Change of a party's title or interest.

19. (1) Where after the commencement of an action and before judgment, title or interest there is any change or transmission or devolution of interest, estate or title or liability in relation to any party, any person interested may apply to the Court for an order enabling or compelling the proper parties to carry on the proceedings.

- (2) Where an order is made ex parte under paragraph (1) of this Rule, any person served with such order may, within such time not exceeding five (5) days or as the Court may direct, apply to the Court to discharge the order.

Where persons entitled to proceed on death of party fails to do so.

20. Where a claimant or defendant in an action dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the proceedings may be continued) may apply to court for an order directing the claimant to proceed within such time as may be ordered, and in default the action may be struck out, and in a case where it is the claimant who has died, execution may issue for any costs awarded to the defendant.

Alteration of records on change of parties.

21. Where a claimant or defendant is substituted or added under any of the Rules on change of parties of this Order, the record of the Court shall be altered accordingly and all subsequent proceedings shall be carried on under the altered title.

22. Person trading as firm

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

ORDER 7

AMENDMENTS

1. When amendment may be made.

An amendment may be made at any stage of the proceedings before judgment by the Court on the oral application of any party or on notice.

Abandonment of part of claim.

2. A claimant may, at any time before an action is called on for trial, or in part of claim opening his case, abandon any part of his claim, and the abandonment shall be entered in the records of the Court.

Change of defendant.

3. Where a person other than the defendant appears at the trial and admits that the defendant is the person whom the claimant intended to sue, or ought to have sued, he may, if the claimant consents, be substituted for the defendant, and the proceedings shall continue as if he had originally been made defendant and this shall not amount to an amendment.

Effect of misnomer.

4. No misnomer or inaccurate description of any person or place in any claim or summons shall vitiate the same, if the person or place is described so as to be identifiable.

Clerical mistakes and errors.

5. Clerical mistakes in judgments or orders or errors arising from any accidental omission may at any time be corrected by the Court.

Amendment on terms.

6. The Court, when granting an application for the amendment, may impose such terms as it deems just.

ORDER 8

ADMISSION AND ENTERING OF JUDGMENT

1. Any person against whom a claim or any other originating process has been filed, may, after the summons has been served upon him, file a written statement signed by him admitting in whole or in part the claim or other originating process. And it shall be the duty of the registrar of the court in which the claim or other originating process was filed forthwith to notify the claimant in writing or by causing the same be delivered at the address for service furnished in the claim or at his usual place of abode or business or as the court may direct. Thereupon it shall be unnecessary for the said claimant to prove the claim admitted as aforesaid. The court shall thereafter, whether the parties are present or not, if satisfied that the written statement of the defendant is authentic, enter judgment for the claim so admitted.

Consent Judgments by Parties

2. If the person against whom a claim or other originating process has been filed, agrees with the defendant, respondent or any other adverse party as contained in such claim or other originating process and upon the terms and conditions upon which the same shall be paid and satisfied, such persons may sign a statement in the presence of the registrar of court, stating the amount of the claim so agreed upon between such persons respectively, and of the terms and conditions upon which the same shall be paid or satisfied, and such registrar shall receive such statement. In the absence of the registrar of the court, the aforesaid written statement together with a sworn affidavit shall suffice.

Where the parties are represented by legal practitioners written terms of settlement executed by the parties and/or their counsel shall also be sufficient.

The court shall thereafter enter judgment for the plaintiff for the amount of the claim so agreed on, and upon the terms and conditions mentioned in such a written statement and such judgment shall for all intents and purposes be the same and have the same effect, shall be enforced in the same manner as if it has been a judgment of the magistrate of the said court.

ORDER 9

THIRD PARTY PROCEDURE

Third-party notice

1. (1) Where a defendant claims against any person not already a party to the action (in this Order called "the third party") that –

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

(b) **he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the claimant; or**

(c) **any question or issue relating to or connected with the said subject matter is substantially the same as some question or issue arising between the claimant and the defendant, and should properly be determined not only as between the claimant and the defendant, but as between the claimant and the defendant and the third party, or between any or either of them, the defendant may apply to the Court for permission to serve a "third party notice", and shall file a copy of the third party notice with the application.**

(2) **Notice of the application shall be served on the claimant and filed in the court's registry within seven (7) days of the service of the summons, inclusive of the day of service, and on receipt of the notice by the Court, all other proceedings in the action shall be stayed until the day fixed for the hearing of the application.**

(3) **On the hearing of the application, the Court may grant or refuse permission, and, if permission is granted, shall give directions as to the time for service of the third-party notice and as to the date of trial, and, if the action is a summary action, judgment shall not be entered pending the trial.**

(4) **The notice shall state the nature and grounds of the claim, or the nature of the question or issue sought to be determined, and the nature and extent of any relief or remedy claimed.**

(5) **The notice shall be served on the third party personally, and shall be accompanied by a copy of the summons in the action and all other processes as in Order 2 Rule 4(3) hereto.**

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

Default by third-party.

2. (1) **If a third party disputes the claimant's claim against the defendant whom the notice has been given or his own liability to the defendant, he shall –**

(a) take the necessary steps for his defence and the provisions of Order 4 Rules 5 and 6 and Order 6 Rule 4 hereto shall apply with necessary modifications; and

(b) appear at the Court on the day fixed for the trial of the action.

(2) If the third party does not appear at the trial, he shall be deemed to admit the validity of and be bound by any judgment given in the action whether by consent or otherwise and by any decision on any question specified in the notice, and when contribution or indemnity or some other relief or remedy is claimed against him in the notice, he shall be deemed to admit his liability in respect of such contribution or indemnity or other relief or remedy.

At the trial.

3. (1) Subject to any directions which may have been given by the Court before the trial, the Magistrate shall have full power at the trial to direct what part the third party shall take in the trial and generally how the trial shall be conducted.

(2) As between the defendant by whom the third-party notice has been given and the third party, the Magistrate may grant to either party any relief or remedy which might properly have been granted if the claim against the third party had been made in a separate action, and may give such judgment for either party against the other as may be just:

Provided that execution against the third party shall not be issued without the permission of the Magistrate until the defendant has satisfied the judgment in the same action given against him.

Fourth and subsequent parties.

4. (1) Where a third party makes as against any person not already a party to the action in such a claim as is defined in Rule 1 (I) of this Order, the provisions of this Order regulating the rights and procedure as between the defendant and the third party shall apply as between the third party and such other person, and the expressions "third party notice" and "third party" shall apply to and include every notice issued against a fourth or subsequent party and every fourth or subsequent party served with such a notice respectively.

(2) Where a person served with a notice under this Rule by a third party in turn makes such a claim as is defined in Rule 1 (1) of this Order against another person not already a party to the action, this Order as applied by this Rule shall have effect as regards such further person and any other further person or persons so served and so on respectively.

Co-defendants.

5. Where a defendant makes against any other defendant in the same action such a claim as is defined in Rule I (1) of this Order, he may without any permission serve on such other defendant a notice making such claim, and the same procedure shall be adopted for the determination of the claim as would be appropriate under this Order if such other defendant were a third party: Provided that nothing contained in this Rule shall prejudice the rights of the claimant against any defendant.

