HIGH COURT (CIVIL PROCEDURE) RULES OF CROSS RIVER STATE, 2008

(ARRANGEMENT OF RULES)

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56. Grant in additional name
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58.(1) Additional personal representatives
59.(1) Grant were two or more persons entitled in same degree
60.(1) Prevention of grant
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63.(1) Grant to general attorney
64.(1) Grant on behalf of minors
65.(1) Grant where minor is co-executor
66.(1) Grant incase of mental or physical incapacity
67.(1) Rennuciation of probate and administration
68. Notice to State of intended application for grant
69. Resealing
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74.(1) Citation to propound a Will
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77. Limited grant
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23.(1) Orders of High Court to be Certified to magistrate's Court.
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26. High Court may enlarge time.
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ORDER 49
FEES AND ALLOWANCES

1. Fees: 1st and 2nd Schedule
1.(b) Allowances. Part II of 3rd Schedule
2. Regulations: 6th Schedule

HIGH COURT (CIVIL PROCEDURE) RULES OF CROSS RIVER STATE, `2008
(ARRANGEMENT OF RULES)

ORDER 1
APPLICATION AND INTERPRETATION

l.-(l) These Rules shall apply to all proceedings including all proceedings including all part-heard causes and matters in respect of steps to be further taken in such actions.

Application

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

Where no Rule exists

(3) Where a matter arises in respect of which no adequate provisions are made in the Rules, the court exists shall adopt such procedure as will in its view do substantial justice between the parties concerned.

Short title and commencement

2.-(l) These Rules may be cited as High Court (Civil Procedure) Rules of Cross River State 2008 and shall come into effect on the 29th day of September, 2008.

Interpretation of Items

(2) These Rules shall be interpreted in interpretation accordance with the Interpretation Law, Cap 1.6 Laws of Cross River State 2004 or any re-enactment thereof.

(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:

"*Claimant*" includes a claimant in a counter-claim;

"*Court*" means the High Court of Cross River State;

"*Court Process" or "Process"* includes writ of summons, originating summons, originating process, notices, petitions, pleadings, order, motion, summons, warrants and all documents or written communication, etc.

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

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

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

"*Law* " means the High Court Law, Cap H2, Laws of Cross River State, 2004 or any re-enactment thereof;

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

"*OriginatingProcess*" means any court process by which a suit is initiated in Court;

"*Person under Legal Disability"* means a person who lacks capacity to institute or defend any proceedings by reason of age, insanity, unsoundness of mind or otherwise;

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

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

"*Registry* " means the Registry of the High Court of Cross River State in the appropriate Judicial Division;

"*State*" means Cross River State

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

ORDER 2
PLACE OF INSTITUTION AND TRIAL OF SUITS

Subject to the provisions of any Law on transfer of suits, the place for instituting and trial of any suit shall be regulated as follows:

Suits relating to land and property distrained or seized.

1. All suits relating to land or any mortgage or charge on land or any interest in land, or any inquiry or damage to land and actions relating to personal property distrained or seized for any cause, shall be commencedand determined in the Judicial Division in which the land is situate, or the distrain or seizure took place.

Suits for re-covery of penalties for-feitures and against Public Officers

2. All actions for recovery of penalties, forfeitures, and all actions against Public Officers shall be commenced and tried in the Judicial Division in which the cause of action arose.

Suits upon contract

3. All suits for specific performance, or upon the breach of any contract, may be commenced and determined in the Judicial Division in which such contract ought to have been performed or in which the defendant resides or carries on business.

Other suits

4.-(l) All other suits may be commenced and determined in the Judicial Division in which the defendant resides or carries on business.

(2) Where there are several defendants who reside or carry on business in different Judicial Divisions, the suit may be commenced in any one of those Judicial Divisions subject to any order or direction a Judge may make or give as to the most convenient arrangement for trial of the suit.

Suits commenced in a wrong Judicial Division

5. If any suit is commenced in a wrong Judicial Division, it may be tried in that Division if the parties agree.

ORDER 3
MISCELLANEOUS PROVISIONS

I Court Sittings and Vacation

Days of sittings

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

Public or private sittings of the court

2. The sittings of the Judge for the hearing of the court causes shall ordinarily be in public but subject to the provisions of the Constitution of the Federal Republic of Nigeria and other laws applicable in Cross River State. the Judge may for special reasons, hear any particular cause or matter in the presence only of the parties, with their Legal Practitioners if any, and the officers of Court.

Office hours

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

Days of sittings and long vacation.

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

(a) on any public holidays
(b) during the week beginning with Easter Monday;
(c) during the period beginning on Christmas eve and ending on the 2nd day of January next following;
(d) during the long vacation.

(2) There shall be an annual vacation of the court not exceeding eight weeks beginning in the month of July as the Chief Judge may by notification in the Gazette appoint.

Vacation.

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

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

Vacation not reckoned in time for pleadings

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

II General

Recovery of penalties and costs

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

Notice

8. In all cases in which the publication of any notice is required, the same may be made by advertisement in the Gazette, unless otherwise provided in any particular case by any rule of Court or otherwise ordered by the Judge.

Filing

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

How process addressed

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

Non-payment of court fees

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

NO fees where proceeding by Government Department

Provided however that when any person is ordered to pay the costs of the State or of any Government Department in any case, whether criminal or civil, all fees which would have been payable but for the provisions of this rule shall be taken as paid and shall be recoverable from such person.

Regulations

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

Saving

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

ORDER 4
APPLICATION AND PROCEEDINGS IN CHAMBERS

Business in Chambers

Representation in Chambers

1. In any proceeding before a Judge in Chambers, any party may, if he so desires, be represented by a Legal Practitioner.

Matters to be disposed of in Chambers

Unless the other party or his counsel objects the Judge may, on application, conduct any proceeding in Chambers, and may also on application, adjourn any such proceeding from Court to Chambers or vice versa.

II. Proceedings Relating to Persons under Legal Disability

Evidence upon applications or appointment of guardians and for maintenance

3. Upon application for the appointment of Evidence upon guardians of infants and allowance for maintenance, the evidence shall show:

(a) the ages of the infants;

(b) the nature and amount of the infants' fortunes and incomes; and

(c) what relations the infants have.

Guardian with reference to proceeding in chambers

4. At any time during the proceeding pursuant Guardian with to any judgment or order, the judge may, if he deems fit, require a guardian to be appointed for any person under legal disability not adjudged a lunatic, who has been served with notice of such judgment or order.

III. Further Consideration

Further consideration of matter originating in Chambers

5. Where any matter originating in Chambers shall, at the hearing have been adjourned for further consideration in Chambers, such matter may, after the expiration of 8 days and within 14 days from the filing of the certificate of judgment or order, be brought on for further consideration by a Summons to be taken out by the party having the conduct of the matter, and after the expiration of such 14 days by a summons to be taken out by any other party such summons shall be in the form following: "That this matter, the further consideration whereof was adjourned by the Order of the…… on…….. day of…… 20 may be further considered"

and shall be served 7 clear days before the return provided that this Rule shall not apply to any matter, the further consideration whereof shall at the hearing have been adjourned in Court.

IV. Registering and Drawing up of Orders in Chambers

Notes of proceedings in Chambers

6. Notes shall be kept of all proceeding in the Judge's Chambers with proper dates, so that all such proceeding in such cause or matter may appear consecutively and in chronological order, with a short statement of the question or points decided or ruled at every hearing.

7. Orders made in Chambers shall, unless the judge otherwise directs, be drawn up by the Registrar in chambers signed by the Judge. Such Orders shall be entered in the same manner as Orders made in Court.

Costs

8. Subject to the provisions of the Law and of costs these Rules, the costs of, and incident to all proceeding in Chambers shall be at the discretion of the Judge.

Decisions given chambers, how set aside or varied

9.-(l) Where any party to a proceeding in Decisions Chambers does not intend to accept the decision of the Judge in Chambers as final, he shall ask at once to have the summons adjourned into Court for argument. If such request is refused, the party may proceed by way of motion on notice in court to discharge, set aside or vary the Order made or the Judgment given or Order made in Chambers.

(2) The notice of motion shall be filed not later than 7 days after the making of the Order in Chambers unless the court grants an extension of time on good and sufficient reason being shown, and the motion shall be heard and determined by the Judge who has dealt with the matter in Chambers unless this proves impossible or inconvenient owing to such Judge's death or retirement or prolonged absence from court.

(3) This rule shall also apply in the case of decisions given by a Judge in Chambers on appeal from the Chief Registrar under Rule 4 of Order 45.

ORDER 5
COMPUTATION OF TIME

Rules for computation of time

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

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

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

(c) where the act is required to be done within a period which does not exceed 3 days, holidays shall be left out of account in computing the period.

Holiday

2. In this Order holiday means a day which is a Sunday or a public holiday.

Time for service

3 Any pleading, summons, motions, orders, originating process, documents and other processes served after 6.00p.m. shall be deemed to have been served the following day, provided that service effected after 6.00p.m on Saturday and Sunday shall be deemed to have been effected on the following Monday. If effected on a public holiday it shall be deemed to have been effected on the next working day.

Court may extend time

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

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

ORDER 6
CHANGE OF LEGAL PRACTITIONER

Legal practitioner to conduct cause or matter to final judgment.

1. A Legal Practitioner who is engaged in any cause or matter shall be bound to conduct same on behalf of the claimant or defendant as the case may be, by or for whom he shall have been so engaged until final judgment, unless allowed for any special reason to cease acting therein.

Application for change of Legal practitioner or withdrawal

2. An application for a change or withdrawal of Legal Practitioner may be made by the claimant or defendant or the Legal Practitioner as the case may be.

ORDER 7
FORM AND COMMENCEMENT OF ACTION

Proceeding which must be begun by writ

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

(a) where a claimant claims;
(i) any relief or remedy for any civil wrong or

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

(iii) damages for personal injuries to or wrongful death of

any person, or in respect of damage or injury to any person, or in respect of damage or injury to any property.

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

(c) where an interested person claims a declaration.

Mode of beginning civil proceeding.

2.-(l) All civil proceedings commenced by writ of summons shall be accompanied by:
(a) statement of claim;
(b) list of witnesses to be called at the trial;
(c) written statements on oath of the witnesses and
(d) copies and list of every document to be relied on at the trial.

(2) Where a claimant fails to comply with Rule

2(1) above, his action shall be incompetent and liable to be struck out by the Court.

Form of writ. Form 1

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

Writ for service out of jurisdiction

(2) Subject to the provisions of these rules or of any written law in force in the State, no writ of summons for service out of jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of Court or a Judge in Chambers.

Forms of Writ for service out of state. Form 2

4. - (1) A writ of summons to be served outside for Service out the jurisdiction of the State shall be in Form 2 with such modifications or variation as circumstances may require

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

Proceedings which may be begun by originating summons

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

Construction of enactment

6. Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed and there is not likely to be any substantial dispute of fact.

Discretion of the judge

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

Forms of originating summons. Forms 3, 4, 5 and 6

8.-(l) An originating summons shall be in the Forms 3,4 or 5 to these Rules and shall be accompanied by a Notice of Appointment in Form 6, with such variations as circumstances may require. It shall be prepared by the applicant or his Legal Practitioner, and shall be sealed and filed in the Registry, and when so sealed and filed shall be deemed to be issued.

(2) An originating summons shall be accompanied by:
(a) an affidavit setting out the facts relied upon;
(b) all the exhibits to be relied upon;
(c) a written address in support of the summons.

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

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

Originating process to be tested by its date

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

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

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

ORDER 8
ISSUE OF ORIGINATING PROCESS

Preparing originating process

1. Originating process shall be prepared by a claimant or his Legal Practitioner, and shall be clearly printed on white paper of good quality.

Sealing of originating process

2.-(l) The Registrar shall seal every originating process whereupon it shall be deemed to be issued.

(2) A claimant or his Legal Practitioner shall, on presenting any originating process for sealing, leave with the Registrar as many copies of the process as there are defendants to be served and one copy for endorsement of service on each defendant.

What is to be done after sealing

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

3.The Registrar shall, after sealing an originating process, file it and note on it the date and time of filing done after and the number of copies supplied by a claimant or his sealing Legal Practitioner for service on the defendant. The Registrar shall then make an entry of the filing in the cause book and identify the action with a suit number that may comprise an abbreviation of the Judicial Division, a chronological number and the year of filing.

Copies to be served

4. The Registrar shall promptly arrange for Copies to be personal service on each defendant of a copy of the served originating process and accompanying documents duly certified as provided by Rule 2(3) of this Order.

Probate actions affidavit with originating process

5. The originating process in probate actions shall be accompanied by an affidavit sworn to by a claimant or one of several claimants verifying the contents of the process.

Life span

6.-(l) The life span of every originating process shall be 3 months.
Form 7

(2) If the Registrar is satisfied that it has proved impossible to serve an originating process on any Form 7 defendant within its life span and a claimant applies before its expiration for renewal of the process, he may renew the original or concurrent process for 3 months from the date of such renewal. A renewed originating process shall be in Form 7 with such modifications or variations as circumstances may require.

Endorsement of renewal.

7. The Registrar may order two renewals in each case strictly for good cause and upon prompt application, provided that no originating process shall be in force for more than a total period of 9 months. The Registrar shall state the fact, date, and duration of renewal on every renewed originating process.

Loss of original process

8. Where an originating process is lost after issue, the Registrar, upon being satisfied of the loss and of the correctness of the process, may order the copy to be filed and sealed in place of the lost originating process.

Current originating process

9. A claimant may at the issue of an originating process or at any time during its life span, cause to be issued one or more concurrent originating processes each to bear the same date as the initial process marked "CONCURRENT" and have stated on it the date of issue.

Concurrent originating process for service within and out of jurisdiction

10- (1) An originating process for service within Concurrent jurisdiction may be issued and marked as a concurrent originating process with one for service out of jurisdiction service within and an originating process for service out of the and out of jurisdiction may be issued and marked as a concurrent Jurisdiction originating process with one for service within jurisdiction.

Jurisdiction

(2) Out of Jurisdiction in this order means out of jurisdiction Cross River State but within Nigeria.

ORDER 9
INDORSEMENT OF CLAIM AND OF ADDRESS

Indorsement

1. All originating processes shall contain the claim, the relief or remedy sought and the foil names and address of the claimant.

Indorsement to show representative capacity

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

Probate Action

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

What is indorsed where the claim is liqudated

4.-(l) Where the claim is for debt or liquidated demand only, the originating process shall state the amount claimed for debt or in respect of such demand with costs and shall further state that the defendant may pay the amount with costs to the claimant's Legal Practitioner within the time allowed for appearance and that upon such payment the proceeding shall terminate.

Ordinary account

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

Indorsement of address by claimant or by Legal Practitioner

6.-(l) 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. He shall also state his telephone number, facsimile number, e-mail address, if any.

(2) Where a claimant sues through a Legal Practitioner, the Legal Practitioner shall state on the originating process his Chamber's address as the address for service. If the Legal Practitioner is based outside the jurisdiction he shall state a Chamber's address within the jurisdiction as his address for service. He shall also state his telephone numbers, e-mail address, if any.

Originating process without an address or with fictitious addres.

7. If the originating process does not state an address for service, or if any such address is illusory, fictitious or misleading, the

process may be set aside by Judge on the application of the defendant.

ORDER 10
SUMMARY JUDGMENT PROCEEDING
The undefended list

1. Whenever application is made to a court for the issue of a writ of summons in respect of a claim to recover a debt or liquidated money demand and such application is supported by an affidavit setting forth the grounds upon which the claim is based and stating that in the deponent's belief there is no defence thereto, the court shall, if satisfied that there are good grounds for believing that there is no defence thereto, enter the suit for hearing in what shall be called the 'Undefended List', and mark the writ of summons accordingly and enter thereon a date for hearing suitable to the circumstances of the particular case.

Copy of affidavit to be served

2. There shall be delivered by the claimant to the Registrar upon the issue of the writ of summons as aforesaid, as many copies of the above mentioned affidavit as there are parties against whom relief is sought, and the Registrar shall annex one such copy to each copy of the writ of summons for service.

Notice of intention to defend

3.-(l). If the party served with the writ of intention to summons and affidavit delivers to the Registrar a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the merit, the court may give him leave to defend upon such terms as the court may think just.

(2) Where leave to defend is given under this rule, the action shall be removed from the Undefended List and placed on the Ordinary Cause List; and the court may order pleadings, or proceed to hearing without further pleadings.

Judgment in Undefended List

4. Where any defendant neglects to deliver the Judgment in notice of defence and affidavit prescribed by rule 3(1) of this Order, or is not given leave to defend by the court, the suit shall

be heard as an undefended suit, and judgment given thereon, without calling upon the claimant to summon witnesses before the court to prove his case formally.

Oral evidence

5. Nothing herein shall preclude the Court from oral evidence hearing or requiring oral evidence or from allowing the defendant to cross examine or challenge the affidavit evidence of the claimant should it so think fit, at any stage of the proceeding under rule 4.

Duration

6. All suits placed under the undefended list Duration shall be heard and determined within 28 days of its being so placed subject to service of the processes on the defendant.

Claimant to deposit original copies of all documents with Registrar

7. Upon assignment of a case filed under this claimant to Order 10 to a court, the claimant shall deposit original deposit copies of all documents attached to his affidavit with the Registrar of the court to which the matter is assigned. A defendant who files a notice of intention to defend likewise deposit original copies of all documents attached to his affidavit with the said Registrar. The Registrar shall keep a register for deposit of original documents.

ORDER 11
NON-COMPLIANCE WITH RULES

Effect of non-compliance

1.- (1) Where in beginning or purporting to begin any proceeding or at any stage in the course of or in connection with any proceeding, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure may be treated as an irregularity and if so treated, will not nullify the proceeding, or any document, judgment or order therein.

(2) The Court may on the ground that there has been such a failure as mentioned in sub rule (1) of this Order, and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceeding in which the failure occurred, any step taken in those proceeding, or any document, judgment or

Order therein, or it may exercise its powers under these rules to allow such amendment (if any) to be made and to make such Order (if any) dealing with the proceeding generally as it thinks fit.

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

Application to set aside for irregularity

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

(2) An application under this rule may be by motion and the grounds for objection shall be stated in the notice of the motion.

ORDER 12
SERVICE OF PROCESS

By whom service is to be effected

l.-(l) 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 all such person serving court processes shall be called "Process Server".

(2) When 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.

Effecting service of originating process

2. The process server shall serve an originating process by delivering to the party to be served a copy of the process duly certified.

When originating process need not be served personally

3. No personal service of an originating process shall be required where the defendant has authorised his Legal Practitioner in writing to accept service or his Legal Practitioner enters appearance or appears in court.

Mode of service when not personal

4. 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 9 Rule 6 or by facsimile (fax), electronic mail (e-mail) provided that the party to be served or his legal practitioner had previously in writing furnished such address for service.

Substituted service

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

(2) Application to the Judge for substituted service, or for the substitution of notice for service shall be supported by an affidavit setting forth the grounds upon which the application is made.

Persons under Legal Disability

6.-(1) Where a person under legal disability is a defendant, service on his guardian shall be deemed, good and sufficient personal service, unless a Judge otherwise orders.

Provided that personal service on a minor who is over 16 years of age living independently or doing business is good and sufficient.

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

Prisoner or detainee

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

Partners

8. 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 or upon any person having control or management of the partnership business at the principal place of

business within the jurisdiction, and such service shall be deemed good service upon the firm whether any of the 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 all such partners within the jurisdiction sought to be made liable.

Corporation or company

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

Foreign corporation or company Cap L.20 LFN 2004

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

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

Local agent of principal who is out of jurisdiction

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

registered courier to the defendant at his address out of the jurisdiction.

Where violence threatened

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

Proof of service generally

13.—(1) After serving any process, or being proof of unable to serve such process, the process server shall service 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 seven (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.

Expenses of service

14. 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 in Practice Directions from time to time.

Time of service

15. Service of originating and other processes, pleadings, notices, summons, orders, and documents whatsoever shall be effected at any time and on any day including public holidays.

Recording of service

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

Agreement as to service

17. Where parties have by their contract prescribed the mode or place of service, or the person that may serve, or the person

who may be served any process in any claim arising out of the contract, service as prescribed in the contract shall be deemed good and sufficient service.

Cases where service of originating process, etc, are allowed out of Nigeria

18. A Judge may, whenever it appears proper order service of any process outside Nigeria.

Service abroad by letter of request

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

Form 8

(a) the process to be served shall be sealed with the seal of the Court for service out of Nigeria, and shall be transmitted to the Solicitor- General of the Federation by the Chief Registrar, together with a copy translated into the language of that country if not English, and with a request for its further transmission to the appropriate authority in that country. The request shall be in Form 8 with such modifications or variations as circumstances may require;

Form 9

(b) a party wishing to serve a process under this rule shall file a praecipe in Form 9 with such modifications or variations as circumstances may require;

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

Form 10

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

with a request in Form 10 with such modifications or variations as circumstances may require:

Provided that a claimant may with leave of a Judge serve any originating process by a reputable courier company or registered post.

Nothing herein contained shall in any way affect any power of a Judge in cases where lands, funds, choses in action, rights or property within the jurisdiction are sought to be dealt with or affected. The Court may, without assuming jurisdiction over any person out of the jurisdiction, cause such person to be informed of the nature or existence of the proceeding with a view to such person having an opportunity of claiming, opposing or otherwise intervening.

Where leave is granted or not required Form 11

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

(a) the party desiring such service shall file in the registry a request in Form 11 with such modifications or variations as circumstances may require and the request shall state the medium through which it is desired that service shall be effected, either:

(i) directly through diplomatic channels or

(ii) through the foreign judicial authority;

(b) the request shall be accompanied by

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

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

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

(2) A Judge, in granting leave to serve a process out of jurisdiction under this Order, may, upon request therefore in appropriate cases, direct that a reputable courier company shall be used by the party effecting service.

Service of foreign processes

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

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

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

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

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

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

Inapplicability of Rule 4

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

Service on behalf of foreign tribunals

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

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

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

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

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

ORDER 13
APPEARANCE

Mode of entry of appearance

1.-(1) A defendant served with an originating process shall, within the period prescribed in the process of appearance for appearance, file in the registry the original and copy of a duly completed and signed memorandum of appearance as in Form 12 with such modifications or variations as circumstances may require.

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

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

Defendant appearing in person or represented by Legal Practitioner

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

(2) Where a defendant appears by a Legal Practitioner, the Legal Practitioner shall state in the memorandum of appearance his place of business and an address for service which shall be within Cross River State, and where any such Legal Practitioner is only the agent of another Legal Practitioner he shall also insert the name and place of business of the principal Legal Practitioner.

Fictitious address

3. The Registrar shall not accept any memorandum of appearance which does not contain an address for service. If any such address is illusory, fictitious or misleading, the appearance may be set aside by a Judge on the application of a claimant.

Defendants appearing through same Legal Practitioner

4. If two or more defendants in the same action appear through the same Legal Practitioner the memorandum of appearance shall include the names of all defendants so appearing.

Late appearance

5. If a defendant files an appearance after the time prescribed in the originating process, he shall pay to the court an additional fee of Two Hundred Naira for each day of default.

Intervener in probate matters

6. In probate matters any person not named in the originating process may intervene and appear in the matter on filing an affidavit showing his interest in the estate of the deceased.

Recovery of land

7. Any person not named as a defendant in an originating process for recovery of land may with leave of a Judge appear and defend, on filing an affidavit showing that he is in possession of the land, either by himself or through his tenant

Person appearing to defend as landlord in possession through his tenant

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

Person under legal disability appearing

9. A person under legal disability shall enter an appearance by his guardian.

II. Default of Appearance

Default of appearance by person under Legal disability

10. Where no appearance has been entered for a person under legal disability, a claimant shall apply appearance to a Judge for an order that some person be appointed guardian for such defendant, and when appointed the person may appear and defend. The application shall be made after service of the originating process. Notice of the application shall be served on the person intended to be appointed the guardian of the defendant.

Default of appearance generally

11. Where any defendant fails to appear, a Default of claimant may proceed upon default of appearance under appearance the

appropriate provisions of these rules upon proof of generally service of the originating process.

Liquidated demand

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

Liquidated demand several defendants

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

Judgment in default of appearance

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

Several defendants

15. Where the claim in the originating process is as in Rule 14 of this Order and there are several defendants one or some of whom appear while another or others do not appear, a claimant may apply for judgment against the defendants) Ming to appear. The value of the goods and the damages or the damages only, as the case may be, shall be ascertained in such manner and subject to the filing of such particulars as a Judge may direct before judgment in respect of that part of the claim.

Detention of goods, damages - and liquidated demand

16. Where the claim in the originating process is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any of the defendants fail to appear, a claimant may apply to a Judge for

judgment. The value of the goods and the damages, or the damages only, as the case may be, shall be ascertained in such manner and subject to the filing of such particulars as a Judge may direct before judgment in respect of that part of the claim

Recovery of land

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

Mesne profits

18. Where in an originating process for recovery Mesne profits of land a claimant claims mesne profits, arrears of rent, damages for breach of contract or wrong or injury to the premises, he may apply for judgment as in Rule 12-17 of this Order for the land, and may proceed to prove the other claims.

Judgment for cost upon payment, satisfaction, etc.

19. In any case to which Rules 12-17 of this judgment for Order do not apply, and the defendant or all of several defendants fail to appear, but by reason of payment, satisfaction, abatement of nuisance, or any other reason it is unnecessary for a claimant to proceed, he may apply to a Judge for judgment for costs:

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

Setting aside judgment

20. Where judgment is entered pursuant to Rules 10-19 after 6 days of this Order, a Judge may set aside or vary such judgment on such terms upon an application by the defendant. The application shall be made within 6 days, and show a good defence to the claim and a just cause for the default.

Default of appearance in actions not otherwise specifically provided for

21. In all claims not specifically provided for under Rules 10-20 of this Order, where the party served with the originating process does not appear within the time prescribed in the originating process, a claimant may proceed as if appearance had been entered.

Compulsory service

22. Notice of any application under Rules 10-21 of this Order shall be served on the other party.

ORDER 14
APPLICATION FOR ACCOUNT

Order for account

1. Where in an originating process a claimant Order for seeks an account under Order 9 Rule 5 or where the account claim involves taking an account, if the defendant either fails to appear, or after appearance fails to satisfy a Judge that there is a preliminary question to be tried, the Judge shall, on application make an order for the proper account, with all necessary inquiries and directions.

Application how made

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

Who may take account

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

ORDER 15
PARTIES GENERALLY

Persons claiming jointly or severally

1. All persons may be joined in one action as claimants in whom any right to relief is alleged to exist whether jointly or severally, and judgment may be given for such claimant(s) as may be found to be entitled to relief and for such relief as the claimant(s) may be entitled to.

Action in name of wrong claimant

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

Mis-joinder and Counter-claim

3. Where in commencing an action any person has been wrongly or improperly included as a claimant and a defendant has set up a counterclaim or set-off, such defendant may establish his set-off or counterclaim as against the parties other than a claimant so included notwithstanding the inclusion of such claimant or any proceeding based thereon.

Any person may be joined as defendant

4. Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. Judgment may be given against one or more of the defendants as may be found to be liable, according to their respective liabilities.

Action in name of wrong defendant

5. Where an action has been instituted against a wrong defendant or where the name of a defendant has been incorrectly stated a Judge may upon application order a striking out or substitution or addition of any person as defendant or correction of any such name on any term as may be just.

Defendant need not be interested in all the reliefs sought.

6.-(l) It shall not be necessary for every Defendant be interested in all the reliefs claimed or answerable to every cause of action in any proceeding against him.

(2) A Judge upon considering the defence filed by any defendant may on application by that defendant make such order as may appear just to prevent him from being embarrassed or put to expense by being required to attend any proceeding in which he may have no interest.

Several or joint liability

7. A claimant may at his option join as parties to the same action all or any of the persons severally, jointly and severally, liable on

any one contract, including parties to bills of exchange and promissory notes.

Proper defendant in doubt

8. Where a claimant is in doubt as to the person from whom he is entitled to redress, he may, in such defendant in manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable and to what extent, may be determined as between all parties.

Persons under legal disability

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

Guardian

10. Where any person's name is to be used in any action as guardian of a person under legal disability or other party or as relator, a written authority for that purpose signed by that person shall be filed in the registry.

Trustees, executors, etc, may be served as representing the estate

11. Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such person, but a Judge may, at any stage of the proceedings order any of such persons to be made parties in addition to or in lieu of the previously existing parties. This rule shall apply to trustees, executors and administrators in proceeding to enforce a security by foreclosure or otherwise.

Representative capacity

12.—(1) Where there are numerous person having the same interest in one suit, one or more of such persons may sue or be sued on behalf of, or for the benefit of, all persons so interested.

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

Representation of persons or classes of persons in certain

proceedings

13.—(1) Where in any proceedings concerning:

(a) the administration of an estate, or

(b) property subject to a trust, or

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

(d) the construction of any written instrument, including a statute,

(e) injury to a class of persons,

a judge is satisfied that:

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

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

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

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

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

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

(4) In this Rule, the word "class" includes a persons recognized by Customary Law as members of a family or as members of a land owning community or as regards Rule 13 (l).(p) and (e) of this Order all persons resident within the State.

Power to approve compromise

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

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

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

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

Where there is no personal representation

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

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

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

Proceeding not defeated by mis-joinder/non-joinder

16.-(l)No proceeding shall be defeated by Proceeding not reason of misjoinder or nonjoinder of parties, and a Judge may deal with the matter in controversy so far as regards nonjoinder the rights and interest of the parties properly before him.

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

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

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

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

Application to add or strike out

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

(2) Where the application is to add a claimant or a defendant, the application shall be accompanied by the statement of claim or defence as the case may be, all the exhibits intended to be used and the depositions of all the witnesses:
Provided that where the application is to substitute a deceased party with another person the application may not be accompanied by the documents specified above;

And Provided Further that where the documents specified above are already before the Court, the party applying shall depose to

an affidavit asserting that fact and verifying the exhibits and depositions relevant to his claim or defence as the case may be.

Where defendant is added

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

Third parties may be joined by any of the parties

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

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

Appearance by third party

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

Default by third party

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

Subsequent third party

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

Claim against co-defendant

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

II. Actions against Firms and Persons carrying <an Business in names other than their own

Actions by and against firms Actions by and against firms

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

Disclosure of partners' names

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

(2) Where the claimants or their Legal Practitioners fail to comply with such demand, all proceeding in the action may, upon an application for that purpose, be stayed upon such terms as a Judge may direct.

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

Appearance of partners

26.-(1) Where persons are sued as partners in the name of their firm, they shall appear individually in partners their own names; but all subsequent proceeding shall continue in the name of the firm.

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

Application of Rules to actions between co-partners

27. The above Rules in this Part shall apply to proceeding between a firm and one or more of its partners and between firms having one or more partners in between co-common,

provided such firm or firms carry on business partners within the jurisdiction.

Persons trading as firms

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

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

Action not abated where cause of action survives

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

Order to carry out proceeding

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

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

(3) A person served who is not already a party to the proceeding, shall, where applicable, enter an appearance thereto within the same time and in the same manner as if he had been served with

the originating process. He shall thereupon be served with the originating and all existing processes.

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

Assignment, creation or devolution of estate or title

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

Application to discharge Order by person under disability

32. Where any person who is under no legal disability, or, being under any legal disability but having a guardian in the proceeding, is served with an order under Rule 26, such person may apply to a Judge to discharge or vary such order at any time within 14 days from the service of the order and the application shall be heard and disposed of within 14 days.

By persons under disability

33. Where any person under any legal disability and not having a guardian in the proceeding is served with an order under Rule 26, such a person may apply to a Judge to discharge or vary such order at anytime within 14 days from the appointment of a guardian for such party, and until such period of 14 days has expired, such order shall have no force or effort as against the person under legal disability.

IV. Legal Practitioners or Agents

Acts may be done by Legal Practitioner or agent

34. Where by these Rules any act may be done by any party in any proceeding, such act may be done either by the party in person, or by the party in person, or by his Legal Practitioner, or by his agent (unless an agent is expressly prohibited under these rules or any written law in force in the State)

ORDER 16

JOINDER OF CAUSES OF ACTION

All causes of action may be joined

1. Subject to the following Rules of this Order, claimant may join in the same action several causes of action; but if it appears that

they cannot be conveniently tried or disposed of together, a Judge may order separate trials of any such causes of action or may make such order as may be necessary or expedient for the separate disposal thereof.

Recovery of land

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

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

Husband and Wife

3. Claims by or against husband and wife may be joined with claims by or against either of them separately.

Executor and administrator

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

Claim by joint claimants

5. Claims by persons claiming jointly against a defendant may be joined with claims by them or any of them separately against the same defendant.

Remedy for mis-joinder

6. Any defendant alleging that the Claimant has joined in the same action several causes of action which cannot be conveniently disposed of together may at any time apply to the judge for an order confining the action to such of the causes of action as may be conveniently disposed of together.

Order of exclusion

7. If, on the hearing of an application under Rule 6 of this Order, it appears to the judge that the causes of action are such as cannot all be conveniently disposed of together, he may order any of

such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just.

ORDER 17
PLEADINGS (STATEMENT OF CLAIM, DEFENCE, COUNTER-CLAIM, AND REPLY)

I. **General**

Pleadings to state material facts and not evidence

1. Pleading shall contain a statement in a summary form of the material facts on which the party state material pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved and shall, when necessary, be divided into paragraphs numbered consecutively. Dates, sums and numbers shall be expressed in figures. Pleadings shall be signed by a Legal Practitioner or by the party if he sues or defends in person.

Particulars to be given where necessary

2.-(1) In all cases in which the party pleading Particulars to relies on any misrepresentation, fraud, breach of trust, be wilful default, or undue influence and in all other cases in necessary which particulars may be necessary, particulars (with dates and items if necessary) shall be stated in the pleading.

(2) In an action for libel or slander if the claimant alleges that the words or matter complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of his allegation.

Further and better Statement of Particulars

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

Denial

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

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

(3) A defendant in an action for recovery of land shall plead specifically every ground of defence on which he relies. A plea that he is in possession of the land by himself or his tenant shall not be sufficient.

Condition precedent

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

Defence, Reply, certain facts to be specifically pleaded

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

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

Pleading to be consistent

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

Joinder of issues

8. A party may by his pleading join issues upon the pleading of the opposing party and such joinder of issues shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined except any fact which the party may be willing to admit.

Effect of document to be stated

9. Wherever the contents of any documents are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

Notice

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

Implied contract or relation

11. Wherever any contract or any relation implied between any persons is to be implied from a series of contract or letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstance without setting them out in detail. If in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

Presumptions of law

12. A party may not allege in any pleadings any Presumptions matter or fact the law presumes in his favour or as to of law which the burden of proof lies upon the other side, unless the same has first been specifically denied.

Stated or settled account

13. In every case in which the cause of action is a stated or settled account the same shall be alleged with particulars but in every case in which a statement of account is relied on by way of evidence or admission a of any other cause of action which is pleaded, the same shall not be alleged in the pleadings.

Technical objections

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

Striking out of pleadings

15. A Judge may at the pre-trial conference pleadings any proceeding order to be struck out or amended, any matter in any

indorsement or pleading which may be unnecessary or scandalous or which-may tend to prejudice, embarrass or delay the fair trial of the action; and may in any such case, if the Judge shall deem fit, order costs of the application to be paid as between Legal Practitioner and client.

Defamation

16.—(1) Wherever it is material to allege malice fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

(2) Where in an action for libel or slander the defendant pleads that any of the words or matters complained of are fair comment on a matter of public interest or were published upon a privileged occasion, the claimant shall, if he intends to allege that the defendant was actuated by express malice, deliver a reply giving particulars of the facts and matters from which such
malice is to be inferred.

(3) Where in an action for libel or slander the defendant alleges that in so far as the words complained of consist of statement of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he shall give particulars stating which of the facts and matters he relies On in support of the allegation that the words are true.

When pleading discloses no reasonable cause of action

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

(a) it discloses no reasonable cause of action or defence, as the case may be; or
(b) it is scandalous, frivolous or vexatious; or
(c) it may prejudice, embarrass or delay the fair trial of the action, or
(d) it is otherwise an abuse of the process of the court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

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

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

Declaratory Action.

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

Raising point of law

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

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

Close of pleadings

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

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

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

II. Statement of Claim

Statement of Claim

20.-(1) A statement of claim, or a counter-claim, statement of shall state specifically the relief claimed either singly or claim in the alternative, and it shall not be necessary to ask for general or other relief, which may be given as a Judge may think just as if it has been asked for.

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

Claim beyond indorsement

(3) Whenever a statement of claim is filed, the claimant may alter, modify or extend his claim without any amendment of the indorsement of the writ:

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

III. Defence and Counter-Claim

21.-(l)The statement of defence shall be a statement in summary form and shall be supported copies of documentary evidence, list of witnesses and their written statements on oath.

(2) Adefendant shall file his statement of defence, set-off or counterclaim, if any, not later than 14 days after service on him of the claimant's originating process and accompanying documents. A counterclaim shall have the same effect as a cross action, so as to enable the court pronounce a final judgment in the same proceeding. A set-off must be specifically pleaded.

Provided that in land cases a defendant shall serve his statement of defence on the claimant not later than 30 days from the day the statement of claim was served on him.

(3) A claimant shall within 14 days of service of the statement of defence and counterclaim if any, file his reply, if any, to such defence or counterclaim, accompanied by any additional list of witnesses, written statements on oath of such witnesses and copies of all documents to be relied upon in proof of the reply:

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

Evasive denial

22. When a party in any pleading denies an allegation of fact in the previous pleading of the opposing party, he shall not do so evasively. If an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

Denials generally

23.-(l) In an action for debt or liquidated demand in money, a mere denial of the debt shall not be sufficient defence.

(2) In an action for money had and received, a defence in denial must deny the receipt of the money or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the claimant

Persons in representative capacity

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

(4) In action upon a bill of exchange, promissory note or cheque, a defence in denial must deny some matter of fact, e.g. the drawing, making, indorsing, accepting, presenting or notice of dishonour of the bill or note.

Persons in representative capacity

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

Pleading to damages

25. No denial or defence shall be necessary as pleading to to damages claimed or their amount as they are deemed damages to be in issue in all cases, unless expressly admitted.

Set off or Counter-claim

26. Where any defendant seeks to rely upon any ground as supporting a right of set-off or counterclaim, he shall in his

defence state specifically that he does so by way of supporting a right of set-off counterclaim.

Title of Counter-claim

27. Where a defendant by his defence sets up any counterclaim which raises questions between himself and the claimant along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim, setting forth the names of all persons who, if such counterclaim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his defence to such of them as are parties to the action within the period which he is required to deliver it to the claimant.

Appearance by added party. Form 13

28. Where any such person as in Rule 27 of this Order is not a party to the action he shall be summoned to appear by being served with a copy of the defence and counterclaim, and such service shall be regulated by the same Rules as those governing the service of the originating process, and every defence and counterclaim so served shall be indorsed in Form 13 with such modifications or variations as circumstances may require.

Claim against person not party

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

Reply to Counter-claim

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

Discontinuance of the claimant's claim

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

Judgment for balance

32. Where in an action, a set-off or counterclaim is established as a defence against the claimant's claim, the judge may, if the balance is in favour of the defendant, give judgment

for the defendant for such balance, or as may otherwise be adjudged due to the defendant as he may be entitled to upon the merits of the case.

Grounds for defence after action brought

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

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

Further defence or reply

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

Concession to defence

35. Whenever any defendant in his defence or in any further defence pursuant to Rule 16 of this Order alleges any ground of defence which has arisen after the commencement of the action, the claimant may concede to such defence (which concession may be in Form 14 with such modification as circumstances may require) and may thereupon obtain judgment up to the time of the pleading of such defence, unless the Judge either before or after the delivery of such concession otherwise orders.

Defence in Originating Summons. Forms 14

36. A defendant to an originating summons shall file a counter affidavit together with all the exhibits he intends to rely upon and a written address within 14 days after service of the originating summons.

IV. Reply

Filing

37. Where the claimant desires to make a reply, he shall file it within 7 days from the service of the defence.

Reply to counter-claim

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

ORDER 18
ADMISSIONS, DISCOVERY, INSPECTION OF DOCUMENTS AND THINGS

I. Admissions

Notice admission of facts

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

2.-(1) Either party may, not later than 7 days before the first pre-trial conference, by notice in writing filed and served, require any other party to admit any document and the party so served shall not later than 7 days after service give notice of admission or non-admission of the document, failing which he shall be deemed to have admitted it unless a Judge otherwise orders.