6. In this Order the words "claimant" and "defendant" respectively shall include a claimant and a defendant to a counter-claim.

ORDER 10

INTERLOCUTORY APPLICATIONS AND DIRECTIONS

1. For the purpose of this Order- "interlocutory application" means an application made during the course of an action and incidental to the principal object of the action, namely, the judgment, and interlocutory applications include all steps taken for the purpose of assisting either party in the prosecution of his case, or of protecting or otherwise dealing with the action, or of executing the judgment when obtained.

Motions Generally

Time to apply

2. Interlocutory applications may be made at any stage of an action.
3. Interlocutory applications shall be made by motion to the magistrate in whose court a cause or matter is pending at any stage of an action:

Provided that the magistrate may allow-

- (a) the application to be made orally.
- (b) to direct notice thereof to be given to any person affected thereby;
- (c) to direct in what manner evidence relating to the application shall be given by the applicant or any person affected thereby.

4. Application by motion

- (1) Where by these Rules, any application is directed to be made to the Court or a magistrate in chambers or a Registrar, such application may be made by motion supported by affidavit, together with a written address and shall state under what Rule of Court or Law the application is brought. Every motion shall be served within 7 days of filing or as otherwise permitted by the Court.

Provided that the Magistrate may dispense with written addresses under this rule where the justice of the case demands.

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

5. Affidavit to be served with motion

- (1) Where service of a motion is required by these Rules or directed by the Court or Magistrate,

such motion shall be served together with all affidavits on which the party moving intends to rely, written addresses inclusive.

- (2) 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.

6. Adjournment of motion

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

Ex-parte Motion

7. When Notice of Motion should be given

- (1) Except where an application ex-parte is required or permitted under any Law or Rules, every motion shall be on notice to the other party.
- (2) No application for an injunction shall be made ex-parte unless the applicant files with it, a motion on notice in respect of the application.
- (3) An order of injunction made upon an application ex-parte shall abate after 14 days.

8. Affidavit in support of ex-parte motion

- (1) A motion ex-parte shall be supported by affidavit, which shall state sufficient grounds why delay in granting the order sought would entail irreparable damage or serious mischief to the party moving.
- (2) The Court, if satisfied that to delay the motion till after notice is given to the parties affected would entail irreparable damage or serious mischief to the party moving or it is impossible to serve the parties affected within seven days, may hear an application ex-parte and make an order accordingly upon such terms as to cost or otherwise and subject to such reasonable undertakings, as the justice of the case demands.

9. Arguments on motion

Any party moving the Court ex-parte shall support his motion with a written address and any party to the suit or proceedings, who is present or likely to be affected by the order sought, is entitled to be heard.

10. Orders on ex-parte motions

Where a motion is made ex-parte, the Court may make, or refuse to make the order sought, or may grant an order to show cause why the order sought should not be made.

11. Court may vary or discharge order

- (1) Where an order is made on a motion ex-parte, any party affected by it may within seven days after service of it, or within such further time as the Court shall allow, apply to the Court by motion to vary or discharge it; and the Court, on notice to the party obtaining the order, either may refuse to vary or discharge with or without imposing terms as to costs or security, or otherwise, as seems just.
- (2) The hearing and determination of either the motion to vary or discharge or the motion on notice must be within a maximum period of sixty days.
- (3) Unless the Court gives special leave to the contrary, there shall be at least two clear days between the service of any affidavit including counter-affidavit or a notice of a motion and the day fixed for hearing of the motion.

12. Service by a solicitor on another

Notice of motion may, without leave of the Court, be served by a solicitor, on the opposing solicitor, and such service shall be good service. Where the above procedure is used, an affidavit of service sworn to by the person who effected the service, exhibiting the endorsement of the service copy, shall be sufficient proof of service.

Orders to show cause; return date to be specified

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

Counter-evidence

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

Further service in certain cases

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

Proof of service

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

General powers as to orders

17. The Court may either discharge the order or make the same absolute, or adjourn the consideration thereof, or permit further evidence to be produced in support of or against the order, and may modify the terms of the order so as to meet the merits of the case.

Notice of motion

18. Service of notice

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

19. Service of motion

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

20. Service on solicitor

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

21. Copy of affidavit to be served with notice

Along with the notice of motion, there shall be served a copy of an affidavit on which the party moving intends to rely at the hearing of the motion.

22. Order for service

If at the hearing of any motion, the Court shall be of the opinion that any person, to whom notice has not been given, ought to have or to have had the notice, the Court may either strike out the motion, or adjourn the hearing thereof in order that the notice may be given, upon such terms as the Court may deem fit.

23. Service with claim

The claimant may, by leave of the Court, cause any notice of motion to be served upon any defendant with the claim

Evidence in Interlocutory Proceedings

24. Oral evidence shall not be heard in support of any motion unless by leave of the Court. Where the party moving is illiterate, the Court may direct evidence to be taken by the Registrar, or other fit officer of Court, and the minutes of such evidence may be used as an affidavit.

Evidence in addition to or in lieu of affidavits

25. In addition to or in lieu of affidavits the Court may, if it thinks it expedient, examine any

witness viva voce, or receive documents in evidence, and may summon any person to attend to produce documents before it, or to be examined or cross-examined before it in like manner as at the hearing of a suit.

Notice to parties and interested persons

26. Such notice as the Court in each case, according to the circumstances, considers reasonable, shall be given to the persons summoned, and to such persons (parties to the cause or matter or otherwise interested) as the Court considers entitled to inspect the documents to be produced, or to examine the person summoned, or to be present at his examination, as the case may be.

. Evidence: how taken

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

Affidavit not filed with motion paper

28. Upon the hearing of any motion, the Court may, on such terms as to cost and adjournment as it may think fit, allow any additional affidavit to be used, after such affidavit has been duly filed and served on the opposite side.
29. (1) In all cases in which it may appear necessary, the court may appoint a receiver or manager of any property in dispute in a suit, and, if need be commit the same to his possession or custody and grant him power to manage or preserve and improve the same and to collect the rents and profits thereof and to apply or dispose of them as may seem fit, and may grant him power to sell perishable goods.
- (2) The court may authorise any person to enter upon or into any land or building in the possession of any party for the purposes of any appointment or order made aforesaid.
30. (1) In making an injunction or order under paragraph (1) (d) of section 19 of the Magistrates' Courts law, the court may grant the same on such terms as to its duration, the keeping of an account, the giving of security or otherwise, as seem just.
- (2). Where application is made for an interlocutory injunction or order as aforesaid, the court may direct notice to be given to any person affected thereby.