(2) When a party decides to challenge the authenticity of any document, he shall not later than 7days of service of that document, give notice that he does not admit the document and requires it to be proved at the trial.

Cost of proving documents

(3) Where a party gives notice of non-admission and the document is proved at the trial, the fee of proving the document, which shall not be more than a sum of five thousand Naira for each document, shall be paid to the court by the party who has challenged it, unless in giving his final judgment, the Judge shall determine that there were reasonable grounds for not admitting the authenticity of the document.

Notice to admit facts

3.-(1) Either party may not later than 7 days before the first pre-trial conference by notice in writing filed and served require any

other party to admit any specific fact or facts mentioned in the notice, and the party so served shall not later than 7 days after service give notice of admission or non-admission of the fact or facts failing which he shall be deemed to have admitted it unless a Judge otherwise orders.

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

Judgment order upon admission of facts

4. The Judge may, on application, at a pre-trial conference or at any other stage of the proceeding where admissions of facts have been made, either on the pleadings or otherwise, make such orders or give such judgment as upon such admissions a party may be entitled to, without waiting for the determination of any other question between the parties.

Cost of notice where document unnecessary.

5. Where a notice to admit or produce comprises facts and or documents that are not necessary for the determination of the facts in issue between the parties, the defaulting party shall pay a fee which shall not be more than five thousand Naira as may be determined by the Judge.

Form 14

6. A notice to admit document shall be in Form14 with such modification or variation as circumstances may require.

II. Discovery and Inspection

Discoveries by interrogatories

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

Form 15

8. Interrogatories shall be in Form 15 with such Form 15 modifications or variations as circumstances may require.

Corporation or companies

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

Objection to interrogatories by answer

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

Affidavit in answer; filing of

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

Form of affidavit in answer; Civil Form 16

12. An affidavit in answer to interrogatories shall be in Form 16 with such modifications or variations as circumstances may require.

Order to answer or answer further

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

Application for discovery of documents

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

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

Form 17

(3) The affidavit to be made by a person in answer to a request for discovery of documents shall specify which, if any, of the listed documents he objects to producing, stating the grounds of his objection, and it shall be in Form 17 with such modifications or variations as circumstances may require.

Processes filed after pre-trial conference

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

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

Verification of business books

16. Where any document required to be attached to any process or produced under this or any other rule is a bankers book or other books of accounts, or books in constant use for the purpose of any trade or business a Judge may upon application order a copy of any entry therein to be furnished and verified in an affidavit. Such affidavit shall be made by a person who keeps the book or under whose supervision the book is kept.

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

(3) The Judge may upon application whether or not an affidavit of document has been ordered or filed, make an order requiring any party to state by affidavit whether any particular document or any class of documents is or has at any time been in his possession, custody, power or control, when he parted with the same and what has become of it.

Non-compliance with order for discovery

17.—(1) If any party fails to comply with any order to answer interrogatories or for discovery or inspection of documents, he shall be liable for committal, discovery

(2) Service of an Order for interrogatories or discovery or inspection made against any party or his legal practitioners shall be sufficient service to forward an application for an attachment for disobedience to the court.

(3) The party shall also, if a claimant, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended, and the party interrogating may apply to the court or a Judge in Chambers for an Order to that effect and an Order may be made accordingly.

Attachment of Legal Practitioner

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

Using answers to interrogatories at trial

19. A party may, at the trial of a cause, matter or issue, use in evidence any one or more of the answers or any part of an answer 0f me opposing party to interrogatories without putting in the others or the whole of such answer.

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

Discovery against sheriff

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

Discovery to apply to person under legal disability

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

ORDER 19
ARREST OF ABSCONDING DEFENDANT
Defendant leaving Nigeria

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

Warrant to arrest

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

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

Bail for appearance or satisfaction

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

Deposit in lieu of bail

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

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

Committal in default

5.-(l) If the defendant fails to furnish in or offer a sufficient deposit, the Judge may commit him into custody until the decision

of the suit or if judgment has been given against the defendant, until the execution of the judgment

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

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

Cost of subsistence of person arrested

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

ORDER 20
PRE-TRIAL CONFERENCES AND SCHEDULING

Pre-trial conference notice. Form 18

1.-(1) Within 14 days after close of pleadings, claimant shall apply for the issuance of a Pre-Trial Conference Hearing Notice as in Form 18.

Form 19

(2) Upon application by a claimant under sub-rule 1 above, the Pre-trial Judge shall cause to be issued to the parties and their Legal Practitioners (if any) a Pre -Trial Conference Hearing Notice as in Form 18 accompanied by a pre-trial information sheet as in Form 19 for the purposes set out hereunder:

(a) Disposal of non-contentious matters which must or can be dealt with on interlocutory application;

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

(c) Promoting amicable settlement of the case by the adoption of alternative dispute resolution.

(3) If the claimant does not make the application in accordance with sub-rule 1 of this rule, the defendant (s) may do

so or apply for an order striking out the action within 7 days after the time limited for the claimant

Scheduling and planning

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

(a) joining other parties;
(b) amending pleadings or any other processes;
(c) filing motions;
(d) further pre-trial conferences;
(e) any other matters appropriate in the circumstances of the case.

Agenda

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

(1) formulation and settlement of issues;
(2) amendments and further and better particulars;
(3) the admissions of facts, and other evidence by consent of the parties;
(4) control and scheduling of discovery, inspection and production of documents;
(5) narrowing the field of dispute between expert witnesses, by their participation at pre-trial conference or in any other manner;
(6) eliciting preliminary objections on point of law,
(7) hearing and determination of non-contentious motions;
(8) giving orders or directions for separate trial of a claim, counterclaim, set-off, cross-claim or third party claim or of any particular issue in the case;
(9) settlement of issues, inquiries and accounts under Order 27
(10) securing statement of special case of law or facts under Order 29;
(11) determining the form and substance of the pre-trial order,
(12) such other matters as may facilitate the just and speedy disposal of the action.

Timetable

4. The pre-trial conference or series of pre-trial conferences with respect to any case shall be completed within 2 months of the close of pleadings, and the parties and their Legal Practitioners shall co-operate with the Pre-trial Judge in working within this time table. Pre-trial conferences shall be held from day to day or adjourned otherwise only for purposes of compliance with pre-trial conference orders.

Report

5. After a pre-trial conference or series of pre-trial conferences, the Pre-trial Judge shall issue a Report This Report shall guide the subsequent course of the proceeding unless modified by either the Pre-trial or the trial Judge for good cause shown by the Judge on his own motion or on the application of a party to the action.

Sanctions

6. If a party or his Legal Practitioner fails to attend the pre-trial conference signed by the party or his/her Counsel jointly or fails to obey a scheduling or pre-trial order or is substantially unprepared to participate in the conference or fails to participate in good faith, the Pre-trial Judge may:

(a) in the case of the claimant, strikeout the claim;

(b) in the case of a defendant enter judgment against him.

Any judgment given under this Rule may be set aside upon an application made within 7 days of the judgment or such other period as the Pre-trial Judge may allow not exceeding the pre-trial conference period with an Order as to penalty of a sum not less than £5,000. The application shall be accompanied by an undertaking to participate effectively in the pre-trial conference jointly signed by the applicant and the Legal Practitioner representing him, if any.

Management

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

Proviso to Order: Pre- trial Judge may not be same as Trial Judge

Provided that in the application of this Order and in all subsequent proceeding, the Pre-Trial Judge who prepares a Report need not be the same as the Trial Judge; but the Trial Judge shall be bound to conduct the said subsequent proceedings in accordance with the Report issued by the pre-trial Judge.

ORDER 21
MOTIONS AND OTHER APPLICATIONS
Application by motion

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

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

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

(4) The applicant may on being served with the written address of the opposing party file and serve an address in reply on points of law within 7 days of being served. Where a counter affidavit is served on the applicant he may file a further affidavit within 3 days with his reply.

2- (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.

When notice of motion should be given

(2) No application for an injunction shall be made *ex parte* unless the applicant files with it an affidavit of urgency which urgency is not self-imposed or illusory, and a motion on notice in respect of the application shall be heard so soon after the grant of an ex parte order.

(3) An order of injunction made upon an application ex parte shall abate after 14 days.

(4) A Judge may upon application extend the effective period of an order made *ex-parte* if he is satisfied that such extension is necessary in the interest of justice or to prevent irreparable damage or serious mischief to the applicant. The application for such an extension shall be made before abatement of the order and the extension shall not be for a period exceeding the period of time up to the date of the ruling on the motion on notice, provided that period shall not exceed 21 days.

(5) If a Motion to vary or discharge an ex parte order is not disposed of within 14 days of its being filed, the ex parte order shall automatically lapse.

Motion on arbitral award

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

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

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

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

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

Special leave

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

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

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

Motions may be dismissed or adjourned where necessary notice not given

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

Adjournment of hearing

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

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

Service of motion with Writ

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

Account by Legal Practitioner

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

Interim certificate

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

ORDER 22
INTERLOCUTORY ORDERS

Preservation or interim custody of subject matter of disputed contract

1- (1) When by any contract, a prima facie case of liability is established and there is alleged as a matter of defence a right to

be relieved wholly or partially from such liability, a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation or may order that the amount in dispute be brought into Court or otherwise secured.

(2) An application for an order under Rule 1 Sub-Rule 1 of this Order may be made by the claimant at any time after his right thereto appears from the pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Judge.

Early trial of cause

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

Order for sale of perishable goods, etc.

3. A Judge on the application of any party may make any order for the sale by any person or persons named in such order and in such manner and on such terms as the Judge may deem desirable, of any goods, wares, or merchandise which may be of a perishable nature (or which is likely to suffer damage as a result of custody) or which for any other just and sufficient reason may be desirable to have sold at once.

Detention, preservation or inspection of property; the subject of an action

4- (1) A Judge upon the application of any party to an action or matter, and upon such terms as may be just, may make any order for the detention, preservation or inspection of any property or thing, being the subject of such action or matter or as to which any question may arise therein, and for all or any of the purposes aforesaid, to authorise any persons to enter upon or into any land or building in the possession of any party to such action or matter, and for all or any of the purposes aforesaid to authorise any samples to be taken or any observation to be made or experiment to be carried out, which may be necessary or expedient for the purpose of obtaining full information or evidence.

(2) Where an order for the inspection of any property or thing is made on an application under this rule (including an action or

matter) and the person who ought to permit the inspection refuses to do so, then, unless the Judge is satisfied that such person reasonably failed or refused to permit the inspection, shall order the costs to be paid by such person in any event and except where such person is a "Poor Person", shall order the costs to be paid forthwith.

Inspection by Judge

5.-(1) A Judge by whom any action or matter inspection by may be heard or tried, may inspect any property or thing Judge concerning which any question may arise therein.

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

(3) The money paid after disposal of any goods or chattel shall be withdrawn from the bank by the successful party who shall present to the Chief Registrar a certified true copy of the enrolment of the judgment

Order for recovery of specific property other than land subject to lien, etc.

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

Allowance of income of property

7. Where any real or personal estate or property forms the subject of any proceeding and the Judge is satisfied that the same will be sufficient to answer all the claims thereon which ought to be provided for in such proceeding, the Judge may at any time after the commencement of the proceeding, allow the parties

interested therein or any one or more of them, the whole or part of the annual income of the real estate of a part of the personal estate or property or the whole or part

Injunction against repetition of wrongful act for breach of contract

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

Appointment of a receiver by way of equitable execution

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

Receivers: Security and remuneration. Form 20 and 21

10. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person security and to be appointed shall first give security to be approved by the Judge, duly to account for what he shall receive as such receiver, and to pay the same as the Judge shall direct; and the person so appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. The security to be given shall be by guarantee or by an undertaking in Forms 20 and 21 with such variations as circumstances may require. The undertaking shall be filed in the Registry and form part of the record of proceedings until it has been duly vacated.

Where receiver appointed in court; adjournment to give security

11. Where any judgment or order is pronounced or made in court appointing a person therein named to be receiver the court may adjourn the proceedings then pending, in order that the person named as receiver may give security as in the last preceding rule

and may thereupon direct such judgment or order to be drawn up.

Fixing days for receivers to leave and pass their accounts and pay in balances and neglect of receiver

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

Form of receiver's accounts Form 22

13. Receiver's accounts shall be in Form 22 with such variations as circumstances may require.

Leaving account at the Registry. Form 23

14. A receiver shall deliver to the Registrar his account, together with an affidavit verifying the same in Form 23 with such variations as circumstances may require. An appointment shall thereupon be obtained by the claimant or person having the conduct of the action for the purpose of passing such account.

Consequences of default by receiver

15. In case of any receiver failing to leave any account or affidavit, or to pass such account, or to make any payment or otherwise, the receiver or the parties or any of them, may be required to show cause why such account was not passed or such payment was not made or any other proper proceeding was not taken and thereupon such directions as shall be proper may be given, including the discharge of any receiver and appointment of another and payment of costs.

Passing of guardian's accounts.

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

ORDER 23
DRAWING UP OF ORDERS

Date of order when drawn

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

Orders need be drawn

2. Where an order has been made not embodying any special terms, not including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave:

(a) for the issue of any writ other than a attachment;
(b) for the amendment of any writ or pleading;
(c) for the filing of any document; or
(d) for any act to be done by any officer of the court other than a legal practitioner,

It shall not be necessary to draw up such order unless j the Judge otherwise directs; but the production of a notice or memorandum of such order signed by a Judge shall be sufficient authority for such enlargement of time, issue, amendment, filing or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed to be a special direction j within the meaning of this rule.

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

ORDER 24
WITHDRAWAL AND DISCONTINUANCE

Claimant may discontinue before defence

l.-(l) The claimant may at any time before receipt of the defence or after the receipt thereof, before taking any other proceeding in the action, by notice in writing duly filed and served, wholly discontinue his claim against all or any of the defendants, or withdraw any part or parts of his claim. He shall thereupon pay such defendant's costs of the action, or if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn.

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

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

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

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

Withdrawal by consent

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

ORDER 25
TRANSFERS AND CONSOLIDATION

Order transferring proceeding to High Court

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

Payment of filing fees

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

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

Duties of Registrar

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

(a) file the documents received from the Lower Court;
(b) make an entry of the filing in the Cause Book; and
(c) transmit the documents to the Chief Judge or such other Judge appointed by the Chief Judge in the Order of transfer.

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

Directions

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

(a) hear the parties or their Legal Practitioners;
(b) take cognizance of the documents, and thereafter,
(c) give directions for the trial or hearing of the action or matter.

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

Party failing to attend.

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

(2) If the defendant fails or all of several defendants fail to attend in compliance with a notice given under sub-rule 2 of Rule 3 of this Order, the claimant may ask for judgment with costs or obtain the order prayed for in the transferred proceeding.

Construction

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

Consolidation

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

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

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

(4) Where an order for consolidation has been made, it shall be drawn up at the expense of the party or parties who applied for consolidation and shall be recorded in the Cause Book.

ORDER 26
AMENDMENT

Amendment to originating processes and pleadings

1. A party may amend his originating process and pleadings at any time before close of the pre-trial conference and not more than twice during the trial but before closing his case.

Application

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

Filing of amended processes

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

Failure to amend after order

4. If a party who has obtained an order to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within 7 days from the date of the order, such party shall pay an additional fee of two hundred Naira for each day of default.

Filing and service of amended process

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

Date of order and amendment to be endorsed

6. Whenever any indorsement or pleading is amended, it shall be marked in the following manner:
"Amended …… day…… of …….. pursuant to Order of (name of judge) dated the …….. day of ……..

Correction of clerical mistakes in judgment

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

Power of a Judge to amend error or defect in proceedings.

8. Subject to the provisions of Rule 1 of this Order, a Judge may at any time and on such terms as to costs or otherwise as may be just, amend any defect or defect in error in any proceeding.

ORDER 27
ISSUES, INQUIRIES, ACCOUNTS AND REFERENCES TO REFEREES

Issues of facts

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

(2) If the parties differ on the issues, the pre-trial Judge may settle the issues.

Reference to referee

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

Instructions to referee

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

General powers of referee

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

Evidence

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

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

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

Reports made in pursuance of reference under Order

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

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

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

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

(b) vary the report;

(c) require an explanation from him;

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

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

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

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

Special directions as to mode of taking accounts

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

Accounts to be verified by affidavit

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

Mode of vouching accounts

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

Surcharge

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

Accounts and inquiries to be numbered

11. Where by any judgment or order, any accounts are directed to be taken or inquiries to be made, in each such direction shall be numbered so that as far as may be practicable, each distinct account and inquiry may be designated by a number and such judgment or order shall be in Form 24 with such modifications or variations as the circumstances of the case may require.

Just allowances

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

Expediting processes in case of undue delay

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

ORDER 28

PAYMENT INTO COURT

Payment into and out of court

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

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

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

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

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

Form 25

(6) The notice shall be in Form 25 with such modifications or variations as circumstances may require. The receipt of the notice shall be acknowledged in writing by the claimant within 3 days. The notice may be modified or withdrawn or delivered in an amended form by leave of a Judge upon such terms as may be just.

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

amount paid into court shall be repaid to him on the order of a Judge.

Claimant may take out money

2.-(l) Where money is paid into court under I Rule 1 of this Order, the claimant shall within 14 days of the receipt of the notice of payment into court, or where more than one payment into court has been made, within 14 days of the receipt of the notice of the last payment in court, accept the whole sum or any one or more of the specific sums in satisfaction of the cause or causes of action to which the specified sum or sums relate by giving notice to the defendant in Form 26 with such modifications or variations as circumstances may require and thereupon shall be entitled to receive payment of the accepted sum or sums in satisfaction as aforesaid.

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

Money remaining in court

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

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

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

Several defendants

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

Form 27

(2) If the claimant elects within 14 days after receipt of notice of payment into court to accept the sum or sums paid into court, he shall give notice as in Form 27 with such modifications or variations as circumstances may require to each defendant and thereupon all further proceeding in the action or in respect of the specified cause or causes of action (as the case may be) shall abate.

(3) The money shall not be paid out except in pursuance of an order of a Judge.

Form 26

(4) In an action for libel or slander against several defendants sued jointly, if any defendant pays money into court, the claimant may within 14 days elect to accept the sum paid into court in satisfaction of his claim against the defendant making the payment, and shall give notice to all the defendants in Form 26 with such modifications or variations as circumstances may require. The claimant may tax his costs against the defendant who has made such payment in accordance with Rule 2(3) of this Order and the action shall thereupon abate against that defendant.

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

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

Counterclaim

6(1) In any proceeding in which money or damages is or are claimed by or on behalf of a person under legal disability suing either alone or in conjunction with other parties, no settlement or compromise, or payment, or acceptance of money paid into court, whether before, at or after the trial, shall as regards the claims of any such person be valid without the approval of a Judge.

(2) No money (which expression for the purposes of this Rule includes damages) in any way recovered or adjudged or ordered or awarded or agreed to be paid in any such proceeding in respect of the claims of any such person under legal disability whether by judgment, settlement, compromise, payment into court or

otherwise, before, at or after the trial, shall be paid to the claimant or to the guardian of the claimant or to the claimant's Legal Practitioner unless a Judge shall so direct

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

Payment into and withdrawal of money from court

7. An application for payment into or transfer out of court shall be made by motion on notice.

ORDER 29
SPECIAL CASE

Special case by consent

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

Special case by order before trial

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

decision of such question of law may render unnecessary may thereupon be stayed.

Special case to be signed

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

Application to set down where a person under legal disability is a party

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

Agreement as to payment of money and cost

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

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

Application of order

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

ORDER 30
PROCEEDING AT TRIAL

Non-appearance of both parties

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

Default of appearance by defendant at trial

2. When a cause is called for hearing, if the claimant appears and the defendant does not appear, the claimant shall proceed to prove his claim, so far as the burden of proof lies upon him; but if he cannot so proceed, the Judge shall, unless he sees good reason to the contrary, strike the cause out.

Default of appearance by claimant

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

Judgment by default may be set aside

4.- (1) Where a cause is struck out under Rule 1 or Rule 2 of this Order, either party may apply that the cause be relisted on the cause list on such terms as the Judge may deem fit.

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

(3) An application to re-list a cause struck out, or to set aside a judgment shall be made within 6 days after the order or judgment or such other larger period as the Judge may allow and upon payment of five

Adjournment of trial

5. The Judge may, if he thinks it expedient in the interest of justice, postpone or adjourn a trial for such time and upon such terms, if any, as he shall deem fit and in any event, not more than fourteen days.

Time of commencement and termination of trial

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

Order of proceeding

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

Burden of proof on party to begin

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

Documentary evidence

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

Additional witness

10.-(1) The court may in order to discover or to obtain proper proof of relevant facts, without seeming witness to make any case for either of the parties, ask any question he pleases, in any form, at any time, of any witness, or any person (whether called by any party or not) who had made a deposition or not, about any fact relevant or irrelevant; and may order the production of any document or thing; during pre-trial or at the trial.

(2) A party who desires to call any witness nor being a witness whose deposition on oath accompanied his pleading shall apply to the Judge for leave to call such witness.

(3) An application for leave in sub-rule 1 of this Order shall be accompanied by the deposition on oath of such witness, and the Judge may, if good cause is shown as in sub-rule 1 above, grant leave to call the additional witness.

Close of parties

11.-(1) A party shall close his case when he has concluded his evidence. Either the claimant or defendant may apply orally to have the case closed.

(2) Notwithstanding the provisions of sub-rule 1 of this Order, the Judge may on his own motion where he considers that either party fails to conclude his case within a reasonable time, close the case for the party.

Exhibits during trial

12.-(1) The Registrar shall take charge of document or object put in as an exhibit during the trial of an action and shall mark or label

every exhibit with a letter or letters indicating the party by whom the exhibit is put in (or where more convenient, the witness by whom the exhibit is put in) and with a number, so that all the exhibits put in by a party are numbered serially.

(2) The Registrar shall cause a list of all the exhibits in the action to be made.
(3)The list of exhibits when completed shall form part of the record of the action.

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

(5) In this rule a witness by whom an exhibit is tendered includes a witness in the court by whose evidence the exhibit is put in.

Written address

13. When the party beginning has concluded his evidence, the Judge shall ask the other party if he intends to call evidence. If the other party does not intend to call evidence, the party beginning shall within 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.

Written address of the other party beginning.

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

Written address of the party beginning.

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

Right of reply

16. The party who files the first address shall have a right of reply on points of law only. The reply shall be filed within 7 days after service of the other party's address.

Custody of exhibit after trial

17.-(1) An exhibit shall not be released after the trial to the party who has put it in unless the period during after which notice of appeal may be given has elapsed without such notice having been

given, and if the trial Judge (or in his absence, another Judge) grants leave to release such exhibit on being satisfied:

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

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

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

Office copy of list of exhibits

18.-(1) Any party may apply for and on payment of the prescribed fee obtain an office copy of the list of exhibits.

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

Non-diligent prosecution

19. A Judge may, on his own motion or on application, strike out any proceedings not being prosecuted diligently.

ORDER 31
EVIDENCE GENERALLY

Facts how proved

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

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

Particular facts

2.-(1) A Judge may, at or before the trial of an action, order or direct that evidence of any party or 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.

Limitation of medical and expert evidence

3. A Judge may, at or before the trial of an action, order or direct that the number of medical or expert witnesses who may be called at the trial be limited as specified by the order or direction, thereafter the witness shall be subjected to cross examination by the opposing Counsel.

Limitation on documentary evidence

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

Revocation and variation

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

Office copies admissible in evidence

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

Examination of witnesses abroad. forms 28 29

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

(a) the party obtaining such order shall file in the Registry an undertaking as in Form 28 which form may be varied as may be

necessary to meet the circumstances of the particular case in which it is used;

(b) such undertaking shall be accompanied by:-

(i) a request in Form 29, with such modifications or variations as may be directed in the order for its issue, together with translation in the language of the country in which it is to be executed (if not English);

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

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

Forms of order for examination of witnesses abroad.Form 30

8. Where an order is made for the examination of a witness or witnesses before the Nigerian Diplomatic Agent in any foreign country with which a Convention in that behalf has been made, the order shall be in Form 30 the form may be modified or varied as may be necessary to meet the circumstances of the particular
case in which it is used.

Order for attendance of person to produce documentation

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

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

Disobedience to order for attendance

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

Expenses of persons ordered to attend

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

Contempt of court

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

Examination of witnesses

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

Desposition not to be given in evidence without leave of a Judge

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

Oaths

15. An officer of the court or other person directed to take the examination of any witness or person or any person nominated or appointed to take the examination of any witness or person pursuant to the provisions of any Convention now made or which may hereafter be made with any foreign country, may administer oaths.

Attendance of witness order subpoena

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

Practice as to taking evidence at any stage of cause or matter

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

Special directions as to taking evidence

18. The practice of the court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the court or other person in any cause or matter after the hearing or

trial, shall be subject to any special directions which may be given in any case.

Evidence in proceeding subsequent to trial

19. Subject to the provisions of Section 34 of the Evidence Act, all evidence taken at the hearing to trial of any cause or matter, may be used in any subsequent proceedings in the same cause or matter without the need for the trial to be commenced de novo.

Form of praecipe for a subpoena. Form 31

20. Where it is intended to issue out a subpoena or precipe for that purpose in Form 31 containing the name or firm and the place of business or residence of the Legal Practitioner intending to issue out the same, where such Legal Practitioner is agent only, then also the name or the firm and place of business or residence of the principal Legal Practitioner, shall in all cases be delivered and filed at the Registry. No subpoena shall be issued unless all court fees have been paid (including fee for service) and unless sufficient money on the prescribed scale is deposited to cover the first day's attendance.

Form of subpoena Forms 32, 33 and 34

21. A subpoena shall be in one of Forms 32, 33 or 34 with such variations as circumstances may require.

Correction of errors in subpoena

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

Personal service of subpoena

23. A *subpoena* shall be served personally unless substituted service has been ordered by a judge in a case where a person persistently evades service. The provisions of Order 12 shall so far as possible apply to service of a subpoena.

Duration of supoena

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

Action to perpetuate testimony

25. A person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event,

to any honour, title, dignity or officer, or to any estate or interest in any property, real or personal, the right or claim to which cannot be brought to trial by him before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim.

Examination of witnesses to perpetuate testimony

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

Such action not to be set down for trial

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

ORDER 32
AFFIDAVITS

Evidence on motion, etc.

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

Title on motion, etc

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

Use of defective affidavit

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

Special time for filing affidavit

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

Affidavits in support of ex-parte application

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

Notice of intention to use affidavit

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

Alterations in accounts to be initialed

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

Exhibits

8. Accounts, extracts from registers, particulars of creditors' debt, and other documents referred to by affidavit, shall not be referred to as annexures, but shall be exhibited and referred to as "exhibits".

Certificate of exhibit

9. A certificate on an exhibit referred to in an affidavit signed by the Commissioner for Oaths before whom the affidavit is sworn shall be marked with the suit number of the cause or matter.

ORDER 33
FILING OF WRITTEN ADDRESS

Application

1. This Order shall apply to all applications and final addresses.

Content of written address

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

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

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

(lii) the issues arising from the evidence;

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

Submission of address

3. All written addresses shall be concluded with a numbered summary of the points raised and the party's prayer. A list of all

authorities referred to sub-divided according to type, e.g., decided cases, statutes, books, monographs and treatises, etc, 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.

Oral arguments

4. Oral arguments not longer than thirty minutes shall be allowed for each party to emphasise and clarify the written address already filed.

Copies of written address

5. Each party shall file two copies of his written Copies of address for the court along with sufficient copies for each 2ess party.

Time limit

6. The time limited for filing written addresses in this Order shall be as provided for in Order 30 Rules
13,14,15 and 16 of these Rules.

PART III
NON-SUIT, JUDGMENT, COST AND STAYPENDINGAPPEAL

ORDER 34
JUDGMENT IN DEFAULT OF PLEADING

Claim for debt or liquidated demand

1. If the claim is only for a debt or liquidated demand, and the defendant does not within the time allowed for the purpose, file a defence, the claimant may, at the expiration of such time, apply for final judgment for the amount claimed with costs.

Several defendants: default of one

2. When in any such action as in Rule 1 of this Order, there are several defendants, if one of them makes default as mentioned in Rule 1 of this Order, the claimant may apply for final judgment against the defendant making default and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

Damages and detention of goods

3. If the claimant's claim is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages only, and the defendant or defendants, make default as mentioned in Rule 1 of this Order, the claimant may apply to a Judge for interim judgment against the defendant or defendants on the value of the

goods and the damages, or the damages only as the case may be, as shall be ascertained in any way which the Judge may order.

Default of one or more defendants

4. When in any such action as in Rule 3 of this Order there are several defendants, if one or more them make default as mentioned in Rule 1 of this Order, the claimant may apply to a Judge for interim judgment against the defendant or defendants in default and proceed with his action against the others. In such a case, the value and amount of damages against the defendant making default shall be assessed at the trial of the action or issues therein against the other defendants, unless the Judge shall otherwise order.

Debt or damages and detention of goods or damages

5. Where the claim is for debt or liquidated demand and also for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any defendant makes default as mentioned in Rule 1 of this Order, the claimant may apply to a Judge for final judgment for the debt or liquidated demand, and may also apply for interlocutory judgment for the value of the goods and damages, or the damages only as the case may be, and proceed as mentioned in Rules 3 and 4 of this Order.

Recovery of land

6. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 1 of this Order, the claimant may apply for judgment that the person whose title is asserted in the writ of summons shall recover possession of the land with his costs.

Claims for mesne profits, arrears, or damages

7. Where the claimant has indorsed a claim for mesne profit or arrears of rent in respect of the premises claimed, or any part thereof, or damages for breach of contract or wrong or injury to the premises claimed upon a writ for the recovery of land, if the defendants make default as mentioned in Rule 1 of this Order, or if there be more than one defendant, some or one of the defendants make such default, the claimant may apply for final judgment against the defaulting defendant or defendants and proceed as mentioned in Rules 3 and 4 of this Order.

Where a defence is filed to part of claim only

8. If the claimant's claim is for a debt or liquidated demand, or for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, or for any such matters, or for the recovery of land, the defendant files a defence which

purports to offer an answer to only a part of the claimant's alleged cause of action, the claimant may apply for judgment, final or interlocutory, as the case may be, for the part unanswered:

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

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

Defendant in default

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

One of several defendants in default

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

Default of third party

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

Setting aside judgment by default

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

ORDER 35
DELIVERY AND ENTRY OF JUDGMENT

Delivery of judgment at or after trial

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

Date of judgment pronounced in court

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

Date of judgment directed to be entered

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

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

Judge may direct time for payment or performance and interest

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

Time to be stated for doing any act; memorandum to be indorsed

5. Any judgment or order made in any cause or matter requiring any person to do an act shall state the time within which the act is to be done. There shall be indorsed on the judgment order a memorandum by the registrar in the following words, viz

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

and same shall be served upon the person required to obey the judgment or order.

Entry on production of affidavit of document

6. Where under any relevant law, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the Registrar shall submit the affidavit or document produced to the Judge and if it is regular and contains

all that is required, the Judge shall signify his approval in writing and judgment shall be entered accordingly.

7. In any cause or matter where the defendant has appeared by Legal Practitioner, an order for entering judgment shall be made by consent of the defendant or by his Legal Practitioner.

Judgment by consent where defendant has no legal practitioner

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

ORDER 36
COSTS

Principle to be observed in fixing costs

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

(2) When costs are ordered to be paid, except as otherwise stated in these rules, the amount of such costs shall, if practicable, be summarily determined by the Judge at the time of making the judgment or order and stated therein.

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

Security for costs

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

Security for costs by claimant temporarily within jurisdiction

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

Action founded on judgment or bill of exchange

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

Bond as security for costs

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

Costs at discretion of court

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

Costs out of fund or property

7. The Judge may order any costs to be paid Costs out of
out of any fund or property to which a suit or proceeding fund or relates.

Stay of proceeding till costs paid

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

When costs to follow the event

9.-(l) Costs when ordered immediately when costs to become payable, and in all events shall be paid within 7 days of the order, otherwise the defaulting party or his Legal Practitioner may be denied further audience in the proceeding.

(2) In addition to any penalty payable for default under these Rules, the costs of and occasioned by any application to extend the time fixed by the Rules or any direction or order thereunder, for delivering or filing any document or doing any other act (including the costs of any Order made on the application) shall be

borne by the party making the application unless the Judge otherwise orders.

Stay of proceeding at which costs to be dealt with

10. Costs may be dealt with by the Judge at any stage of the proceeding and any order of the Judge for the Payment of any costs may, if the Judge deems fit and the person against whom the Order is made is not a person to whom Order 46 applies, require the costs to be paid forthwith notwithstanding that the proceeding have not been concluded.

Matters to be taken into account in exercising discretion

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

Costs arising from misconduct or neglect

12.-(1) Where in any cause or matter anything is done or omission is made improperly or unnecessarily or on behalf of a party, the Judge may direct that any costs to that party in respect of the cause or matter shall not be allowed. Any costs occasioned by such act of misconduct or neglect shall be borne by the party in default.

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

(a) the omission to do anything the doing of which would have been calculated to save costs;

(b) the doing of anything calculated to occasion or in a manner or at a time calculated to occasion unnecessary costs;

(c) any unnecessary delay in the proceeding.

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

Personal liability of legal practitioner for costs

13.—(1) Subject to the following provisions of these Rules, where in any proceeding costs are incurred improperly or without reasonable cause or by undue delay or by any other misconduct or default, the Judge may make against any Legal Practitioner

whom he considers to be responsible (whether personally or through a servant, agent or delegate) an order:

(a) directing the Legal Practitioner personally to pay to his client costs which the client has been ordered to pay to other parties to the proceedings; or

(b) directing the Legal Practitioner personally to indemnify such other parties against costs payable by them: or

(c) disallowing the costs as between the Legal Practitioner and his client.

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

(a) because of the failure of the Legal Practitioner to attend in person or by a proper representative; or

(b) because of the failure of the Legal Practitioner to deliver any document for the use of the court which ought to have been delivered or to be prepared with any proper evidence or account or otherwise to proceed.

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

(4) Any counsel holding brief for another must be ready to proceed with the matter, otherwise the counsel holding brief shall pay cost not less than One Thousand Naira to the court.

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

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

Taxation of costs

14. A bill of costs (other than a bill delivered by Taxation of

a Legal Practitioner to his client which falls to be taxed costs under the Legal Practitioners Act) shall be referred to the Chief Registrar and may be taxed by him or such other Taxing Officer as the Chief Judge may appoint.

Notice to other party

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

Power of Taxing Officer

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

Supplementary powers of Taxing Officer

17. A Taxing Officer may, in the discharge of Supplementary his functions with respect to the taxation of costs:

(a) take an account of any dealings in money made in connection with the payment of the costs being taxed, if the Judge so directs;
(b) require any party represented jointly with any other party in any proceeding before him to be separately represented;
(c) examine any witness in those proceeding;
(d) direct the production of any document which may be relevant in connection with those proceeding.

Extension of time

18.-(l) A Taxing Officer may:

(a) extend the period within which a party is required by or under these Rules to begin proceeding for taxation or to do anything in or in connection with proceeding before that officer;
(b) where no period is specified by or under these Rules or by the Judge for the doing of anything in or in connection with such proceedings, specify the period within which the thing is to be done.

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

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

Power of Taxing Officer where party liable to be paid and to pay costs

19. Where a party entitled to be paid costs is also liable to pay costs, the Taxing Officer may:

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

or

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

Mode of beginning proceeding for taxation

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

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

Provisions as to bills of costs

21.-(l) In any bill of costs the professional charge and the disbursements shall be entered in separate to bills of columns and every column shall be cast before the bill is left for taxation.

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

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

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

provisions as to taxation proceeding

22.—(1) If a party entitled to be heard on any taxation proceeding does not attend within a reasonable time after the time appointed for the taxation, the Taxing Officer, if satisfied by

affidavit or otherwise that the party had due notice of the time appointed, may proceed with the taxation.

(2) The Taxing Officer before whom any taxation proceeding are being conducted may, if he deems it necessary to do so, adjourn the proceeding from time to time.

Scale of costs

23.-(1) Subject to Rule 20 of this Order, and the following provisions of this Rule, the scale of costs as may be determined by the Chief Judge from time to time by Order, shall apply to the taxation of all costs incurred in relation to contentious business done after the commencement of these Rules.

(2) Where the amount of a Legal Practitioner's remuneration in respect of non-contentious business connected with sales, purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is regulated (in the absence of agreement to the contrary), the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything contained in the scale of the appendix to these Rules.

Certificate of Taxing Officer

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

Fees on taxation

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

Application for review

26. A party to any taxation proceeding who is dissatisfied with the allowance or disallowance in whole or in part of any item by a Taxing Officer or with the amount allowed by a Taxing Officer in respect of any item, may apply to a Judge for an order to review the taxation as to that item.

Application by summons

27.-(l) An application under the preceding Application Rules shall be made by summons at any time within 14 by summons days after the Taxing Officer's certificate.

(2) Unless a Judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on taxation but, save as aforesaid, on the hearing of any such

application the Judge may exercise all such powers and discretion as are vested in the Taxing Officer in relation to the subject matter of the application.

(3) On an application under this Rule, a Judge may make such order as the circumstances require and in particular may order the Taxing Officer's decision to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another Taxing Officer for taxation.

ORDER 37
STAY OF EXECUTION PENDING APPEAL
Application

1. Where an application is made to a Judge for a stay of execution or proceeding under any judgment or decision appealed from, such application or in the course of a proceeding shall be made by notice of motion supported by affidavit setting forth the grounds upon which a stay of execution or of proceeding is sought.

Court may grant or refuse order for stay

2- (1) Application for stay of execution shall Court may be regarded as an urgent matter and shall be heard within 28 days from the date of filing.

(2) Where a Judge refuses an application for stay, no further application for stay of execution shall be made by the same applicant in the matter.

(3) An order for stay may be made subject to such condition as shall appear just, including the deposit in court of monies adjudged in liquidated claims, due to any party in the Judgment appealed from.

Formal order to be drawn up

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

PART IV
SUPPLEMENTAL RULES FORCERTAIN SPECIALPROCEEDINGS
ORDER 38
INTERPLEADER

When relief by interpleader is granted

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

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

Matters to be proved by application

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

(a) claims no interest in the subject matter in dispute other than for charges or costs; and
(b) does not collude with any of the claimants; and
(c) is willing to pay or transfer the subject matter into court or to dispose of it as the Judge may direct.

Adverse titles of claimants

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

When defendant may apply

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

Summons by applicant

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

Stay of action

6. If the application is made by a defendant in stay of action an action, the Judge may stay all further proceeding in the action.

Order upon summons

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

Question of law

8. Where the question is a question of law and facts are not in dispute, the Judge may either decide the questions without directing the trial of an issue or order that a special case be stated for the opinion of the Judge. If a special case is stated, Order 30 shall apply thereto.

Failure by claimant to appear or obey summons

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

Costs, etc.

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

ORDER 39
SUMMONS TO PROCEED

Bringing in judgment; directing accounts and inquiries, etc.

1. A judgment or order directing accounts or inquiries to be taken or made shall be brought to a Judge by the party entitled to prosecute the same within 10 days after such judgment or order shall have been entered or filed, and in default thereof any other party to the cause or matter shall be at liberty to bring the same, and such party shall have the prosecution of such judgment or order unless the Judge shall otherwise direct.

Summons

2. Upon a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries directed, and upon the return of such summons, the Judge, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to:

(i) the manner in which each of the accounts and inquiries is to be prosecuted;

(ii) the evidence to be adduced in support thereof;

(iii) the parties who are to attend on the several accounts and

inquiries; and

(iv) the time within which each proceeding is to be taken,

and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied by addition thereto or otherwise, as may be found necessary.

Settling deed in case parties differ

3. Where by a judgment or order a deed is directed to be settled by a Judge in case the parties differ, a summons to proceed shall be issued, and upon the return of the summons the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the Judge shall deem fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections (if any) within 8 days after the delivery of such copy, and the proceeding shall be adjourned until after the expiration of the said period of 8 days.