ORDER 11

PAYMENT INTO COURT

1. (1) The defendant may, at any time before the hearing, pay into court an amount in full satisfaction of the claimant's claim or of part thereof, together with costs incurred up to the time of such payment in.
- (2) The registrar shall cause notice of such payment in to be served upon the claimant in the prescribed form.
2. Payment into court, whether made in satisfaction of the claimant's claim generally or some part thereof, shall operate unless the defendant in his defence denied liability, as an admission of liability to the extent of the amount paid in, and no more, and for no other purpose.
3. (1) The claimant may accept any sum paid into court in full satisfaction and discharge of the claim in respect of which it was paid in, and may apply by motion for payment of the money out of court to him, whereupon the court shall make such order as to pay of further proceeding and as to costs and other matters as may be just.
- (2) if the claimant does not so apply, and having proceeded with his claim, recovers an amount not more than that paid into court-
 - (a) the judgment shall be satisfied out of the amount paid into court, and the balance repaid to the defendant;
 - (b) the court may in its discretion award to the defendant costs incurred after payment in, together with a sum considered just and reasonable as compensation, and may make an order against the claimant to this effect in like manner as if judgment had been given against him.

ORDER 12

ALTERNATIVE DISPUTES RESOLUTION (ADR) OPTIONS

1. At any stage of the proceedings, where parties to the action consent, the Magistrate may make an order referring disputes that in his opinion are suited to Alternative Dispute Resolution (ADR) to the Edo State Multi-Door Court for parties to explore settlement options.

Alternative dispute proceedings and the time within which to take any step.

2. The time within which to take procedural steps under this rule shall not run during the period of exploration of ADR options

Cost of mediation.

3. The parties shall be bound by the rules, practice and procedure applicable to the Edo State Multi-Door Court.

Report

4. At the conclusion of ADR proceedings at the aforesaid Edo State Multi-Door Court, a Court appointed mediator or an officer of the Multi-door Court shall report the outcome of the mediation to the Court in writing within 14 days of the end of the mediation whether or not a settlement had been achieved.

Terms of settlement to be adopted as Consent Judgment

5. Where settlement is reached at the Edo State Multi-Door Court, the terms of settlement reached shall be registered and adopted as consent judgment of the Court and enforceable in the same manner as a judgment or order of the referral court.

ORDER 13

PROCEDURE AT HEARING

Sittings of Court

1. The sittings of the court for the hearing of causes shall ordinarily be public; but the court may, for special reasons, hear any particular cause or matter in the presence only of the parties, the legal practitioners representing them, if any, and the officers of court.

Summons to witnesses

2. Either of the parties to any cause or matter may obtain upon application, from the registrar; summons to witnesses, with or without a clause requiring the production of documents etc that are in the possession or control of the person summoned as a witness, and such summons shall be served in accordance with the provisions of Order 5 relating to service of processes.

Witnesses in general to be out of hearing

3. Immediately before the hearing of any cause or matter in which witnesses are to be examined, the court shall direct that all witnesses, other than the parties in the cause or matter leave the court:

Provided that the magistrate may in his discretion permit professional, expert or technical witnesses to remain in court. Failure to comply with the provisions of this rule shall not invalidate the proceedings.

Procedure when both parties appear

4. If on the day of hearing, both parties appear, the claim shall be read to the defendant and the court shall require him to make an answer or defence thereto and on such defence or answer being made, the magistrate shall immediately record the same and shall, except where the court considers it necessary to order otherwise, proceed in summary way to hear and determine the cause, without further pleading or formal joinder of issues.

No evidence to be given of any claim which is not in summons

5. Subject to the right or power of amendment provided in these rules, no evidence of any claim shall be given by the claimant on the trial or hearing, except of such claim as shall be stated in the summons or other proceedings under the Magistrates' Courts Law or these rules directed to be issued or taken.

Procedure when Claimant fails to appear or prove his case.

6. (1) If, on the day of hearing or at any continuation or adjournment of the court or cause, the

claimant shall not appear or sufficiently excuse his absence, the cause shall, unless the court sees good reason to the contrary, be struck out except as to any counterclaim by the defendant; and if the claimant appears but does not prove his claim to the satisfaction of the court, the magistrate may non suit him or enter judgment for the defendant; and in either case, where the defendant appears and does not admit the claim, the magistrate may award the defendant, in addition to costs, such further amount as the magistrate in the exercise of his discretion may consider just as compensation for his trouble and attendance. Such amount shall be recoverable from the claimant in like manner as any debt or damage ordered by the court can be recovered; and no action shall be brought by the claimant in respect of same cause of action until such sum and costs have been paid.

- (2) If the claimant does not appear when called upon, but the defendant appears and admits the cause of action to the full amount claimed, the magistrate may, if he thinks fit, proceed to give judgment, with or without costs, as if the claimant had appeared.

7. Re-listing of causes

Any cause struck out may, by leave of the court, be replaced on the cause list on such terms as the court may deem fit

Counter Claim where Claimant does not appear

8. Where the defendant to a cause which has been struck out under rule 6 of this order has a counterclaim, the court may, on due proof of service on the claimant of notice thereof, proceed to hear the counter claim and give judgment on the evidence adduced by the defendant, or may adjourn the hearing of the counter claim and direct that notice of such adjournment be given to the claimant.

9. Costs of defendant where Claimant does not appear.

In every case where the claimant does not appear on the day of hearing, or at any continuation or adjournment of the court or cause, and the defendant shall appear, the court may award the defendant such amount as the court shall consider just. Such sum shall include an amount as costs and may include a further amount considered reasonable by the Magistrate as compensation for the defendant's trouble and attendance, and the sum so awarded shall be recoverable from the claimant in like manner as any debt or damage ordered to be paid by the court can be recovered.

10. Procedure when defendant fails to appear

If on the day of hearing or at any continuation or adjournment of the court, the claimant appears and the defendant does not appear or sufficiently excuse his absence or neglects to answer when called in court, the magistrate may, on due proof of service of the claim and summons, and upon his being satisfied that the time between the date of service and the date of hearing is sufficient for the defendant to have appeared had he wished to do so, proceed to the hearing and determination of the cause on the part of the claimant only, and the judgment thereon

shall be as valid as if both parties had appeared.

Setting aside of judgment

- 11(1) The Magistrate, at the same or any subsequent sitting of the court, may set aside any judgment or order given or made against any party in the absence of such party, and the execution thereupon, and may grant a new trial or hearing upon such terms, if any, as he may think fit, on application and on sufficient cause shown to him for that purpose.
- (2) When a Magistrate is not so satisfied that the defendant has been served or such reasonable time, the magistrate shall adjourn the hearing to a convenient date, and hearing notice thereof shall be served on the defendant.
- (3) When the Magistrate has heard and determined any cause or matter in the absence of a defendant, under the provisions of paragraph (1) of this rule and the defendant has filed a counter claim, the counter claim shall, unless the court sees good reason to the contrary, be struck out.
- (4) An application to re-list a cause struck out or to set aside a judgment under this rules shall be made within 6 days after the order or judgment or such other longer period as the Magistrate may allow for good cause shown.

Power of amendment

12. (1) A Magistrate may at all times before judgment amend all defects and errors in any proceeding in the court, whether the defect or error is that of the party applying to amend or not, and upon due application being made, may make all such amendments as may be necessary for the purpose of determining the real question in issue between the parties.
- (2) All such amendments may be made with or without costs and upon such terms as the Magistrate may think just.

Recording of evidence

13. (1) Subject to the provisions of the Evidence Act, at the hearing of any proceeding, evidence may be recorded by the Magistrate in writing, or by mechanical, electronic, or any other scientific means -
 - (a) of any question of law or equity raised at the hearing; and
 - (b) of any legal submission made, together with any authorities quoted in support of the same; and
 - (c) the purport of all relevant oral evidence given before the court; and
 - (d) of his decision thereon and his determination of the proceedings; in a book to be kept for that purpose, and such book shall be signed by the Magistrate at the conclusion of each day's

proceedings.

- (2) Where such notes or record has been taken, the registrar shall, whether notice of appeal has been given or not, on the application of any party to the proceedings, and on payment by that party of such fee as may be prescribed, furnish him with a copy of the note or record, and shall certify the copy to be a true copy of the note or record and the copy so certified shall be admitted as evidence of such proceedings and of the statement or evidence given by the witnesses.
- (3) The registrar shall enter into a book to be kept for this purpose in his office and called the Civil Cause Book, particulars of all proceedings heard and determined by the Magistrate. Such particulars shall include the number of the claim, the date of filing the claim, the names of the parties, the substance of the claim, the date of the judgment, a minute of the judgment, the name of the Magistrate adjudicating and the costs. Such book shall be checked and signed by the Magistrate.

Affidavits and documentary evidence

Power of the Magistrate to order proof by affidavit evidence

14. (1) The Magistrate may at any time order that—

- (a) any particular fact or facts may be proved by affidavit; or
 - (b) the affidavit of any witness may be read at the hearing on such conditions as the Magistrate thinks reasonable.
- (2) The provisions of Section 107 of the Evidence Act shall apply where an order has been made under this rule.

Contents of affidavit

15. All affidavits shall be made by some person who has knowledge of the fact stating—

- (a) the deponent's residence and occupation; and
- (b) what facts are within his own knowledge and his means of knowledge; and
- (c) what facts are deposed to on information derived from other sources and what the sources are.

Cross examination of the deponent

16. Where a party desires to cross examine a deponent who has made an affidavit filed on behalf of the opposite party the following proceedings shall apply—

- (a) he may serve on the opposite party a notice requiring the production of the deponent for cross examination at the hearing.

- (b) If the party served with the notice does not produce the deponent at the hearing, he shall not be entitled to use the affidavit as evidence without the leave of court;
- (c) a witness summons may be issued on the application of the party served with the notice for the purpose of summoning the deponent to attend for purposes of cross examination.

Evidence of witness about to leave Jurisdiction

- 17. (1) At any time after a cause or matter is begun and before trial, the court may take the evidence of a witness who is about to leave jurisdiction or who, from illness or old age or any other sufficient cause, is not likely to be present at the trial.
- (2) The note or record of the evidence shall be signed at the time by the Magistrate taking same.
- (3) The evidence so taken and recorded may not, except for special reasons to be recorded in the Magistrates' notes, be admitted as evidence at the trial unless it is shown that the party against whom it is offered had the opportunity of cross examining the witness or deponent.

Documents admitted in evidence

- 18. Every document admitted in evidence shall be put in and read or taken as read by consent and shall be marked by the Court, or registrar, with a distinguishing mark or letter, and a note of the date and character of all material documents admitted in evidence shall be made by the court in the record of the case., and each document admitted shall be retained by the court until the end of the proceedings, and in the case of an appeal until the final determination of the cause or matter, when it shall be returned to the party who put it in, or from whose custody it came, unless the court, for any reasons, orders it to be retained in the custody of the court.

Documents not admitted in evidence

- 19. Where a document is produced and tendered in evidence, and rejected by the court, the document shall be marked as having been tendered and rejected.

Inspection by Magistrate

- 20. (1) The Magistrate may inspect any property or thing concerning which any question may arise in any proceedings.
- (2) The expenses of any inspection under this Rule shall be paid in the first instance by the party on whose application the inspection is made or ordered, or, if made or ordered without an application, by the claimant, and shall be costs in the proceedings unless the Magistrate otherwise orders.

List of witnesses and exhibits

- 21. Only the witnesses listed on the list of witnesses and evidence referred to under these

rules shall be called in evidence, but where during the course of the trial, it becomes evident that the testimony of an identified and available witness is required in the interest of justice or the evidence such a witness could give, may materially affect the outcome of the use in relation to genuinely disputed relevant issues, the court may grant a period not exceeding 5 (five) working days at as may be convenient to the court within which to hear the testimony of such witness.

Adjournments.

22. (I) Subject to the provisions of these rules, the court shall take all reasonable steps and must endeavour to conduct all of its proceedings regularly and punctually and discourage adjournments made on trivial grounds by parties and/ or their counsel.

(2) A Magistrate may adjourn proceedings from time to time as the justice of the case demands.

(3) A Magistrate may, after the matter has been set down for trial, at his discretion, grant in –

(a) uncontested civil cases, not more than three (3) adjournments; and

(b) contested civil cases, not more than 5 (five) adjournments.

(4) Subject to the provisions of this Rule, in the event that any of the parties to the action fails to, is unable to or refuses to attend Court or proceed with the cause or matter, the Magistrate shall strike the matter off the cause list and/ or enter judgment in default against the defendant.

Provided that a magistrate may extend time or date under this order as the justice of the case may demand.

(5) Where a counsel who was present in court and agreed on a next date of adjournment, fails to attend the hearing or otherwise unnecessarily applies for an adjournment without good reason or sufficient notice, costs may be awarded against him personally.

(6) Where a counsel puts himself forward as holding the brief of another counsel, he shall be deemed to be seised of the facts of the case and ready to proceed with the court business of the day. If he is unable to proceed with the court's business of the day due to his unpreparedness etc, costs may be awarded against him personally.

(7) Under this order the court may, subject to its discretion, direct a suitable time and mode of enforcement of the aforesaid cost.

23. Discontinuance by Claimant

Notice.

1. If a claimant desires to discontinue wholly or in part any proceedings against all or any of the parties, he shall notify the Court and every party against whom he desires to discontinue.

Costs.

2. (1) Where a notice of discontinuance has been given, the Court shall on the return day assess the costs incurred by the defendant before the receipt of the notice, or, if the proceedings are not wholly discontinued, the costs incurred before the receipt of the notice in relation to the part discontinued as in appropriate Form in the First schedule hereto.
- (2) If such costs are not paid within five (5) days, the defendant shall be entitled to apply for an execution warrant in respect of the unpaid costs:

Provided that –

- (a) if the proceedings are not wholly discontinued against the defendant, execution shall not issue before the proceedings are disposed of, except by permission of the Court; and
- (b) discontinuance under this Order shall not be a defence to any subsequent proceedings unless evidence was led in the earlier proceeding, but if subsequent proceedings are brought for substantially the same cause of action before the payment of the costs mentioned, the Court may stay the proceedings until the costs have been paid.

24. Facts how proved

- 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 may be tendered from the bar or by the party where he is not represented by a legal practitioner.
- (3) The oral examination of a witness during his evidence-in-chief shall be limited to confirming his written deposition and tendering in evidence all disputed documents or other exhibits referred to in the deposition.