Where service of notice of Judgment or Order dispensed with

4. Where, upon the hearing of the summons to proceed, it appears to the Judge that by reason of absence, or for any other sufficient cause, the service of notice of the judgment or order upon any party cannot be made, the Judge may if he shall deem fit, order any substituted service or notice by advertisement or otherwise in lieu of such service.

Stoppage of proceeding where all necessary parties have not been served with notice of Judgment or Order

5. If on the hearing of the summons to proceed it shall appear that all necessary parties are not parties to the action or have not been served with notice of the judgment or order, directions may be given for advertisement for creditors, and for leaving the accounts in Chambers. Adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining the parties to be served, until all necessary parties shall have been served and until directions shall have been given as to the parties who are to attend the proceeding.

Documents: Copies for use by Judge

6. Copies, abstract, extracts of or from accounts, deeds or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the Judge, and where so directed, copies shall be handed over to the other parties.

Provided that no copies shall be made of deeds or documents where the originals can be brought in unless the Judge shall otherwise direct.

Summons to proceed book

7. At the time any summons to proceed is Summons to obtained, an entry thereof shall be made in the Book, stating the date on which the summons issued, the name of the cause or matter, and by what party, and shortly for what purpose such summons is obtained, and at what time it is returnable.

High Court (Civil Procedure) Rules of Cross River State, 2008

ORDER 40
APPLICATION FOR JUDICIAL REVIEW

Cases appropriate for application for Judicial Review

1.- (1) An application for:

(a) an order of *mandamus*, prohibition or *certiorari,* or

(b) an injunction restraining a person from acting in any office in which he is not entitled to act shall be made;

by way of an application for judicial review in accordance with the provisions of this Order.

(2) An application for a declaration or an injunction (not being an injunction mentioned in rule (l)(b) of this Rule of this Order) may be made by way of an application for judicial review and the Court may grant the declaration or injunction if it deems it just and convenient to grant it by way of judicial review, having regard to:

(a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari',

(b) the nature of the persons and bodies against whom relief may be granted by way of such an order;

(c) all the circumstances of the case.

Joinder of claims for relief

2. On application for judicial review any relief mentioned in Rule 1 of this Order, may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of, relates to, or is connected with the same matter.

Grant of leave to apply for Judicial Review

3- (1) No application for judicial review shall Grant be made unless the leave of the Court has been obtained in accordance with this Rule.

(2) An application for leave shall be made *exparte* to a Judge and shall be supported by:

(a) a statement setting out the name and description of the applicant, the reliefs sought and the grounds on which they are sought;
(b) an affidavit verifying the facts relied on.

Amendment of Statement

(3) A Judge hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as he deems fit

(4) A Judge shall not grant leave unless he considers that the applicant has a sufficient interest in the matter to which the application relates.

(5) Where leave to apply for judicial review is granted, then:
(a) if the relief sought is an order of prohibition or certiorari and the Judge so directs, the grant shall operate as a stay of the proceeding to which the application relates until the determination of the application or until the Judge otherwise orders;
(b) if any other relief is sought, the Judge may at any time grant in the proceeding such interim relief as could be granted in an action begun by writ;
(c) the Judge may impose such terms as to costs and as to giving security as he deems fit

Time within which to bring application

4. An application for judicial review shall be brought within 3 months of the date of occurrence of the subject of the application.

Mode of applying for Judicial Review

5.-(1) Where leave has been granted and the Judge so directs, the application may be made by motion or by originating summons.

(2) The motion on notice or summons shall be served on all persons directly affected and where it relates to any proceeding before a Judge and the object of the application is either to compel the Judge or an officer of the court to do any act in relation to the proceeding, or to quash them or any order made therein, the motion or summons shall also be served on the Clerk

or Registrar of the court and where any objection to the conduct of the Judge is to be made, on the Judge.

(3) Unless the Judge granting leave has otherwise directed, there shall be at least 7 days between the service of the motion on notice or summons and the day named therein for the hearing.

(4) The motion on notice shall be filed and entered for hearing within 14 days after the grant of leave.

(5) An affidavit giving the names and addresses of the places and dates of service on all persons who have been served with the motion or summons shall be filed before the motion or summons is entered for hearing and if any person who ought to be served under this Rule has not been served, the affidavit shall state that the fact and the reason for it and the affidavit shall be before the judge on the hearing of the motion or summons.

(6) if on the hearing of the motion or summons the judge is of the opinion that any person who ought, whether under this Rule or otherwise to have been served has not been served, the judge may adjourn the hearing on such terms, (if any) as he may direct in order that the motion or summons may be served on that person.

Statements and Affidavits

6.-(1) Copies of the statement in support of an application for leave under Rule 3 of this Order, shall be served with the motion on notice or summons and subject to sub-rule 2, of this Rule, no grounds shall be relied upon or any relief sought at the hearing except the grounds and reliefs set out in the statement

Amendment of Statement

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

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

(4) Each party to the application shall apply to every other party a copy of every affidavit which he proposes to use at the hearing

including, in the case of the applicant, the affidavit in support of the application for leave under Rule 3 of this Order.

(5) It shall not be necessary to draw up and serve an order granting leave where such order does not include any special terms or special directions.

Claims for damages

7. On the application for judicial review the judge may, subject to Rule 2 of this order, award damages to the applicant if:

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

(b) the judge is satisfied that if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

Interlocutory application

8. Any interlocutory application in proceeding on an application for judicial review may be made to the judge.

Hearing of application of Judicial Review

9.-(1) On the hearing of any motion or summons under Rule 5 of this Order, any person who desires to be heard on the motion or summons, and appears to the judge to be proper person to be heard, shall be heard notwithstanding that he has not been served with motion on notice or the summons.

(2) Where the relief sought is or includes an order of certiorari to remove any proceeding for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has filed a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Judge hearing the motion or summons.

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

(4) Where the relief sought is an order of certiorari and the Judge is satisfied that there are grounds for quashing the decision to which the application relates, the Judge may, in addition to

quashing it, remit the matter to the court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Judge.

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

Person acting in obedience to an order of mandamus

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

Consolidation of applications

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

ORDER 41
HABEAS CORPUS, COMMITTAL FOR CONTEMPT

I. Habeas Corpus
Habeas Corpus

Application how made

1. An application for an *Order of Habeas Corpus Ad Subjiciendum* shall be made to the court, How made except that:

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

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

Affidavit to accompany ex parte application

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

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

state that the person restrained is unable to make the affidavit himself.

Power to issue order of release immediately

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

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

Power to issue order of release immediately

(3) A Judge to whom the application is made may adjourn it so that notice thereof may be given to the detaining authority or person.

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

Service of Notice

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

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

Copies of affidavit

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

Service of Order to release

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

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

Statement and verifying affidavit

7. Upon service of the order or motion on notice statement and on the jailer, he shall within 2 days file a statement stating the reasons for the detention, the period of the detention, and any

other matter that may be directed by the Judge. The statement shall be verified by an affidavit deposed to by the jailer.

Procedure at hearing

8- (1) Where the applicant is brought up in accordance with the Order, his Legal Practitioner shall be heard first, then the Legal Practitioner for the respondent and then the Legal Practitioner for the applicant in reply.

(2) Where the applicant is not brought in accordance with the Order, a Judge may upon the application of his Legal practitioner order that he be discharged or make any other order as he deems fit in the circumstances.

II. Committal for Contempt

Procedure for committal

9.-(l) The procedure in applications for Procedure for committal for contempt of court in cases to which this comm,ttaI rule applies shall be the same as for applications for an order for judicial review under Order 40 so far as may be applicable.

(2) The motion on notice shall be personally served unless the Judge dispenses with such service as he deems fit in the circumstances.

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

(a) in connection with proceedings to which this Order relates;

(b) in connection with criminal proceeding or any proceedings in the High Court, except where the contempt is committed in facie curiae or consists of disobedience to an order of the court;

(c) in connection with proceedings in an inferior court.

Procedure on disobedience of order of court: Memorandum to be indorsed

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

Notice of Consequence of Disobedience to Court Order.

To…… Of……..

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

Dated this ……..day of……..20……

……
Registrar

Response

11. Upon service of the application for committal issued in a case to which Rule 9 of this Order applies, the respondent shall within two days file a statement stating the reasons why an order for attachment should not be issued. The statement shall be verified by an affidavit deposed to by the respondent.

Return

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

ORDER 42
PROCEEDING IN FORMA PAUPERIS

Application

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

Who may sue or defend in forma pauperis

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

Conditions to be fulfilled

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

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

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

Fees and costs

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

Procedure to be followed

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

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

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

Revocation of Order, discontinuance, etc

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

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

Pay to Legal Practitioner

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

Duty of Legal Practitioner

8. An order, notice or application on behalf of the applicant, except an application for the discharge of his Legal Practitioner, shall be signed by his Legal Practitioner, who shall take care that no application or notice is made or given without reasonable cause.

Appeals

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

ORDER 43
SUMMARY PROCEEDING FOR POSSESSION OF LANDED PROPERTY AND SERVICE ON UNKNOWN PERSONS

Application for this order

l-(1) Proceeding under this Order shall apply where a person is in occupation of land without being:

(a) a tenant; or

(b) a tenant holding over after termination of his tenancy; or

(c) a licensee of the owner or person entitled to possession; or

(d) a person who had the consent of the predecessor-in-title of the person who is entitled to possession.

(2) Where a person claims possession of land that he alleges is occupied solely by a person listed in sub-rule 1 above, proceeding may be brought by originating summons in accordance with the provisions of this Order.

Form of Originating Summons

2. The originating summons shall be in Form 35 and no acknowledgment of service shall be required.

Affidavit in support

3. The claimant shall file in support of the originating summons an affidavit stating:

(a) his interest in the land;

(b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and

(c) that he does not know the name of any person occupying the land who is not named in the summons.

Service of Originating Summons

4.-(l) Where any person in occupation of the land is named in the originating summons together with a copy of the affidavit in support shall be served on him:

(a) personally or in accordance with Order 12 Rule 1 sub-rule 2; or
(b) by leaving a copy of the summons with the affidavit or sending them to him at the premises; or
(c) in such other manner as the Judge may direct.

(2) The summons shall, in addition to being served on the named defendants, if any, in accordance with sub-rule 1 of this Rule be served, unless the Judge otherwise directs by:

(a) affixing a copy of the summons with the affidavit to the main door or other conspicuous part of the premises; or
(b) if practicable, inserting through the letterbox at the premises, a copy of the summons with the affidavit enclosed in a sealed envelope addressed to "the occupiers".

(3) A copy of an originating summons for service under sub-rule 1 or 2 of this Rule shall be sealed with the seal of the court out of which the summons was issued.

High Court (Civil Procedure) Rules of Cross River State, 2008

Application by occupier to be made a party

5. Without prejudice to Rule 17 of Order 15, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceeding to be joined as a defendant.

Order for possession Form 36

6.-(1) An order for possession in proceeding Order for under this Order shall be in Form 36 with such variations possession as circumstances may require.

(2) Nothing in this Order shall prevent the Judge from ordering possession to be given on a specified date, in the exercise of any power that should have been exercised if possession had been claimed in an action begun by writ.

Writ of Possession

7. No writ of possession to enforce an order writ of for possession under this Order shall be issued after the expiration of 3 months from the date of the order without the leave of the Judge.

Setting aside of order

8.-(l) The Judge may, on such terms as he setting aside deems fit, set aside or vary any order made in proceeding of order under this Order.

(2) In this Order "landed property" means land with or without building thereon.

ORDER 44
FORECLOSURE AND REDEMPTION
Originating Summons for foreclosure

1. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose an equitable charge, or, any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons, for such relief of the nature or kind following, as may by the summons be specified, and as the circumstances of the case may require:

(a) payment of moneys secured by the mortgage or charge;

(b) sale;

(c) foreclosure;

(d) delivery of possession (whether before or after foreclosure) to the mortgagor or person entitled to the charge, by the mortgagee or person having the property subject to the charge, or by any other person in, or alleged to be in possession of the property;

(e) redemption;

(f) re-conveyance;

(g) delivery of possession by the mortgagee.

Civil forms 37, 38 and 39

2. Orders for payment and for possession shall be in Forms 37, 38 and 39 of these Rules with such variations as the circumstances of the case may require, and the like forms shall be used under corresponding circumstances in actions for like relief commenced by writ.

Service and execution of judgment

3. The Judge may give any special direction concerning the execution of the judgment, or the service thereof upon persons not parties to the cause or matter as he deems fit.

ORDER 45
JURISDICTION OF CHIEF REGISTRAR
Chief Registrar

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

Business to be transacted by Chief Registrar

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

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

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

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

(d) the taxation of bills of costs.

Chief Registrar may refer matters to the Chief Judge

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

Appeal from order of Chief Registrar

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

Chief Registrar's lists

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

Legal Practitioner may represent party

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

Chief Registrar's Certificate

Certificate

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

Reference to judgment, etc.

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

Form of Certificate Form 40

9.-(l) In case of accounts and inquiries, the Certificate of the Chief Registrar shall be in Form 40 with such variations as the circumstances may require.

Contents of certificate in cases of accounts and transcripts.

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

When certificate becomes binding

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

Bill of Costs

11. When taxing a bill of costs, the Chief Registrar shall insert in red ink against every item disallowed, reduced or altered by him the substance of the modification made by him, and at the bottom of the costs he shall certify the net result of the taxation.

The bill of costs shall then be transmitted by the Chief Registrar to the Registry for filing and the provisions of Rule 10 of this Order shall apply in respect of such Certificate.

Discharge or variation of Certificate

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

ORDER 46
PROBATE AND ADMINISTRATION

I. Applications

Petition to be made to Probate Registrar

1- (1) Subject to the provisions of Rules 44 and 45 of this Order when any person subject to the jurisdiction of the Court dies, all petitions for the granting of any Letters of Administration of the estate of the deceased person, with or Without a Will attached, and all applications on other matters connected therewith shall be made to the Probate Registrar of the Court.

(2) In regard to any such application, the Chief Judge or the Probate Judge or a Judge shall have power to request the Court of any Judicial Division to take measures and make such orders as may appear necessary or expedient for the interim preservation of the property of the deceased within such Judicial Division, for the discovery or preservation of the Will of the deceased, or for any other purposes connected with the duties of the Court under this Order, and every Court shall carry out any such request as far as practicable and report to the Chief Judge

(3) No grant of administration with the Will annexed shall issue within 7 days of the death of the deceased; and no grant of administration, without the Will annexed, shall issue within 14 days of such death.

Preservation of property

2. The Judge shall, when the circumstances of the case appear so to require, forthwith on the death of a person, or as soon after as may be, appoint and authorise an officer of the Court, or some other fit person, to take possession of his property within its jurisdiction, or put it under seal and so keep it until it can be dealt with according to law.

Unauthorised persons intermeddling with property

3. If any person other than the person named as trustee or executor or administrator, or an officer of the Court or administrator, or person authorised by the Judge, takes possession of and administers or otherwise deals with the property of any deceased person, he shall, besides the other liabilities he may incur, be liable to a fine not less than Fifty thousand naira as the Judge, having regard to the conduct of the person so interfering with the property and the other circumstances of the case, may deem fit to impose.

Production of testamentary paper

4 .Any person having in his possession or under his control any paper or writing of any person deceased, being or purporting to be testamentary, shall forthwith deliver the original to the Probate Registrar of the Court. If any person fails to do so within 14 days after having had knowledge of the death of the deceased, he may be liable to a fine of not less than twenty five thousand naira as the Judge having regard to the conduct of such person in default and other circumstances of the case may deem fit to impose.

Judge may Order production

5. Where it appears that any paper of the deceased, being or purporting to be testamentary is in order the possession of, or under the control of any person, a Judge may upon an exparte application, whether a suit or proceeding respecting probate or administration is pending or not, order him to produce the paper and bring it into Court.

Examination respecting papers

6. Where it appears that there are reasonable grounds for believing that any person had knowledge of any paper being or purporting to be testamentary (although it is not shown that the paper is in his possession or under his control), a Judge may upon an exparte application, whether a suit or proceeding respecting probate or administration is pending or not, order that he be examined respecting the same in Court, or on interrogatories, and that he attend for that purpose, and after examination that he produce the paper and bring it into Court.

Notice to prove Will

7. The Judge may on the application of any person claiming an interest under a Will, give notice to the trustees or executors (if any) therein named, to come in and prove the Will, or to renounce probate, and they, or some or one of them, shall within 14 days after notice, come in and prove or renounce accordingly.

Liability of executor neglecting to apply for probate

8. If any person named trustee or executor in the Will of the deceased takes possession and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within 3 months after the death, or after the termination of any suit or dispute respecting probate or administration, he may, independently of any other liability be deemed to be in contempt of court, and shall be liable to such fine not less then fifty thousand naira, as the Judge deems fit to impose.

Evidence of identity

9. The Judge shall require evidence, in addition to that offered by the applicant, where additional evidence in that regard seems to the Judge necessary or desirable, in regard to the identity of the deceased or of the applicant, or in regard to the relationship of the applicant to the deceased, or in regard to any person or persons in existence with a right equal or prior to that of the applicant to the grant of probate or administration sought by the applicant, or in regard to any other matter which may be considered by the Judge relevant to the question whether the applicant is the proper person to whom the grant should be made:

Provided that the Judge may refuse the grant unless the applicant produces the required evidence on these points or any of them as required by the Judge.

Judge may refuse grant until all persons interested are given due notice

10. Where it appears to the Judge that some judge may person or persons other than the applicant may have at least an equal right with the applicant to the grant the Judge may refuse the grant until due notice of the application has been given to such other person or persons and an opportunity given for such person or persons to be heard in regard to the application:

Provided that the Judge may in his discretion refuse the grant unless and until all persons entitled to the grant in priority to the applicant shall have expressly renounced their prior right.

Value of property

11. An applicant for a grant of Letters of Administration shall file in the Court a true declaration of all the personal property which grant if made shall not include:

(a) any gratuity payable by the Government of the Federation of Nigeria, or of a State, or of a local government to the estate of any

person formerly employed by either or such Governments or by a Statutory Corporation;

(b) any sum of money payable to an estate from a Provident Fund established under the provisions of any applicable law.

Answers required before grant

12. All inquiries the Court sees fit to institute required before shall be answered to the satisfaction of the Court before issue of Letters of Administration. The Court shall, however, afford as great a facility for the obtaining of Letters of Administration as is consistent with due regard to the prevention of error and fraud.

Forms of suits

13. Suits respecting administration shall be instituted and carried on as nearly as may be in the like manner and subject to the same Rules of procedure as suits in respect of ordinary claims.

II. Custody of Wills

Testator May deposit Will

14. Any person may deposit his Will for safe custody in the Probate Registry, sealed up under his own seal and the seal of the Court.

Custody of Wills of which probate is granted

15. An original Will, of which probate or administration with Will annexed is granted, shall be filed and kept in the Probate Registry in such manner as to secure at once its due preservation and convenient inspection. A copy of every such Will and of the probate or administration shall be preserved in the Registry.

Will not given out without Order of Judge

16. No original Will shall be given out for any purpose without the direction in writing of the Chief Judge or the judge designated as Probate Judge, if there is one. A certified transcript under the seal of the Court of the probate or administration with the Will annexed may be obtained from the Court.

III. Probate or Administration with Will Annexed

Examination of Will as to its execution

17—(1) On receiving an application for administration with Will annexed, the Judge shall inspect of will as to the Will, and see whether it appears to be signed by the testator or by some other person in his presence, and by his direction, and subscribed by two witnesses according to the applicable law, and shall not proceed further if the Will does not appear to be so signed and subscribed.

(2) If the Will appears to be so signed and subscribed, the Judge shall then refer to the attestation clause (if any) and consider whether the wording thereof states the Will to have been in feet executed in accordance with those enactments.

Evidence as to due execution of Will

18.-(1) Where a Will contains no attestation Evidence as to clause or the attestation clause is insufficient or where it due execution appears to the Registrar that there is some doubt about the due execution of the Will, he shall before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the Will was executed.

(2) If no affidavit can be obtained in accordance with sub-Rule 1 of this Rule, the Registrar may, if he deems fit having regard to the desirability of protecting the interest of any person who may be prejudiced by the Will, accept evidence on affidavit from any person he may deem fit to show that the signature on the Will is the handwriting of the deceased, or of any other matter which may raise a presumption in favour of the due execution of the Will.