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

2. Particular facts

- (1) The court 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 document which contains a statement of that fact.

*

3. Limitation on use of documentary evidence

Unless, at or before trial, the Court for special reasons otherwise orders or directs, no document, plan, photograph or model shall be receivable in evidence at the trial of an action which has not been filed along with the originating processes of the parties under these Rules.

ORDER 14

FILING OF WRITTEN ADDRESS

1. Application and final address

This Order shall apply to all applications and final addresses.

2. Written address by party beginning

When the party beginning has concluded his evidence, the Magistrate 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 14 days after close of evidence file a written address. Upon being served with the written address, the other party shall within 14 days file his own written address.

3. Written address by the other party

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

4. Written address of party beginning

Upon being served with other party's written address, the party beginning shall within 14 days file his own written address.

5. Right of reply

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.

6. Form and content of written address

A written address shall be printed on good quality white opaque A4 paper size and set out in paragraphs numbered serially and shall contain:

Content of written address

- (i) The claim or application on which the address is based;
- (ii) A brief statement of the facts with reference to the exhibit attached to the application or tendered at the trial;
- (iii) The issues arising from the evidence; and
- (iv) A succinct statement of argument on each issue incorporating the purport of the authorities referred to together with full citation of each authority.

7. Summation of address

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.

8. Adoption of written addresses

Written addresses of counsel to both parties shall be adopted on a date set aside for adoption by the court.



Oral argument in support of written addresses

9. Oral argument of not more than twenty minutes may 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, case or matter shall be treated as having been argued on the basis of the written address and shall be considered as such.

10. Oral Address

Without prejudice to the foregoing, the Court may order oral address by the parties where the justice of the case warrants.

11. Oral address to be brief and concise.

An oral address to the court shall be brief and concise and shall not exceed 20 minutes by each party except as the Magistrate otherwise directs.

ORDER 15

JUDGMENT

- (1) At the conclusion of the hearing, the court shall either at the same or at a subsequent sitting, deliver judgment in the cause and shall if so required by the parties and on payment of the prescribed fee, cause to be delivered to the parties a certified true copy of the judgment so delivered.
2. (1) Where the court reserves judgment, the parties shall be served with notice to attend and hear the judgment, unless the court at the hearing had stated the day on which judgment will be delivered.
- (2) All parties are deemed to have notice of the judgment if pronounced at the hearing
- (3) All parties served with notice to attend and hear judgment are deemed to have notice of the judgment pronounced.

Order may be made by Court whether or not expressly asked for.

3. Subject to particular rules, the court may in all causes and matters make an order which it considers necessary for doing justice, whether such order has been expressly asked for by the person entitled to the benefit of the order or not.

Payment and suspension of judgments or orders.

4. (1) When a judgment is given or an order is made by a court under which a sum of money or any amount is payable, whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise, the court may, as it thinks fit, order the money to be paid either in one sum, whether forthwith or within such period as the court may fix, or by such installments payable at such times as the court may direct with or without interest.
- (2) Such order may be made at the time of giving judgment or at any time afterwards, and may be rescinded upon sufficient cause and at any time by a Magistrate.
- (3) If at any time it appears to the satisfaction of the Magistrate that any party to any proceedings is unable from any cause to pay any sum awarded against him, whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise, or any instalment thereof, the magistrate may in his discretion suspend or stay any judgment or order given or made in the proceedings for such time and on such terms as the Magistrate thinks fit, and so from time to time until it appears that the cause of inability has ceased.

Non-suit

5. The court shall have power to non-suit the claimant in every case in which satisfactory proof shall not be given entitling either the claimant or defendant to judgment.

Execution and Power to Stay Execution

6. The issue of execution in any proceedings shall be in accordance with the provisions of the Sheriffs and Civil Process Law.

ORDER 16

COSTS

Costs in the discretion of Court

1. Subject to the provision of these rules and of any other written law, the costs of civil proceedings in the court shall be in the discretion of the court.
2. Where the court orders costs to be paid, or security to be given for costs by any party, the court may, if it thinks fit, order all proceedings by or on behalf of that party in the same suit or proceedings or connected therewith to be stayed until the costs are paid or security given accordingly but such order shall not supercede the use of any other lawful method of enforcing payment.

Application of High Court rules as to Solicitors

3. The provisions of the High Court Law and the rules made thereunder regulating the fees, the taxation and recovery of such fees and disbursements and the payment out of them of money which has been paid into court, shall, in so far as they are not incompatible with the provisions of this order, apply mutatis mutandis to any solicitor engaged in any proceeding in a Magistrates court.

Agreements between solicitors and illiterate clients

4. (1) Any agreement made by a solicitor with his client for an inclusive fee for the conduct of a case shall, if the client is illiterate, be null and void unless it shall have been made in duplicate and the solicitor and his client shall have signed and made their mark, or sign or signature, respectively on both copies in one and the same transaction and in the presence of a witness, other than an employee or casual employee of the solicitor, who understood the language and script in which the agreement was written and explained in its terms to the client and was present at the transaction of the signing and marking thereof and set his signature also to the agreement; and unless one of the copies so signed shall also have been given to the client in the presence of the same witness and as part of the same single transaction of signing and marking them. (see further the Legal Practitioners Act)
- (2) The onus of proof that the requirements of this rule have been complied with shall be on the solicitor seeking to enforce any such agreement.
- (3) For the purpose of this rule, the word "illiterate" shall be as defined under the Illiterates Protection Law and shall include any person who may be able to read but may nevertheless not be able to understand the purport of such an agreement, and the onus of proof that a person is not an illiterate in this sense shall be upon the solicitor.

Duty of solicitors in relation to costs

5. When any solicitor has conducted a case under an agreement for an inclusive fee, or has conducted a case not under an inclusive charge but has presented his bill and the fee or bill has been paid in full and costs awarded to his client by the court are subsequently paid to the solicitor, the solicitor shall refund to the client an amount equal to the costs received; if the fee or bill has not been paid in full but the receipt of the costs awarded causes an excess, an amount equal to the excess shall be refunded to the client. When no excess is caused, the amount of costs received shall be deducted in computing the balance due from his client under the agreement or on the bill.

6. Suits by solicitors to recover fees

In any suit brought by a solicitor to recover from his client any sum of money due under an inclusive agreement for conducting a proceeding in court, the court may reduce the amount claimed if it thinks the same or any part thereof to be harsh and unreasonable but before doing so shall have regard to the degree of skill, labour and responsibility involved and to the nature of the practice of the solicitor.

Solicitors to be officers of court

7. Every solicitor while retained for a cause in a Magistrates' court shall be an officer of the Court and when retained for a matter other than a proceeding in court, which subsequently develops into a proceeding in court, he shall be deemed to have been an officer of the court from the date of his original retainer.

Security for costs

8. (1) In all proceedings the court may either of its own motion or on the application of any defendant, if it sees fit, require any claimant to any suit, either at the commencement or at any time during the progress thereof, to give security for costs to the satisfaction of the court, by deposit or otherwise, or to give further or better security and may likewise require a defendant to give security or or further and better security, for the costs of any particular proceedings undertaken in his interest.
- (2) A defendant shall not be ordered to furnish security for costs except in special circumstances to be recorded by the Magistrate.