(3) If the Registrar, after considering the evidence:

(a) is satisfied that the Will was not duly executed, he shall refuse probate and shall mark the Will accordingly;

(b) is doubtful whether the Will was duly executed, he may refer the matter to the Court by motion.

Evidence on failure of attesting witnesses

19. If both the subscribing witnesses are dead or if from other circumstances such an affidavit cannot be obtained from either of them, resort for such an affidavit shall be had to other persons (if any) present at the execution of the will; but if no such affidavit can be obtained, proof shall be required for that fact, and of the handwriting of the deceased and of the subscribing witnesses, and also of any circumstances raising a presumption in favour of the due execution of the Will.

Evidence as to terms, conditions, and date of execution Of Will

20.-(1) Where in a Will, there is any obliteration, interlineation or other alteration which is not authenticated in the manner prescribed by law, or by re-execution of the Will, or by the execution of a codicil, the Registrar shall require evidence to show

whether the alteration was present at the time the Will was executed and shall give directions as to the form in which the Will is to be proved:

Provided that this sub-rule shall not apply to any alteration which appears to the Registrar to be of no practical importance.

(2) If from any mark on the Will it appears to the Registrar that some other document has been attached to the Will or if a Will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the will, the Registrar may require the document to be produced and may call for such evidence in regard to the attaching or incorporation of the document as he may deem fit.

(3) Where there is doubt as to the date on which a will was executed, the Registrar may require such evidence as he deems necessary to establish the date.

Attempted revocation of a Will

21. Any appearance of attempted revocation of a Will by burning, tearing or otherwise and every other revocation of a circumstances leading to a presumption of revocation by the testator, shall be accounted for to the Registrar's satisfaction.

Affidavit as to due execution of terms, etc, of Will

22. The Registrar may require an affidavit from any person he may deem fit for the purpose of satisfying himself as to any of the matters referred to in Rules 18, 20 and 21. In any such affidavit sworn by an attesting witness or other person present at the time of the execution of a Will, the deponent shall depose to the manner in which the Will was executed.

Wills of persons in military Service and Seamen

23. Where it appears to the Registrar that there is prima facie evidence that a Will is one to which Section 9 of the Wills Act, 1837 or any provision of the equivalent enactment in force in the State applies, the Will may be admitted to proof if the Registrar is satisfied that it was made by the testator in accordance with the provisions of that section or enactment as the case may be.

Evidence of foreign law

24. Where evidence of foreign law is required on any application for a grant, the Registrar may accept an affidavit from any person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably qualified to give expert evidence of the law in question.

Order of priority for grant where

Order of priority for grant where deceased left a Will

25. Where the deceased died after the commencement of this Order, the person or persons deceased left a entitled to a grant of probate or administration with the Will annexed shall be determined in accordance with the following order of priority:

(a) The executor;
(b) any residuary legatee or devisee holding in trust for any other person;
(c) any residuary legatee or devisee for life;
(d) the ultimate residuary legatee or devisee, including one entitled on the happening of any contingency or where the residue is not wholly disposed of by the Will, any person entitled to share in the residue not so disposed of, or the

Provided that:
(i) unless the Registrar otherwise directs, a residuary legatee or devisee whose legacy or devise is vested in interest shall be preferred to one entitled on the happening of a contingency; and
(ii) where the residue is not in terms wholly disposed of, the Registrar may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made (subject to Rule 68 of this Order) to any legatee or devisee entitled to, or to a share in the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the Will; whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made (subject to Rule 68 of this Order) to any legatee or devisee entitled to, or to a share in the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the Will;
(e) any specific legatee or devisee or any creditor or, subject to sub-rule 3 of Rule 59 of this Order, the personal representative of any such person or where the estate is not wholly disposed of by Will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion to it; (f) any specific legatee or devisee entitled on the happening of any contingency, or any person having no interest under the Will who would have been entitled to a grant if the deceased had died wholly intestate.

Joinder of Administration

26. In the absence of a proving executor:

(a) an application to join with a person entitled to a grant of administration with the Will attached, a person in a lower degree shall, in default of renunciation by all persons entitled in priority to the latter, be made to the Registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Registrar may require;

(b) an application to join with a person entitled to a grant of administration with the Will attached, a person having no right to it, shall be made to the Registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Registrar may require:

Provided there may, without any such application be joined with a person entitled to administration with the Will attached:

(i) on the renunciation of all other persons entitled to join in the grant, any kin of the deceased having no beneficial interest in the estate;

(ii) unless the Registrar otherwise directs, any person whom the guardian of a minor may nominate for the purpose;

Will of blind or illiterate testator

27. Where the testator was blind or illiterate, the Court shall not grant administration with the Will annexed, unless the Court is first satisfied, by proof or by what appears on the face of the Will, that the Will was read over to the deceased before its execution or that he had at that time knowledge of its contents.

Interlineations, erasures, obliterations

28-(1) The Court, on being satisfied that the Will was duly executed, shall carefully inspect it to see, whether there are any interlineations, alterations, erasures, or obliterations appearing in it and requiring to be accounted for.

(2) Interlineations, alterations, erasures, and obliterations are invalid unless they existed in the Will at the time of its execution or unless, if made afterwards, they have been executed and attested in the mode required by the said enactments; or unless they have been made valid by the re-execution of the Will or by the subsequent execution of some codicil thereto.

(3) Where interlineations, alterations, erasures, or obliterations appear in the Will (unless duly executed or recited in or otherwise identified by the attestation clause), an affidavit in proof of their having existed in the Will before its execution shall be filed.

Unsatisfactory evidence as to time of erasure

(4) If no satisfactory evidence is adduced respecting the time when an erasure or obliteration was made and the words erased or obliterated are not entirely effaced, and can, on inspection of the Will, be ascertained, they shall form part of the probate. Where any words have been erased which might have been of importance, an affidavit shall be required.

Documents referred to in a Will or annexed or attached thereto

29—(1) Where a Will contains a reference to any document of such a nature as to raise the question whether it ought or ought not to form a constituent part of the Will, the Court shall require the production of the document with a view to ascertaining whether or not it is entitled to probate; and if it is not produced, a satisfactory account of its non- production shall be proved. A document cannot form part of a Will unless it was in existence at the time when the Will was executed.

(2) If there are vestiges of sealing wax or wafers, or other marks on the Will, leading to the inference that some document has been at sometime annexed or attached thereto, a satisfactory account of them shall be required, and if it is not produced, a satisfactory account of its non- production shall be proved.

Executor dying without proving or not appearing

30. Where a person appointed executor in a Will survives the testator but either dies without having without taken probate or having been called on by the Court to take probate and does not appear, his right in respect of the executorship wholly ceases; and, without further renunciation, the representation to the testator and the administration of his property may go and be committed as if that person had not been appointed executor.

Marking of a Will

31. A Will in respect of which an application for grant is made shall be marked by the signatures of the applicant and the person before whom the oath is sworn, and shall be exhibited to any affidavit which may be required under this Order as to the validity, terms, condition or date of execution of the Will:

Provided that where the Registrar is satisfied that compliance with this Rule might result in the loss of the Will, he may allow a photocopy to be marked or exhibited in lieu of the original document.

Viva Voce examination of persons making affidavit

32. In any case where evidence is directed or allowed to be given by affidavit, the Judge may require examination of the personal attendance of the deponent if within the jurisdiction, before the Court, to be examined viva voce affidavits. The examination may take place before any affidavit has been sworn or prepared if the Judge deems fit.

letters of Administration

33.-(I) The Court in granting Letters of Administration shall proceed as far as may be as in cases of probate.

(2) The Court shall ascertain the time and place of the deceased's death and the value of the property to be covered by the administration.

Administration Bond

34.(1) The person to whom administration is granted shall give a bond with two or more responsible sureties to the satisfaction of the Probate Registrar. The bond shall affirm that the administrator shall be duly conditioned to collect, getting in and administering the personal property of the deceased.

(2) The Court may, if it deems fit, take one surety only where the gross value of the estate does not exceed two hundred and fifty thousand naira or where a corporation is proposed as a surety.

(3) The bond shall be in form of a penalty which is twice the sum value of the estate of the deceased unless the Court deems it expedient to reduce the amount.

(4) The Court may also in any case direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the Court deems reasonable.

Guarantee

35.-(I)The Registrar shall not require a guarantee as a condition of making a grant where it is proposed to make it:

(a) by virtue of Rule 25(e) of this Order to creditor or the personal

representative of a creditor or to a person who has not immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;

(b) under Rule 61 of this Order to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate, be entitled to his estate;

(c) under Rule 63 of this Order to the attorney of a person entitled to a grant;

(d) under Rule 64 Order for the use and benefit of a minor,

(e) under Rule 66 of this Order for the use and benefit of a person who by reason of mental or physical incapacity is incapable of managing his affairs;

(f) to an applicant who appears to the Registrar to be resident elsewhere than in the State; or

(g) except where the Registrar considers that there are special circumstances making it desirable to require a guarantee.

(2) Notwithstanding that it is proposed to make a grant as aforesaid, a guarantee shall not be required, except in special circumstances, on an application for administration where the applicant or one of the applicants is the Administrator-General or a trust corporation.

(3) A guarantee entered into by a surety for the purpose of this Order shall be in Form 41 with such variations as circumstances may require.

(4) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an authorised officer, Commissioner for Oaths or other person authorised by law to administer an oath.

(5) Unless the Registrar otherwise directs:

(a) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed N250,000.00 (Two Hundred and Fifty Thousand Naira) or a corporation is a proposed surety, and in those cases one will suffice;

(b) no person shall be accepted as a surety unless he is resident in the State;

(c) no officer of the judiciary shall be a surety;

(d) the limit of the liability of the surety or sureties under a guarantee shall be the gross amount of the estate as sworn on the application for the grant;

(e) every surety other than a corporation, shall justify his eligibility.

(6) Where the proposed surety is a corporation, there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed the guarantee in the manner prescribed by its constitution, and containing sufficient information as to the financial position of the corporation to satisfy the Registrar that its assets are sufficient to satisfy all claims which may be made against it under any guarantee which it has given or is likely to give.

Assignment of bond

36. The Probate Registrar may, on being satisfied that the condition of the bond has been broken, assign to some person, and that person may thereupon sue on the bond in his own name as if it had been originally given to him instead of the Probate Registrar, and may recover thereon, as trustee for persons interested, the full amount recoverable in respect of any breach of the bond.

Administration Summons

37. Any person claiming to be a creditor or legatee or the next-of-kin or one of the next-of-kin of a deceased, may apply for and obtain a summons from the Court requiring the executor or administrator (as the case may be) of the deceased to attend the Court and show cause why an order for the administration of the property of the deceased should not be made.

Order for administration

38.-(1) On proof of service of the summons or appearance of the executor or administrator, and on administration proof of all such other things (if any) as the Judge may direct, the Judge may, if he deems fit, make an order for the administration of the property of the deceased.

(2) The Judge shall have discretionary power to make or refuse any such order or to give any special directions in respect of the carriage or execution of it and in the case of applications for such an order by two or more different persons or classes of persons, to grant the same to such one or more of the claimants or classes of claimants, as the court deems fit.

(3) If the Judge deems fit the carriage of the order may subsequently be given to such person, and on such terms, as he may direct.

Order relating to property

39. On making such an order or at any time afterwards, the Judge may, if he deems fit, make any further or other order which may appear requisite to secure the proper collection, recovery for safe-keeping and disposal of the property or any part thereof.

Administration may be granted to officer

40. In a case of intestacy, where the special circumstances of the case appear to the Judge to require, the Judge may, if he deems fit on the application of any person having interest in the estate of the deceased or of his own notion, grant Letters of Administration to an officer of the Court, to a Consular Officer, or to a person in the service of the Government.

Officer to act under the direction of Judge

41.—(1) The officer or person so appointed shall act under the direction of the Judge, and shall be indemnified thereby.

(2) The Judge shall require and compel him to file in the Court his accounts of his administration at intervals not exceeding 3 months.

Court may appoint person to be administrator

42. Where a person has died intestate as to his personal estate or leaving a Will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate or where the executor shall, at the time of the death of such person, be resident out of the jurisdiction and it shall appear to the Court to be necessary or convenient in any such case to appoint some person as administrator of the estate of the deceased or of any part thereof, the Court may appoint such person as it shall deem fit to be such administrator upon his giving such security, if any, as the Court shall direct, and every such administrator may be limited as the Court shall deem fit.

Remuneration of administrators

43. The Court may direct that any administrator Remuneration (with or without the Will annexed) shall receive out of the personal and real estate of the deceased such reasonable remuneration as the Court shall deem fit not exceeding 10% per centum on the amount of the realized property, or, when not converted into money, on the value of the property duly administered and accounted for by him:

Provided that where the Court shall be satisfied that by reason of exceptional circumstances the administration of the property has required an extraordinary amount of labour to be bestowed on it, the Court may allow in respect of such property a higher rate of remuneration.

Securing and collection of estate

44. Where any citizen of any foreign country dies within the jurisdiction without leaving within the jurisdiction a widower, widow or next-of-kin, the Probate Registrar shall collect and secure all moneys and other property belonging to the deceased, and shall then inform the nearest Consular Officer of such country of the death, and transmit to him a list of the money and property of the deceased.

Application by Consular Officer or person authorised by him to administer estate

45. Application may be made to the Court by any such Consular Officer or by any person authorised by him in writing and under the consular seal, for leave to administer the estate of the deceased, and the Court may make such order as to security for payment of debtors and the method of administration as the Court shall deem fit, and vary such order when so often as it is expedient.

IV. Administration Generally

Accounts to be filed

46.—(1) A person to whom a grant of probate or Letter of Administration shall have been made, and every administrator appointed by the Court shall, file in Court the accounts of his administration every 6 months from the date of the grant or the appointment until the completion of the administration.

(2) Such executor or administrator who fails within any such period to file his accounts as aforesaid shall be liable to a penalty of one hundred naira for every day of default. Such fine shall on non-payment be enforceable by distress, and failing sufficient distress, by imprisonment for a term not exceeding 6 months.

(3) When an account is filed in Court under this Rule, the Judge shall scrutinize such account and if it appears to the Judge that by reason of improper, unvouched or unjustifiable entries or otherwise such account is not a full and proper account, the Judge shall require the person filing the account to remedy such defects as they may be within such time as the Judge may deem reasonable for the purpose; and on failure to remedy such defects

within such time, the person who filed such defective account shall be deemed to have failed to file an account within the meaning of this Rule and proceeding may be taken against such person accordingly.

(4) It shall be the duty of the Probate Registrar to bring to the notice of the Judge the fact that any executor or administrator has failed to file his accounts as required by this Rule.

(5) The Judge may, on the motion of any party interested, or on its own motion, summon any executor or administrator failing as aforesaid, to show cause why he should not be punished.

(6) The Judge may for good cause shown extend the time for such filing of accounts.

(7) Any executor or administrator who has been granted an extension of time to file such accounts, and who fails within such extended time to file such accounts, shall be liable to the penalty set out above, and the procedure for bringing him before the Court shall be as set out above.

(8) Such accounts shall be open to the inspection of all persons satisfying the Probate Registrar that they are interested in the administration.

(9) In this Rule, the word "accounts" shall include an inventory, an account of the administration, the vouchers in the hands of the executor or administrator relating thereto and an affidavit in verification.

Court may refuse application to review

47. The Court may refuse to entertain any application to under Rule 5 of this Order if it considers that there has been unreasonable delay by the applicant in making the application.

Grant to be signed by Probate Registrar

48. The grant of Letters of Administration under this Order shall be signed by the Probate Registrar on behalf of the court.

V. Probate (Non-Contentious) Procedure

Applications

49. In this Part, Rules 1, 4, 5, 6, 7, 8, 11, 12, 14, 15, 16, 17, 19, 26, 27, 28, 30, 31, 71(l)and 72(1) or (4) of this Order shall also apply.

Application for grant through Legal Practitioner

50. A Legal Practitioner through whom an application for grant is made shall give the address of his place of business within the jurisdiction of the court.

Personal applications

51.-(1) An applicant for a grant may apply person.

(2) A personal applicant may not apply through an agent, whether paid or unpaid, and may not be represented by any person acting or appearing to act as his adviser.

(3) No personal application shall be received or proceeded with if:

(a) it becomes necessary to bring the matter before the Court by motion or by action;

(b) an application has already been made by a Legal Practitioner on behalf of the applicant and has not been withdrawn

(c) the Registrar otherwise directs.

(4) After a Will has been deposited in the Registry by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the Registrar so directs.

(5) A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as the Registrar may approve.

(6) A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared in the Registry or may himself prepare such papers and lodge them unsworn.

(7) Unless the Registrar otherwise directs, every oath, affidavit or guarantee required of a personal application shall be sworn or executed by all the deponents or sureties before an authorised officer.

Duty of Registrar on receiving application for grant

52.-(1) The Registrar shall not allow any grant to issue until all inquiries which he may deem fit to make have been answered to his satisfaction.

(2) The Registrar may require proof of the identity of the deceased or of the applicant for the grant beyond those contained in the oath.

(3) No grant of probate or of administration with the Will annexed shall issue within 7 days of the death of the deceased; and no grant of administration (not with the Will annexed) shall issue within 14 days of such death.

Oath in support of grant

53.-(l) An application for a grant shall be supported by an oath in the form applicable to the circumstances of the case, which shall be contained in an affidavit sworn by the applicant, and by such other papers as the Registrar may require.

2) Unless otherwise directed by the Registrar, the oath shall state where the deceased was domiciled at the time of death.

Grant in additional name

54.- Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the oath the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name; or as to any other reason that there may be for the inclusion of the other name in the grant.

Engrossment for purposes of record

55(1) Where the Registrar considers that in any particular case a photocopy of the original Will would not be satisfactory for purposes of record, he may require that an engrossment suitable for photo reproduction be
lodged.

(2) Where a Will contains alterations which are not admissible to proof, there shall be lodged an engrossment of the Will in the form in which it is to be proved.

(3) An engrossment lodged under this Rule shall reproduce the punctuation, spacing and division into paragraphs of the Will and, if it is one to which sub-rul 2 of this Rule applies, it shall be made book wise on durable paper following continuously from page to page.

(4) Where any pencil writing appears on a Will, there shall be lodged a copy of the Will or of the pages or sheets containing the pencil writing in which they shall be underlined in red ink those portions which appear in pencil in the original.

Grant to attesting witnesses, etc.

56. Where a gift to any person fails by reason of the fact that he is an attesting witness or the spouse of an attesting witness, such person shall not have any right to a grant as a beneficiary named in the Will, without prejudice to his right to a grant in any other capacity.

Right of assignee to a grant

57.—(1) Where all the persons entitled to the estate of the deceased under a Will have assigned their whole interest in the estate to one or more persons, the assignees shall replace in order of priority for a grant of probate the assignor, or if there are two or more assignors, the assignors with the highest priority, in the absence of a proving executor.

(2) Where there are two or more assignees, probate may be granted with the consent of the others to any one or more (not exceeding four) of them.

(3) In any case where probate is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the Registry.

Additional personal representatives

58-(1) An application to add a personal representative shall be made to the Registrar and shall be supported by an affidavit by the personal applicant, the consent of the person proposed to be added as personal representative, and such other evidence as the Registrar may require.

(2) On any such application the Registrar may direct that a note shall be made on the original grant of the addition of a further personal representative, or he may impound or revoke the grant or make such Order as the circumstances of the case may require.
Grant where two or more persons entitled in same degree

Grant where two or more persons entitled in same degree

59.-(l)A grant may be made to any person entitled thereto without notice to other persons entitled in the same degree.

(2) A dispute between persons entitled to a grant in the same degree shall be brought by application before the Registrar.

(3) If an application under this Rule is brought before the Registrar, he shall not allow any grant to be sealed until such application is finally disposed of.

(4) Unless the Registrar otherwise directs, probate or administration with the Will attached shall be granted to a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same degree, and to a person not under disability in preference to an infant entitled in the same degree.

Prevention of grant

60-(1) Nothing in Rules 57,60 or 62 of this Order, shall operate to prevent a grant being made to any person to whom a grant may, or may require to be made under any enactment.

(2) The Rules mentioned in the last foregoing Sub Rule 1 of this Rule shall not apply where the deceased died domiciled outside the State, except in a case to which the provisions of Rule 63 apply.