ORDER 17

CUSTODY OF MONEY

Registrar to take Charge of fees and other payments

1. All fees payable in respect of civil proceedings under the Magistrates' Courts Law, and all penalties, forfeitures and fines imposed thereunder or under any other written law, if not by such laws directed to be paid otherwise applied, shall be paid to the registrar and accounted for by him to the Accountant- General of Edo State or as otherwise provided by law.

Registrar to account to the Accountant- General

2. The registrar of every court from time to time, as often as he shall be required so to do by the Accountant-General of Edo State or as otherwise provided by law, shall account in full to the said Accountant- General of Edo state for all monies which has been received by him under these rules and shall produce for examination all books and papers which shall be considered necessary for the elucidation of such accounts and proper checking thereof.

Audit

3. All accounts kept by a registrar shall be audited at such time and in such manners as the Auditor- General may direct.

Registrar to enter all monies in cash book.

4. All monies coming into the hands of the registrar of every court in the course of business of the court shall be entered into a book to be kept for that purpose, to be called the Cash Book, which shall record the number of the claim in respect of which each sum is paid, together with the folio of such claim in the Civil Cause Book. Every entry therein will show whether the payment is made by claimant or defendant, and whether for fees on process into court, awards or costs as the case may be.

Registrar to comply with financial Instructions

5. All monies coming into the hands of the registrar of every court in the course of the business of the court shall be retained, deposited and paid out in accordance with the provisions of the government financial instructions or regulation for the time being in force.

ORDER 18

MISCELLANEOUS PROVISIONS

Effect of non-compliance.

1. (1) Where in beginning or purporting to begin any proceeding there has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, the failure shall not nullify the proceedings.

Magistrates to give direction to regularise such steps

- (2) 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. The Magistrate may give any direction as he deems fit to regularise such steps.

Notices.

2. All notices required by these Rules shall be in writing unless expressly authorised by the Court to be given orally.

Computation of time.

3. (1) Where anything is required by these Rules to be done within a specified time or after the happening of a particular event, the period shall be computed from the end of the day on which the event happens, unless the period is expressed to be inclusive of such day.
- (2) Where anything is required by these Rules to be done within a period not exceeding forty-eight hours or where a period not exceeding forty-eight hours is required by these Rules to elapse between the doing of an act and the happening of a particular event, no Sunday or public holiday shall be included in the computation of that period.
- (3) Where the time prescribed for doing any act expires on a Sunday or public holiday and for that reason the act cannot be done on that day, the act shall be in time if done on the next day on which the registry of the Court is open

Filing

4. No document shall be filed unless it bears the reference number of the proceedings and the names of the parties and unless the prescribed fee has been paid.

Forms

5. (1) All forms used in civil proceedings in the court shall be in the prescribed form as defined in these rules.

- (2) The forms set out in the First Schedule or forms to the like effect, may be used in all proceedings to which they are applicable with such variations as the circumstances may require.

6. Fees of Court

The fees prescribed in Part 1 of the schedule shall be payable by the party prosecuting or asking for a service as therein provided in respect of the proceedings or services to which they relate and such fees may afterwards be recovered as costs of cause if so ordered.

Allowance of witnesses

7. Persons required to attend or be examined as witnesses may where the court so orders, be allowed expenses and compensation for loss of time at the rate set out in part II of the schedule.

Consolidation of actions.

8. Actions or matters pending in the same court may be consolidated by order of a magistrate of his own motion or on the application of any party on notice whether or not such magistrate be the magistrate who finally adjudicates thereon.

Provided that actions or matters may not be consolidated if the effect of such consolidation is to bring the total of the consolidated actions or matters above the jurisdiction of the magistrate adjudicating.

Enlargement of time

9. The Court may, as often as it thinks fit, and either before or after the expiration of the time appointed by the judgment, order or the rules, extend or adjourn the time for doing any act or taking any proceedings.

Savings

10. Where no other provision is made by any written law or by these rules, the present practice and procedure shall remain in force:

Provided that no practice which is inconsistent with any of these rules shall apply in any court.

SCHEDULE

CIVIL FORM

**UNDERTAKING BY GUARDIAN TO BE
RESPONSIBLE FOR DEFENDANT'S COSTS**

IN THE.....
.....
... MAGISTRATES' COURT

No. of Claim

I, the undersigned

of

being the guardian of
.....
.....

who is an infant/a person of unsound mind, and who is desirous of commencing an action in this
Court, against

of

undertake to be responsible for the costs of the said..... in
those proceedings, in the manner following,

if the said

fail to pay to the said

When and in such manner as the Court shall order, all such proceedings as the Court shall
direct him to pay to the said

.....
.....

I will immediately pay the same to the Registrar of the Court.

Dated this day of 20.....

(Signed)

.....

Signed by the above-named
in my presence

.....
Legal Practitioner

(Address)
.....
.....

Commissioner for Oaths

CIVIL FORM

SUMMARY SUMMONS

IN THE.....
.....
MAGISTRATES' COURT OF EDO STATE

TO THE DEFENDANT:The Claimant
Claims:- N K

Debt (particulars are attached)

Court Fees

Other Disbursements

Costs

N

Judgment may be obtained against you and enforced without further notice unless within ten (10) days of the service of this summons inclusive of the day of service you:

Pay the total amount of the claim and costs into Court

or

Send to the Court an Admission. Defence or Counter-claim for which the attached form should be used.

Dated thisday of20.....

Registrar

INSTRUCTIONS

- (1) If you admit the Claim or any part of it, pay the amount admitted and costs into Court within ten days after service of this summons, inclusive of the day of service. If you require longer time for payment complete the form of ADMISSION attached.
- (2) If you dispute the Claim or any part of it, complete the form of DEFENCE attached.
- (3) If you have a Claim against the claimant, complete the form of COUNTERCLAIM attached.
- (4) After completing and signing the form, deliver it to the Registrar of the Court not later than ten days after service of this Summons inclusive of the day of service. Unless you make an admission and proposal for payment which is accepted, you will receive notice from the Court of a day on which you will have an opportunity of being heard on your proposal for payment or counterclaim.
- (5) Delay in payment or in returning the form may add to the costs.
- (6) You can obtain help in completing the form at any registry of a Magistrates' Court

CIVIL FORM

FORM OF ADMISSION, DEFENCE AND COUNTER-CLAIM

IN THE
MAGISTRATES' COURT OF EDO STATE

No. of Claim

V.
.....
.....

I admit the Claimant's for N part of Claimant's Claim, and I ask permission
to pay the sum with the costs on that amount, on the

..... day of

..... 20.....

[Admission]

for by instalments of N per
(.....)
because

(1)
.....
.....
.....
.....
.....
.....
.....
.....

[(1) State why you cannot pay at once]

or I have a special defence (such as limitation of action, infancy, discharge under

[Defence]

any written law res judicata) or I dispute the Claimant's claim (or N part of the Claimant's claim because (2)

.....

.....

.....

.....

.....

[(2 State shortly the facts you wish to put before the Court.)

Or I have a counterclaim or set-off against the Claimant for N

.....

for

.....

.....

[Counter-Claim]

To be signed here

.....

.....

Defendant

.....

Defendant's address for service within the State

.....

.....

DATED this day of 20.....

NOTE:- Where the Defendant admits the whole or part of the claim, his signature should be witnessed by a legal practitioner, or by the Registrar or other Officer of the Court.

CIVIL FORM

FORM FOR ENTRY OF JUDGMENT IN SUMMARY ACTION

I REQUEST that Judgment in default be entered against the Defendant (name) the Defendant, or if there are more Defendants and it is desired to enter judgment against some of one only, name them or him), payable immediately or on the day of or by instalments of N for every the first instalment to be paid on the day of 20.....

N K

Amount of claim as stated in summons

Amount (if any) since received by Claimant

Balance of Claim for which judgment is to be entered

N K

Court fees entered on Summons

Costs entered on Summons

Costs (if any) on entering judgment

Total N K

DATED this day of 20.....

.....
Claimant, or Claimant's Legal
Practitioner.

To the Registrar of the Court.

CIVIL FORM

ORDER FOR SUBSTITUTED SERVICE

UPON READING the Affidavit of
..... sworn upon the day of
..... 20.....

IT IS ORDERED that a
issued in this action together with a

copy of this Order be served on the person of or above the apparent age of eighteen (18) years

at
being the

usual (or last known) place of residence (or business) of
.....
.....

(name of Claimant, Defendant, Witness of Party)

(or that a
..... issued in this action together

with a copy of this Order, be sent by registered post addressed to
.....

(name of Claimant, Defendant, Witness or Party)

at being the usual (or
last known) place of residence

(or business) of the said)

(or that notice of the be
published in

the
..... Gazette).

(or that notice of the be
published in

the newspaper in

(number) separate issues).

(or that a copy of the in
this action (or matter)

shall be affixed to the premises at
being the usual (or last known) place of residence (or business) of

.....
.....)
(THE Claimant, Defendant, Witness or Party)

(or as may otherwise be ordered by the Court)

ORDERED this day of 20.....

.....
Magistrate.

CIVIL FORM

**SUBSTITUTED SERVICE, NOTICE IN GAZETTE OR
NEWSPAPER OR POSTING UP IN PUBLIC PLACE**

IN THE MAGISTRATES' COURT

Suit No.
.....

TAKE NOTICE that an action has commenced against you in the above Court by
.....

..... of for
..... and

that an Order has been made that publication of a notice of the entry of such action (in the
Gazette

or the
.....
.....

newspaper, or by posting up at shall be deemed to be
good and

sufficient service of the summons (or) on you.

THE ACTION will be heard at on the
.....

day of 20..... at the hour of
.....

on the noon, on which day you are to appear, and if you do not appear either in person or by legal
practitioner, you will be bound by any decision or order given or made in the proceedings.

Dated this day of 20.....

.....
Registrar.

CIVIL FORM

AFFIDAVIT OF SERVICE

I of

Suit No.

make oath and say as follows:-

1 That I am over eighteen years of age and

(a) am a Bailiff of the Court (under Warrant No.).
or

(b) have been designated by the Sherriff to serve the a
true copy of which
is annexed and marked "A"

2. That I did on the day of
20.....

serve the a true copy of which is annexed .. A .. on
the Defendant:-

(a) by delivering the same to the said Defendant personally at

or

(b) by delivering the same at to
.....

() by delivering the same at to a person who
did not give his name but stated that he was a partner in (or carried on business in the name of the
Defendant firm).

or

(d) by delivering the same at being the
principal place of business
of the Defendant firm in Edo state to
.....

or

(e) by delivering the same at to
.....
a legal practitioner, who represented that he was authorized to accept service on behalf of the Defendant and who at the time of such delivery endorsed upon the copy of the summons retained by me, a memorandum that he accepted service of it on behalf of such Defendant.

Endorse the copy of the summons or other process thus:-

“This paper marked “ A ” is a true copy of the summons or other process referred to in the annexed affidavit”.

This affidavit must be filed within two (2) days after the day of service.

Registrar

CIVIL FORM

ORDER TO ADJOURN PROCEEDINGS

TAKE NOTICE that the hearing of the Action (or Matter) (or Judgment Summons) has been adjourned

until the
day of

20..... at the hour of in the
..... noon.

DATED this day of 20.....

.....

Registrar.

CIVIL FORM

**NOTICE OF DAY FIXED FOR HEARING AFTER
GENERAL ADJOURNMENT**

TAKE NOTICE that the hearing of this action will take place on

the day of
20..... at the hour

of in the noon.

the
.....
.....

DATED this day of 20.....

.....
Registrar.

CIVIL FORM

INTERLOCUTORY INJUNCTION

IN THE
MAGISTRATES' COURT OF EDO STATE

No. of Claim

Between A. B
Claimant

and

..... C. D
Defendant

THE CLAIMANT undertakes by his legal practitioner to abide by any order the Court may make as to damages, in case this Court shall later be of the opinion that the Defendant shall have sustained any damage by reason of this order, which the Claimant ought to pay.

NOW, THEREFORE the Defendant in this action, by of himself, his servants, workmen and agents, or otherwise is strictly enjoined and restrained from until the day after the day upon which this action shall be heard, or until further order, or until the the day of 20..... upon which day this Court will consider whether this order shall be further continued.

n the noon, on which day you are to appear, and if you do not appear either in person or by legal practitioner, you will be bound by any decision or order given or made in the proceedings.

DATED this day of 20.....

Magistrate.

NOTICE AS TO CONSEQUENCES OF DISOBEDIENCE TO ORDER OF COURT

To: C. D.....

of

.....

TAKE NOTICE, that unless you obey the directions 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. .

CIVIL FORM

NOTICE OF DISCONTINUANCE OF PROCEEDINGS OR WITHDRAWAL OF PART OF CLAIM

TAKE NOTICE that I shall not proceed further in this Action or Matter and that I hereby withdraw from the action (add, if so, as against the Defendant

.....)
.....)

(Or take notice that I now withdraw so much of my Claim in the Action or Matter as relate to (specify) the Claim which is withdrawn, and add, if so) as against

the Defendant

DATED this day of 20.....

.....

Claimant.

CIVIL FORM

JUDGMENT FOR COST AGAINST CLAIMANT ON DISCONTINUANCE OR WITHDRAWAL OF PART OF CLAIM, OR FAILURE TO GIVE SECURITY

The Claimant having by notice in writing dated the day of 20..... which discontinued this action (or matter) (or withdraw so much or his claim in this action (or matter) as relates to

.....
.....
(Or the Claimant having failed to comply with an Order requiring him to deposit the sum of

N as security for the Defendant's cost of the action).

IT IS ADJUDGED that the Defendant do recover against the Claimant the sum of N for costs.

AND IT IS ORDERED that the Claimant do pay the said sum of N to the Registrar immediately.

DATED this day of 20.....

.....
Magistrate.