Grants to persons having spes Successionis

61. When the beneficial interest in the whole estate of the deceased is vested absolutely in a person persons having who has renounced his right to a grant of administration with the Will attached and has consented to such administration being granted to the person or person who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or one or more (not exceeding four) of such persons:

Provided that a surviving spouse shall not be regarded as person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate, whatever it's value may be.

Grant where deceased was domiciled outside the State

62.—(1) Where the deceased was domiciled outside the State, the Registrar may order that a grant should issue:

(2) to the person entrusted with the administration of the estate by the court having jurisdiction at the place where the deceased died domiciled;

(3) to the person entitled to administer the estate by the law of the place where the deceased died domiciled;

(4) if there is no person as is mentioned in paragraph (a) or (b) of this Rule or if in the opinion of the Registrar the circumstances so require, to such person as the Registrar may direct;

(5) if a grant required to be made to, or if the Registrar in his discretion considers that a grant should be made to, not less than

two administrators, to such person as the Registrar may direct jointly with any such person as is mentioned in paragraph (a) or (b) of this Rule or with any other person:

Provided that without any such order as aforesaid:
(a) probate of any Will which is admissible
to proof may be granted:
(i) if the Will is in English or in the local vernacular, to the executor named therein;
(ii) if the Will described the duties of a named person in terms sufficient to constitute him executor according to the tenor of the Will, to that person;
(b) where the whole of the estate in the state consists of immovable property, a grant limited thereto may be made in accordance with the law that would have been applicable if the deceased had died domiciled in the State.

Grant to attorney

63.—(1) Where a person entitled to a grant resides outside the State, a grant may be made to his lawful attorney for his use and benefit, until such person shall obtain a grant or in such other way as the Registrar may direct:

Provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any.

(2) Where the Registrar is satisfied by affidavit that it is desirable for a grant to be made to the lawful attorney of a person entitled to a grant and resident in the State, he may direct the grant to be made to the attorney for the use and benefit of such person, until such person obtains a grant or in such other way as the Registrar may direct.

Grant on behalf of minors

64.- (1) Where the person to whom a grant would otherwise be made is a minor, a grant for his use and benefit until he attains the age of 18 years shall subject to sub-rules 3 and 5 of this Rule, be granted:

(a) to both parents of the minor jointly or to any guardian appointed by a court of competent jurisdiction; or
(b) if there is no such guardian able and willing to act and the minor has attained the age of 16 years, to any next-of-kin nominated by the minor, or where the minor is a married woman, to any such next-of-kin or to her spouse if nominated by her.

(2) A person nominated under sub-rule 1 (b) of this Rule may represent any other minor whose next-of- kin he is, being a minor below the age of 16 years entitled in the same degree as the minor who made the nomination.
(3) Notwithstanding anything in this Rule, administration for the use and benefit of the minor until he attains the age of 18 years may be granted to any person assigned as guardian by order of a court in default of, or jointly with, or to the exclusion of any such person as is mentioned in sub-rule 1 of this Rule; and such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the court, an affidavit of fitness sworn by a responsible person. Such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the court, an affidavit of fitness sworn by a responsible person.

(4) Where a grant is required to be made to not less than two persons and there is only one person competent and willing to take a grant under the foregoing provisions of this Rule, a grant may, unless the Registrar otherwise directs, be made to such person jointly with any other person nominated by him as a fit and proper person to take the grant.

(5) Where a minor who is sole executor has no interest in the residuary estate of the deceased, administration with the Will attached for the use and benefit of the minor until he attains the age of 18 years shall, unless the Registrar otherwise directs, be granted to the person entitled to the residuary estate.

(6) A minor's right to administration may be renounced only by a person assigned as guardian under sub-rule 3 of this Rule and authorised to renounce by the Registrar.

Grant where minor is co-executor

65.(l) Where one of several executors is a minor probate may be granted to the adult executors, with power reserved for making the like grant to the minor on his attaining the age of 18 years and administration for the use and benefit of the minor until he attains the age of 18 years may be granted under Rule 64 of this Order, if and only if the adult executors renounce or, on being cited to accept or refuse a grant, fail to make an effective application.

(2) A minor executor's right to probate on attaining the age of 18 years shall not be renounced by any person on his behalf.

Grant in case of mental or physical incapacity

66.-(1) Where the Registrar is satisfied that a person entitled to a grant is by reason of mental or physical infirmity incapable of managing his affairs, a grant for his use and benefit, during his incapacity may be made:

(a) in the case of mental incapacity, to the person authorised by the Judge to apply for the grant;

(b) where there is no person so authorised or in the case of physical incapacity:

(i) if the person incapable is entitled as executor and has no interest in the residuary estate of the deceased, to the person entitled to such residuary estate;

(ii) if the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate; or to such other person as the Registrar may by order direct.

(2) Unless the Registrar otherwise directs, no grant shall be made under this Rule unless all persons entitled in the same degree as the person incapable have been considered and excluded.

(3) In the case of mental incapacity, notice of intended application for a grant under this Rule shall, unless the Registrar otherwise directs, be given to the person alleged to be so incapable.

Renunciation of probate and administration

67.-(1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to grant of administration in some other capacity unless he expressly renounces such right.

(2) Unless the Registrar otherwise directs, no person who has renounced a grant in one capacity may obtain a grant in some other capacity.

(3) A renunciation of probate or administration may be retracted at any time on the order of the Registrar.

Provided that only in exceptional circumstances may leave be given to an executor to retract a renunciation of probate after a

grant has been made to such other person entitled in a lower degree.

Notice to State of intended application for grant

68. Where the State is or may be beneficially of interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Cross River State Attorney-General, and the Registrar may direct that no grant shall issue within a specified time after the notice has been given.

Resealing Form 42

69.-(l)An application for the resealing of probate or administration with the Will attached granted by a court outside the State shall be made by the person Form 42 to whom the grant was made or by any person authorised in writing to apply on his behalf.

(2) On any such application:

(a) an Inland Revenue Affidavit shall be lodged as if the application were one for a grant in the State;

(b) the application shall be advertised in such manner as the Registrar may direct and shall be supported by an oath sworn by the person making the application.

(3) On an application for the resealing of such a grant

(a) the Registrar shall not require sureties except where it appears to him that the grant is made to a person or for a purpose mentioned in paragraphs (a) to (f) of Rule 35(1) of this Order, or except where he considers that there are special circumstances making it desirable to require sureties;

(b) Rules 35(2), (4), (5) (6) and 51(4) of this Order shall apply with any necessary modifications; and

(c) a guarantee entered into by a surety shall be in Form 42 with such variations as circumstances may require.

(4) Except by leave of the Registrar, no grant shall be resealed unless it was made to such a person as is mentioned in sub-rules 2 or 3 of Rule 62 or to a person to whom a grant could be made under a proviso to that rule.

(5) No limited or temporary grant shall be resealed except by leave of the Registrar.

(6) A grant lodged for resealing shall include a copy of any will to which the grant relates or shall be accompanied by a copy certified as correct by or under the authority of the Court by which the grant was made.

(7) The Registrar shall send notice of the resealing to the Court which made the grant.

(8) Where notice is received in the Registry from outside the State of the resealing of a grant made in the State, notice of any amendment or revocation of the grant shall be sent to the Court by which it was resealed.

Amendment and revocation of grant

70. If the Registrar is satisfied that a grant shall be amended or revoked, he may make an order accordingly:

Provided that except in special circumstances no grant shall be amended or revoked under this Rule except on the application or with the consent of the person to whom the grant was made.

Notice to prohibit grant

71.-(1) A notice to prohibit a grant of administration may be filed in Court.

Caveat

(2) A person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat in the Registry.

(3) A person who wishes to enter a caveat (in this Rule called "the caveator") may do so by completing the appropriate Form at the Registry and obtaining an acknowledgment of entry from the proper officer, or by sending through the post, at his own risk, a notice in the appropriate form to the Registry in which he wishes the caveat to be entered.

Form 43

(4) Where the caveat is entered by a Legal Practitioner on behalf of the caveators the name of the caveator shall be stated in Form 43

(5) Except as otherwise provided by this Rule, a caveat shall remain in force for 3 months from the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

(6) The Registrar shall maintain an index of caveats entered in the Registry and on receiving an application for a grant in the Registry, he shall cause the index to be searched and shall notify the applicant in the event of any caveat having been entered against the sealing of a grant for which application has been made.

(7) The Registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect thereof:

Provided that no caveat shall operate to prevent the sealing of a grant on the day on which the caveat is entered.

Form 44

(8) A warning in Form 44 may issue from the Registry against a caveator at the instance of any person interested ("the person warning") which shall state his interest and, if he claims under a Will, the date of the Will, and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased; and every warning or a copy thereof shall be served on the caveator.

Form 44 and 45

(9) A caveator having an interest contrary to that of the person warning may, within 8 days of service of the warning upon him inclusive of the day of such service; or at any time thereafter if no affidavit has been filed under sub-rule 12 of this Rule, enter an appearance in the Registry by filing Form 45 and making an entry in the appropriate book, and shall forthwith thereafter serve on the person warning a copy of Form 44 sealed with the seal of the Registry.

(10) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the Registry and the caveat shall then cease to have effect and if he has been warned, the caveator shall forthwith give notice of withdrawal of the caveat to the person warning.

(11) A caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to that person may, within 8 days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under sub-rule 12 of this Rule, issue and serve a summons for directions, which shall be returnable before the Registrar.

(12) If the time limited for appearance has expired and the caveator has not entered an appearance, the person warning may file in the Registry an affidavit showing that the warning was duly served and that he has not received a summons for directions under the last sub-rule of this Rule, and thereupon the caveat shall cease to have effect.

(13) Upon commencement of a probate action the Probate Registrar shall, if a Caveat is in force (other than a caveat entered by the claimant), give to the caveator notice of the

commencement of the action and, upon the subsequent entry of a caveat at any time when the action is pending, shall likewise notify the caveator of the existence of the action.

(14) Unless the Registrar otherwise directs:

(a) a caveat in force at the commencement of proceeding by way of citation or motion shall, unless withdrawn pursuant to sub-rule 10 of this Rule, remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such proceeding, and upon such application any caveat entered by a party who had notice of the proceeding shall cease to have effect;

(b) a caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;

(c) the commencement of a probate action shall whether or not any caveat has been entered, operate to prevent the sealing of a grant until application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such action, and upon such application any caveat entered by a party who had notice of the action, or by a caveator who was given notice under sub-rule 13 of this Rule, shall cease to have effect.

(15) Except with the leave of the Registrar, no further caveat may be entered by or on behalf of any caveator whose caveat has ceased to have effect under sub-rule 12 or 14 of this Rule.

Citation

72.- (1) ANotice in the nature of citation shall be given in such manner as the Court may direct.

(2) A citation shall be settled by the Registrar before being issued.

(3) An averment in a citation and such other information as the Registrar may require shall be verified by an affidavit sworn to by the person issuing the citation (in this Order called "the citor") or, if there are two or more citors, by one of them:

Provided that the Registrar may in special circumstances accept an affidavit sworn to by the titer's Legal Practitioner.

(4) The citor shall enter a caveat before issuing a citation.

(5) A citation shall be served personally on the person cited unless the Registrar, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

(6) A Will referred to in a citation shall be lodged in the Registry before the citation is issued, except where the Will is not in the titer's possession and the Registrar is satisfied that it is impracticable to require it to be lodged.

(7) A person who has been cited to appear may, within 8 days of service of the citation upon him inclusive of the day of such service, or at any time thereafter if no application has been made by the citor under sub-rule 5 of Rule 35 of this Order,or sub-rule 2 of Rule 69 of this Order enter an appearance in the Registry by filing the appropriate Form and making an entry in the appropriate book, and shall thereafter serve on the citor a copy of the Form sealed with the seal of the Registry.

Citation to accept or refuse a grant

73.—(1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the Will, or the executors of the last survivor of deceased executors who have proved the Will.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in tie estate at any time after the expiration of 6 months from the death of the deceased:

Provided that no citation to take a grant shall issue while proceeding as to the validity of the Will is pending

(4) A person cited, who is willing to accept or take a grant, may apply ex parte to the Registrar for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may:

(a) in the case of a citation under sub-rule 1 of this Rule, apply to the Registrar for an order for a grant to himself;

(b) in the case of a citation under sub-rule 2 of this Rule, apply to the Registrar for an order that note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights or interest in respect thereof have ceased;

(c) in the case of a citation under sub-rule 3 of this Rule, apply to the Registrar by summons (which shall be served on the person cited) for an order requiring such person to take a grant within a specified time or for a grant to himself or some other person specified in the summons.

(6) An application under sub-rule 5 of this Rule shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance but has not applied for a grant under sub-rule 4 of this Rule, or has failed to prosecute his application with reasonable diligence, the citor may:

(a) in the case of a citation under sub-rule 1 of this Rule, apply by summons to the Registrar for an order for a grant to himself,

(b) in the case of a citation under sub-rule 2 of this Rule, apply by summons to the Registrar for an order striking out the appearance and for the indorsement on the grant of such a note as is mentioned in paragraph (b) of sub-rule 5 of this Rule;

(c) in the case of a citation under sub-rule 3 of this Rule, apply by summons to the Registrar for an order requiring the person cited to take a grant within a specified time or for a grant to himself, or some other person specified in the summons ;and the summons shall be served on the person cited in each case.

Citation to propound a Will

74.-(1) A citation to propound a Will shall be directed to the executors named in the Will and to persons interested thereunder, and may be issued at the instance of any citor having any interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired, the citor may:

(a) in the case where no person cited has entered an appearance, apply to the Registrar for an order for a grant as if the Will were invalid;
(b) in the case of a citation under sub-rule 2 of Rule 73 of this Order apply by summons to the Registrar for an order striking out the appearance and for indorsement on the grant of such a note as mentioned in paragraph (b) of sub-rule 5 of Rule 73 of this Order.
(c) in the case of a citation under sub-rule 3 of Rule 73 of this Order apply by summons to the Registrar for an order requiring the person cited to take a grant within a specified time, or for a grant to himself, or some other person specified in the summons; and the summons shall be served on the person cited in each case.

Address for Service

75. All caveats, citations, warnings and Address for appearances shall contain an address for service within service the jurisdiction.
Application for order to bring in Will or to attend for examination

Application for order to bring in Will or to attend for examination

76.(1) An application for an order requiring a person to bring in a Will or to attend for examination may, unless a probate action has been commenced, be made to the Court by summons, which shall be served on every such person as aforesaid.

(2) An application for the issue by the Registrar of a subpoena to bring in a Will shall be supported by an affidavit setting out the grounds for the application, and if any person served with the subpoena denies that the Will is in his possession or control he may file an affidavit to that effect.

Limited grant

77. An application for an order for a grant limited to part of an estate may be made to the Registrar and shall be supported by an affidavit stating:

(a) whether the application is made in respect of the real estate only or any part thereof, or real estate together with personal estate, or in respect of a trust estate only;
(b) whether the estate of the deceased is known to be insolvent;

(c) that the persons entitled to a grant in respect of the whole estate in priority to the applicant have been considered and excluded.

Grants ad collegenda bona

78. An application for an order for grant of administration *ad colligenda* bona may be made to the Registrar, and shall be supported by an affidavit setting out the grounds of the application.

Application for leave to swear to death of a person

79. An application for leave to swear to the death of a person in whose estate a grant is sought may be made to the Registrar and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance effected on the life of the presumed deceased.

Grants in respect of codicils and copies of Wills

80.-(1) An application for an order admitting to codicils and proof a codicil or a Will contained in a copy, a completed copies of wills draft, a reconstruction or other evidence of its contents where the original Will is not available, may be made to the Registrar

Provided that where a will is not available owing to its being retained in the custody of a foreign court or official, a duly authenticated copy of the Will may be admitted to proof without any such order as aforesaid.

(2) The application shall be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to:

(a) the due execution of the Will;

(b) it's existence after the death of the testator; and

(c) the accuracy of the copy or other evidence of the contents of the Will, together with any consent in writing to the application given by any person not under disability who would be prejudiced by the grant.

Grants Durant absentia

81. An application for an order for a grant of special administration where a personal representative absentia is residing outside the State shall be made to the Court by a motion.

Notice of election by surviving spouse to redeem life interest.

Form 46

82.—(1) Where a surviving spouse who is the sole personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to the

Registrar by filing a notice in Form 46 with such variations as circumstances may require.

(2) A notice filed under this Rule shall be notice on the grant and the record shall be open to inspection.

Photocopy of Wills or other documents maybe certified and sealed

Photocopy of Wills or other documents certified and sealed

83.-(1) Where copies are required of original Wills or other documents deposited under the provisions of any written law, such copies may be photocopies sealed with the seal of the Registry and issued as office copies, and where such office copies are available copies certified under the hand of a Registrar to be true copies shall be issued only if it is required that the seal of the court be affixed thereto.

(2) Copies, not being photocopies of original Wills or other documents deposited as aforesaid shall be examined against the documents of which they purport to be copies if so required by the person demanding the copy, and in such case the copy shall be certified under the hand of a Registrar to be a true copy and may in addition be sealed with the seal of the Court.

Power to require application to be made by summons or motions

84. The Registrar may require any application under this Order to be made by motion or summons.

Duties and powers to be performed and exercised by probate judge

85. The duties imposed and powers conferred upon the Court or Judge as the case may be by this Order shall be performed and exercised by the Probate Registrar on behalf of the Court subject to any directions which the Chief Judge may give restricting or enlarging this delegation to the Probate Registrar of the duties and powers of the Court under this Order or the Probate Judge designated by the Chief judge pursuant to Rule 16 hereof

Exercise of powers of judge

86.-(1) Any person aggrieved by a decision or requirement of the Registrar may by summons apply to a Judge for that decision or requirement to be reviewed.

(2) If in the case of a summons for review under sub-rule 1 of this Rule, any person besides the applicant appeared or was represented before the Registrar from whose decision or requirement the application for review is brought, the summons

shall be issued within 7 days thereof for hearing on the first available day and shall be served on every such person concerned.

(3) On such review the Judge shall have power to cancel or amend anything which may have been done by the Probate Registrar.

Courts may refuse application to review

87. The Court may refuse to entertain any application under Rules 86 of this Order if it considers that there has been unreasonable delay by the applicant in making his application.

Service of motions on notice and summons

88.-(1) A Judge or the Registrar may direct that a motion on notice or summons for the service of which no other provision is made in this Order shall be served on such person or persons as the Judge or Registrar may direct.

(2) Where by the provisions of this Order or by any direction given under sub-rule 1 of this Rule a motion on notice or summons is required to be served on any person, it shall be served not less than 5 days, before the hearing of the motion or summons.

Service of notice and documents

89. Unless the Registrar otherwise directs or service of this Order provides, any notice or other document required to be given or served on any person may be given or served by leaving it at, or by sending it by courier to that person's address for service, or if he has no address for service, his last known address.

Affidavits

90. An affidavit used in non-contentious probate Affidavit business shall satisfy the requirements of Order 32.

Time

91. The provisions of Order 5 shall apply to the computation, enlargement and abridgement of time under this Order.

Application

92. Subject in any particular case to any direction given by a Judge, this Order shall apply to any proceeding which is pending on the date on which these Rules come into operation as well as to any proceeding commence on or after that date:

Provided that where the deceased died before the commencement of these Rules, the right to a grant shall, subject to the provisions of any enactment, be determined by the

principles and Rules in accordance with which the Court would have acted at the date of the death.

Contentious probate; form of suits

93. Suits in respect of probate shall be instituted and carried on as nearly as possible in the like manner and subject to the same Rules of procedure as suits in respect of civil claims.

III. Proceeding Generally

Probate actions

94. In Probate actions, the originating process shall state whether the Claimant claims as creditor, executor, administrator, beneficiary, next-of- kin or in any other capacity.

Service of Writs of summons

95. In probate actions service of a writ of summons may by leave of a Judge be allowed out of Nigeria.

Pleadings and further actions

96. In probate actions a party shall state with regard to every defence which is pleaded, what is the substance of the case on which it is intended to rely; and further where it is pleaded that the testator was not of sound mind, memory and understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial and except by leave of a Judge no evidence shall be given of any other instances at the trial.

Where claimant disputes defendant's intrest

97. In probate actions where the claimant disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

Notice in Probate actions

98. In probate actions the party opposing a Will may, with his defence, give notice to the party setting up the Will that he merely insists upon the Will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the Will, and he shall thereupon be at liberty to do so and shall not in any event be liable to pay the costs of the other side unless the Judge finds that there was no reasonable ground for opposing the Will.