CIVIL FORM

ORDER TO BRING UP PRISONER TO GIVE EVIDENCE

To (Officer who has custody of prisoner).

WHEREAS the
has made an application

..... who it is said

is detained as a prisoner in your custody, to be examined as a witness on behalf of the said

..... in the above action.

YOU ARE THEREFORE, by this Order issued pursuant to the said Section of the Law, required upon tender made to you of a reasonable sum for the transportation and maintenance of the Officers and of the said in going to, remaining at, and returning from this Court, to bring the said

before this Court at on the day of 20.....

at the hour of in the Noon, then and there to be examined as a Witness on behalf of the said and immediately after the said shall have given his testimony before the Court, you are required to safely conduct him to the place from which he shall have been brought under this order.

DATED this day of 20.....

.....
Magistrate.

CIVIL FORM

**NOTICE TO DEFENDANT OF ACCEPTANCE BY
CLAIMANT OF PAYMENT INTO COURT**

TAKE NOTICE that the Claimant (or Judgment Creditor) has accepted the sum of N

paid into Court in satisfaction of his Claim in the above action for in respect of his cause of action for

.....
.....)

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

Registrar. .

CIVIL FORM

JUDGMENT FOR CLAIMANT FOR COSTS WHERE WHOLE CLAIM PAID OR AMOUNT PAID INTO COURT ACCEPTED IN SATISFACTION

THE DEFENDANT having paid into Court the whole amount of the Claimant's claim (or the sum of

N paid into Court by the Defendant having been accepted by the Claimant in satisfaction of his claim and the Claimant's costs being N Or having been taxed and allowed at the sum N

IT IS ADJUDGED that the Claimant do recover against the Defendant the sum of N

for his costs (including the costs of entering judgment).

And it is ordered that the Defendant pay the same to the Registrar immediately.

DATED this day of 20.....

.....

Magistrate.

CIVIL FORM

SUMMONS TO WITNESS TO GIVE ORAL EVIDENCE

YOU ARE summoned to attend at on
.....

the day of
20..... at

the hour of in the noon,
and so from day to day,

until the above action is tried, to give evidence in the above action or matter.

There was paid or tendered to you at the time of the service of this summons your reasonable expenses of travelling to and from the Court, together with a sum as compensation for loss of time according to the prescribed scale.

DATED this day of
20.....

.....

Magistrate.

To: of
.....

This Summons was issued on the application of the (Claimant or Defendant)

Sum to be paid or tendered to the witness:- N

CIVIL FORM
INTERLOCUTORY INJUNCTION

You are to attend at
on the day of 20.....
at the hour of in the noon, and so on from
day to day, until
the above action or matter is tried to give evidence in the above matter and also to bring with
you and produce the several documents specified below.

(Here, insert list of documents required to be produced)

IN DEFAULT of your attendance or of production by you of all or any of the specified document,
you will be liable to forfeit N if there was paid or tendered to you at the
time of service of the summons your reasonable expenses of travelling to and from the Court
together with a sum as compensation for loss of time according to the prescribed scale. (Where
the witness is merely required to produce documents the words "to give evidence in the above
action or matter and also" should be omitted).

DATED this day of 20.....

Magistrate.

To: of

This summons was issued on the application of the (Claimant or Defendant)

Sum to be paid or tendered to the witness:- N

CIVIL FORM

JUDGMENT FOR CLAIMANT (PAYMENT BY INSTALMENT)

IT IS ADJUDGED that the Claimant do recover against the Defendant the sum

of N

for the debt (or damages), and costs N

amounting together to the sum of

..... N

And the Defendant having paid the sum of

..... N

unto Court (or to the Claimant)

IT IS ORDERED that the Defendant do pay the sum of N

.....

to the Registrar by instalment of N for every
the first

instalments to be paid on the day of
20.....

IN CASE DEFAULT is made in payment of any instalment according to this order, execution or successive executions may issue for the whole of the said sum and costs then remaining unpaid, or for such portion unpaid, as the court shall order.

DATED this day of 20.....

.....

Magistrate.

CIVIL FORM

BOND BY PERSON GIVING SECURITY

We

of

and

of

.....

and

.....

of

are jointly and severally held and firmly bound to in
the

sum of N to be paid to the said
.....

or his Attorney, Executors, Administrators or Assigns: we bind each and every one of the and
each of our Heirs, Executors and Administrators jointly and severally by this bond.

Sealed with our seals and dated this day of

two thousand

Whereas (1)

[(1) Here recite the circumstances in which the bond is required]

NOW THE CONDITION of this obligation is such that if the above-bond
.....

do (2) then this obligation shall be void and of no effect, otherwise the same shall remain in full
force and virtue.

[(2) Here state the obligation undertaken].

SEAL.

SEAL.

SEAL.

SEAL.

Signed, sealed and delivered by the above-bound in the presence of

.....

Magistrate.

Or

Commissioner for Oath.

CIVIL FORM

THIRD PARTY NOTICE

IN THE MAGISTRATES' COURT OF EDO STATE

No. of Claim

Between A. B
..... Claimant

and

C. D
.....
..... Defendant

and

E. F
Third Party

TAKE NOTICE that this action has been brought by the Claimant against the Defendant or

..... and that the
.....
.....

(a) he is entitled to contribution from you to the extent of
.....
.....

or (b) he is entitled to be indemnified by you against liability in respect of
.....

or (c) he is entitled to the following relief or remedy relating to or connected with the original
subject

matter of the action, namely.....
.....
.....

or (d) the following question or issue relating to or connected with the subject matter of the
action
should properly be determined as between the Claimant and the Defendant and

the third party, namely
.....
.....

The grounds of the Defendant's claim are:-

AND TAKE NOTICE that if you dispute the Claimant's claim against the Defendant or the Defendant's claim against you, you must take all necessary steps for your defence, and appear on the day fixed for the hearing of the action when the Claimant's claim against the Defendant and the Defendant's claim against you will be heard and determined.

In default of your appearing at the day of hearing you will be deemed to admit:-

- (1) the Claimant's claim against the Defendant: and
- (2) the Defendant's claim against you and
- (3) your liability to (contribute to the extend claimed) or (indemnify the Defendant) or
- (4 the Defendant's right to the relief or remedy claimed in paragraph (c) above; and
- (5) the validity of any judgment in the action.

And you will be bound by the judgment in the action which may be enforced by execution against your good.

DATED this day of 20.....

.....

Magistrate.

To (the Third Party).

CIVIL FORM

ON BEHALF OF INFANT OR PERSON OF UNSOUND MIND FOR APPOINTMENT OF GUARDIAN AT LAW

I, of
.....

made oath and say as follows:-

1. The Defendant was served with the..... in
this action

(or matter) on the day of
20.....

2. The Defendant
..... is an(infant or person of unsound mind) not adjudged a lunatic.

3 or and proper person to act as a guardian
at law of the said Defendant and has no interest in the matters in question in this
action (or matter) adverse to that of the said to act
as such guardian is annexed.

.....
Deponent.

Sworn to this day of
..... 20.....

.....
Commissioner for Oaths.