Enquiry as to outstanding personal estate

99. A judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for any inquiry as to what parts (if any) of such personal estate are outstanding or undisposed of, unless the Court or a Judge shall otherwise direct.

Discretion to order costs

100. Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of such proceeding in so far as they are not recovered from or paid by any other person out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may otherwise order only on the ground that the trustee or personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

Originating summons relating to deceased person

101. The executors or administrators of £ deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor. beneficiary, next-of-kin, heir-at-law of a deceased person, or as *Cestui que* trust under the trust of any deed or instrument, or as claiming by assignment or administration otherwise under any such creditor or other person as aforesaid, may take out an originating summons for such relief as listed hereunder as may be specified by the summons and as the circumstances of the case may require; that is, the determination without an administration of the estate or trust of any of the following questions or matters:

(a) any question affecting the rights or interests of the person claiming to be creditor, beneficiary, next-of-kin, or heir-at-law or *cestui que* trust;

(b) the ascertainment of any class of creditors, beneficiary, next- of-kin, or others;

(c) the furnishing of any particular accounts by the executors or administrators or trustees and the vouching (when necessary) of such accounts;

(d) the payment into court of any money in the hands of the executors or administrators or trustees;

(e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;

(f) the approval of any sale, purchase, compromise, or other transaction;

(g) the determination of any question arising in the administration of the estate or trust.

Order for administration of estate of deceased and of trust

102. Any of the persons named in Rule 101 of this Order may in like manner apply for and obtain an order for:

(a) the administration of the personal or real estate of the deceased;

(b) the administration of the trust;

(c) any act to be done or step to be taken which the Judge could have ordered to be done or taken if any such administration order as aforesaid has previously been made.

Persons to be served

103. The persons to be served with the summons under Rules 101 and 102 of this Order in the first instance shall be the following:

(a) for the determination of any question, under paragraph (a) (c), (f) or (g) of Rule 101 of this Order, the persons, or one of the persons, whose rights cr interests, are sought to be affected;

(b) for the determination of any question, under paragraph (b) of Rule 101 of this Order any member or alleged member-of the class;

(c) for the determination of any question, under paragraph (c) of Rule 101 of this Order, any person interested in taking such accounts;

(d) for the determination of any question under paragraph (d) Rule 101 of this Order, any person interested in taking such money

(e) for relief under paragraph (a) of Rule 102 of this Order, the residuary legatees. or next of kin (or some of them) or the residuary devisees, or heirs, or some of them, as the case may be;

(f) for relief under paragraph (b) of Rule 102 of this Order, the Cestui que trust or some of them;

(g) if there are more than one executor or administrator or trustee and they do not all concur in taking out the summons, those who do not concur;

Where summons taken out by any other person

(h) where the summons is taken out by any person other than the executors, administrators or trustees, the said executors, administrators or trustees, or some of them, must be served.

Judge not bound to order administration

104. It shall not be obligatory on the Judge to pronounce or make judgment or order, whether on summons or otherwise for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined without such judgment or order.

Order which may be made on application for administration or execution of trusts, where no account or insufficient accounts have been rendered

105. Upon an application for administration or execution of trusts by a creditor or beneficiary under Will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the Judge may, in addition to the powers already existing:

(a) order that the application shall stand over for a certain time, and that the executors, administrators or trustees in the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceeding;

(b) when necessary, to prevent proceeding by other creditors, or by persons beneficially interested, make the usual judgment or order for administration with a proviso that no proceeding are to be taken under such judgment or order without leave of the Judge.

Interference with discretion of trustee

106. The issue of a summons under Rule 101 of this Order shall not interfere with or control any power with discretion or discretion vested in any executor, administrator or trustee except so far as such interference or control may necessarily be involved in the particular relief sought.

Appointment of new trustees and vesting orders

107. Any of the following applications may be made by summons:

(a) an application for the appointment of a new trustee with or without a vesting or other consequential order;

(b) an application for a vesting order or other order consequential on the appointment of a new trustee whether the appointment is made by the court or otherwise;

Vesting order on sale, etc

(c) an application for vesting or other consequential order in any case where a judgment or order has

been given or made for the sale, conveyance, or transfer of any land or stock or the suing for or recovering any chose in action;

Payment out of Court

(d) an application relating to a fund paid into Court in any case coming within the provisions of Rule 8 of this Order.

Interpretation Law of Cross River State to apply

108.-(1) The provisions of the Interpretation Law shall apply to the interpretation of this Order.

(2) In this Order, unless the context otherwise requires:

"authorised officer" means any officer of the Registry who is for the time being authorised by law to administer any oath or to take any affidavit required for any purpose connected with his duties;

"gross value" in relation to any estate means the value of the estate without deduction for debts, encumbrances, funeral expenses or estate duty;

"oath" means the oath required by this Order to be j sworn by every applicant for grant;

"personal applicant" means a person other than a ' trust corporation who seeks to obtain a grant without I employing a Legal Practitioner, and

"personal application" has a corresponding meaning;
"Poor person" means a person whose monthly income is less than N5,000.00.

"Registrar" means the Probate Registrar;

"Registry" or "Probate Registry" means the Probate Registry of the Court;

"Will" includes a codicil and any testamentary document or copy or reconstruction of it;

(3) Unless the context otherwise requires, any reference in this Order to any rule or enactment shall be construed as a reference

to that rule or enactment as amended, extended or applied by any other rule or enactment as amended or extended.

ORDER 47
PROCEEDINGS IN LIEU OF DEMURRER
Demurrer abolished

1. No demurrer shall be allowed.

Points of law may be raised by pleadings

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

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

ORDER 48
APPEALS FROM MAGISTRATE'S COURT, ETC.
Notice of Appeal

1. Every appeal shall be brought by Notice of Appeal which shall be lodged in the lower Court within Appeal 30 days of the decision appealed from and served on all other parties affected by the appeal within that period.

Contents, etc., of Notice of appeal

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

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

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

Form 47

(4) The Notice of appeal shall be in Form 47 the appendix and may be varied to suit the circumstances of the case but so that no variation of substance shall be 'made.

Copies of record of proceedings

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

(2) The Registrar shall within 7 days of preparing the certified copies of the record of proceedings and Notice of Appeal referred to in sub-rule 1 of this Rule notify the parties to come forward and collect their own copies upon payment of necessary fees, and shall copies also to the Registrar of the Court in the Judicial Division in which the lower Court is situated, and the appeal shall be decided by the Judge of the Division.

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

Filling of address

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

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

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

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

Proceeding time

5. The times prescribed in Rules 1 to 4 may be enlarged at any time by the Court on such terms (if any) as may seem fit, after

notice is given to the respondent by the appellant of his application for enlargement of time.

Where time expires

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

Constitution of Court hearing appeals

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

Time and place for hearing

8. The appeal shall come on hearing at such time and at such place as the Registrar of the Court shall notify to the parties.

Where appellant fails to appear

9.-(l) If, on the day of hearing or at any adjournment of the case, the appellant does not appear, the appeal shall be struck out and the decision shall be affirmed, unless the Court thinks fit, for sufficient cause to order otherwise.

(2) If, in any such case the respondent appears, the judgment shall be with costs of the appeal against the appellant, unless the Court expressly orders otherwise; but if the respondent does not appear, the cost of the appeal shall be at the discretion of the Court.

Where appellant appear

10. If, on the day of hearing and at any adjournment of the case, the appellant appears, the Court shall, whether the respondent appears or not, proceed to the hearing or further hearing and determination of the appeal and shall give judgment according to the merits of the case without regarding any imperfection or defect of form; but if it appears or is so proved to the Court that the appellant has not complied with requirements precedent to the hearing of an appeal hereinbefore contained, the Court shall dismiss the appeal and affirm the decision, with or without costs of the appeal against the appellant.

Appeal limited to grounds given in notice.

11. On hearing, it shall not be competent for the appellant to go into any other reasons for appeal than those set forth in his notice of grounds of appeal; but where, in the opinion of the Court, other grounds of appeal than those set forth in the memorandum of grounds of appeal should have been given, or the statement of grounds of appeal is defective, the Court, in its discretion, may

allow such amendments of the memorandum of grounds of appeal upon such conditions as to service upon the respondent and as to costs as it may think fit.

Request to confirm judgment on other grounds.

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

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

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

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

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

Objections to form of grounds of appeal.

14.- (1) No objection on account of any defect in the form of setting forth any ground of appeal shall be allowed, unless the court is of the opinion that the ground of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the respondent to enquire into the subject-matter thereof or to prepare for the hearing.

(2) In any case where the Court is of the opinion that any objection to any ground of appeal ought to prevail, the Court may, if it thinks fit, cause the ground of appeal forthwith to be amended upon such terms and conditions, if any, as the Court may think just.

Defects in proceedings under appeal.

15. On any appeal from a decision of a lower Court; no objection shall be taken or allowed to any proceeding in such Court for any defect or error which might have been amended by that Court, or to any complaint, summons, warrant, or other process to or of such Court for any variance between any complaint or summons and the evidence adduced in support thereof in such Court:

Provided, however, that if any error, defect, or variance mentioned in this Rule appears to the Court at the hearing of any appeal to be such that the appellant has been thereby deceived or misled, it shall be lawful for the Court either to refer the case back to the lower Court with directions to re-hear and determine it or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.

Defects in notice of appeal or recognisance

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

Additional evidence.

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

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

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

Mode of taking Evidence.

18.-(1) When additional evidence is to be taken Mode of by the Court and specific findings of fact reported, it ^"8 shall certify the evidence to the Court which shall thereupon proceed to dispose of the appeal.

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

(3) Evidence taken in pursuance of Rule 17 shall be taken as if it were evidence taken at the trial before the lower Court.

(4) When forwarding to the Court any additional evidence taken by a lower Court in pursuance of Rule 17 the lower Court may express its opinion on the demeanour of the witnesses and of the value of their evidence and may also, if it is the same Court against whose decision the appeal has been made, state whether or not it would have come to a different decision had the additional evidence been brought forward at the trial.

Fees. Fist schedule

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

Stay of execution

20.—(1) On application being made for stay of execution under any enactment establishing the lower Court, the lower Court or the Court may impose one or more of the following conditions-

(a) that the appellant shall deposit a sum fixed by the Court not exceeding the amount of the money or the value of the property affected by the decision or judgment appealed from, or give security to the satisfaction of the Court for the said sum;

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

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

(d) that the appellant's property shall be seized and attached pending the making of a deposit or the giving of security as aforesaid, including a deposit or security for the expenses incidental to the seizure and attachment;

(e) that the appellant's property shall be seized, and attached and sold and the net proceeds deposited in Court pending determination of the appeal.

(2) Any order made on any such application shall limit the time (not being more than thirty days) for the performance of the conditions imposed, and direct that in default of the performance within the period of time so limited, execution may issue or proceed.

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

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

(5) Where the appellant proposes to give security instead of making a deposit, the application shall state the nature of the security and the name of the surety proposed (if any).

(6) Any party dissatisfied with an order made by the lower Court may apply to the Court by motion (original or interlocutory, as the case may require) with notice to the other party for a review of the order, and the Court may thereupon make such order as may seem just.

(7) An appeal shall not operate as a stay of execution under the decision or judgment appealed from except so far as the lower Court or the Court may order; and no intermediate act or proceeding shall be invalidated except so far as either Court may direct.

Costs

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

Security of costs

22.- (1) The Court may, in special circumstances, upon application on notice by motion (original or interlocutory as the case may require), supported by affidavit, order the appellant to deposit such sum or give such security as may seem fit for the respondent's cost of appeal including the costs incidental to the application.

(2) The order shall limit the time (not exceeding 30 days) within which the deposit or security shall be made or given and may direct that in default of its being made or given within the time so limited the appeal shall without further order stand dismissed.

(3) Where an appeal so stands dismissed the respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such costs may be stated in the order in anticipation or may be assessed at any time by the Court of its own motion or on application made ex-parte or on notice, as the Court may see it.

(4) Where an appeal so stands dismissed the appellant shall take no further step or proceeding therein save by leave of the Court or for reinstatement of the appeal, which may be granted on such terms (if any) as may seem fit upon application by motion on notice given within a month of such dismissal (but not otherwise).

(5) Subject and without prejudice to the discretion of the Court to grant costs where it seems proper on an application made under sub rule (1), cost shall not normally be granted to the applicant save where the net proceeds of execution levied on the appellant's goods are sufficient to satisfy the amount payable under the judgment or decision appealed from.

Orders of High Court to be Certified to magistrate's Court.

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

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

Enforcement of judgment

24. After the pronouncement of the judgment of Court, the lower Court from which the appeal came shall have the same jurisdiction and power to enforce, and shall enforce, any decision

which may have been affirmed, modified, amended, or substituted by the Court or any judgment which may have been pronounced by the Court, in the same manner in all respects as if such decision or judgment had been pronounced by itself.

Enforcement of orders

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

High Court may enlarge time.

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

Interpretation

27. In this Order- "the lower Court" means the Court whose judgement is appealed against.

" Judgement" includes an order or ruling.

ORDER 49
FEES AND ALLOWANCES

Fees: 1st and 2nd Schedule

1. Subject to the provisions of any written law and of the foregoing Orders-

   (a) the fees set out in the First and Second Schedules hereunder shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in those Schedules;

Allowances. Part II of 3rd Schedule

   (b) the allowances set out in Part II of the Allowances. Third Schedule shall be payable to the various categories of witnesses mentioned therein by any person at whose instance the testify:

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

Regulations: 6th Schedule

2. The regulations set out in the Fourth Schedule shall be observed by all officers of Court concerned with the rendering of services, or collection of fees payable, under the provisions of the foregoing Order.

HIGH COURT OF CROSS RIVER STATE
(CIVIL PROCEDURE) RULES

APPENDIX

List of Forms

Form No. **Title**

1. General Form of Writ of Summons
2. Writ for service out of the Jurisdiction
3. General Form of Originating Summons
4. Originating Summons
5. Form of Ex-parte Originating Summons
6. Notice of appointment to hear Originating Summons
7. Form of Memorandum for Renewed Originating

Process

8. Request to Minister of Foreign Affairs to transmit Writ to Foreign Government.
9. Request for Service Abroad
10. Letter Forwarding Request for Substituted Service
11. Request to Minister of Foreign Affairs to transmit Notice of Writ to a Foreign Government
12. Memorandum of Appearance
13. Notice of Counter-Claim
14. Concession to defence
15. Interrogatories
16. Answer to interrogatories
17. Affidavit as to documents
18. Hearing Notice for pre-trial conference
19. Pre-trial Sheet
20. Form for guarantee for the acts and default of a receiver
21. Receiver's Security by undertaking
22. Receiver's Account
23. Affidavit verifying Receiver's Account
24. Form of Order for Account and Inquiries
25. Notice of Payment into Court
26. Acceptance of Sum paid into Court
27. Acceptance of sum paid into Court by one of several defendants
28. Legal practitioner's undertaking as to expenses
29. Letter of request to take evidence abroad (Convention Country)
30. Order for appointment of the Nigerian Diplomatic agent as Special examiner (in Convention Country)
31. Form of Praecipe
32. Subpoena ad Testificandum
33. Habeas Corpus ad Testificandum
34. Subpoena duces Tecum
35. Originating Summons for Possession
36. Order for Possession
37. Order for payment of Principal Money. interest, secured by Mortgage or charge.
38. Order for possession of property forming a security for payment to the claimant of any principal money or interest
39. Order for payment of principal money or interest secured by mortgage or charge and for possession of property comprised therein

40. Certificate of the Chief Registrar
41. Surety's guarantee
42. Surety's guarantee on application for resealing
43. Caveat
44. Warning to Caveator
45. Appearance to warning of citation
46. Notice of election to redeem life interest

HIGH COURT OFCROSS RIVER STATE
(CIVIL PROCEDURE) RULES

FORM1
General Form of Writ of Summons
(0.7,r.3)

(Here put the Judicial Division letter and number of the suit (see note (a) following this form).
In the High Court of Cross River State
In the …….. Judicial Division
Between
A.B ……Claimant
and
CD…….. Defendant

To C.D of…….. in the…….. of……

You are hereby commanded that within eight days after the service of this writ on you, inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit A.B and take notice that in default of your so doing the Claimant may proceed therein, and judgment may be given in your absence.

DATED this…….. day of …….. 20……..

……
Registrar

Memorandum to be subscribed on the writ

together with any consent in writing to the application given by any person not under disability who would be prejudiced by the grant.

81. An application for an order for a grant of Grants Durant special administration where a personal representative absentia is residing outside the State shall be made to the Court by a motion.

Notice of election by surviving spouse to redeem life interest. Form 46

82.—(1) Where a surviving spouse who is the sole personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to the Registrar by filing a notice in Form 46 with such variations as circumstances may require.

(2) A notice filed under this Rule shall be notice on the grant and the record shall be open to inspection.

Photocopy of Wills or other documents maybe certified and sealed

83.-(1) Where copies are required of original Wills or other documents deposited under the provisions of any written law, such copies may be photocopies sealed with the seal of the Registry and issued as office copies, and where such office copies are available copies certified under the hand of a Registrar to be true copies shall be issued only if it is required that the seal of the court be affixed thereto.

(2) Copies, not being photocopies of original Wills or other documents deposited as aforesaid shall be examined against the documents of which they purport

Order 46: Probate and Administration

OR. 46 PG 47/56

Power to require
application to be made by summons or motion
Duties and powers to be performed and exercised by Probate Judge/ Probate Registrar

to be copies if so required by the person demanding the copy, and in such case the copy shall be certified under the hand of a Registrar to be a true copy and may in addition be sealed with the seal of the Court.

86. The Registrar may require any application under this Order to be made by motion or summons.

87. The duties imposed and powers conferred upon the Court or Judge as the case may be by this Order shall be performed and exercised by the Probate Registrar on behalf of the Court subject to any directions which the Chief Judge may give restricting or enlarging this delegation to the Probate Registrar of the duties and powers of the Court under this Order or the Probate Judge designated by the Chief judge pursuant to Rule 16 hereof.

Exercise of powers of Judge

86.-(1) Any person aggrieved by a decision or requirement of the Registrar may by summons apply to a Judge for that decision or requirement to be reviewed.

(4) If in the case of a summons for review under sub-rule 1 of this Rule, any person besides the applicant appeared or was represented before the Registrar from whose decision or requirement the application for review is brought, the summons shall be issued within 7 days thereof for hearing on the first available day and shall be served on every such person concerned.

(5) On such review the Judge shall have power to cancel or amend anything which may have been done by the Probate Registrar.

87. The Court may refuse to entertain any application under Rule 86 of this Order if it considers that there has been unreasonable delay by the applicant in making his application. Court may review application to

88.-(1) A Judge or the Registrar may direct that a motion on notice or summons for the service of which no other provision is made in this Order shall be served on such person or persons as the Judge or Registrar may direct. Service of motion on summons

(2) Where by the provisions of this Order or by any direction given under sub-rule 1 of this Rule a motion on notice or summons is required to be served on any person, it shall be served not less than 5 days, before the hearing of the motion or summons.

89. Unless the Registrar otherwise directs or this Order provides, any notice or other document required to be given or served on any person may be given or served by leaving it at, or by sending it by courier to that person's address for service, or if he has no address for service, his last known address. service of notice and documents

92. An affidavit used in non-contentious probate business shall satisfy the requirements of Order 32. Affidavit

93. The provisions of Order 5 shall apply to the computation, enlargement and abridgement of time under this Order. -nme

92. Subject in any particular case to any direction given by a Judge, this Order shall apply to any proceeding Application

which is pending on the date on which these Rules come into operation as well as to any proceeding commence on or after that date:

Provided that where the deceased died before the commencement of these Rules, the right to a grant shall, subject to the provisions of any enactment, be determined by the principles and Rules in accordance with which the Court would have acted at the date of the death.

Contentious suits' 0rm an<* carr*ed on as nearly as possible in the like manner

93. Suits in respect of probate shall be instituted and subject to the same Rules of procedure as suits in respect of civil claims.

III. Proceeding Generally

Probate actions

94. In Probate actions, the originating process shall state whether the Claimant claims as creditor, executor, administrator, beneficiary, next-of- kin or in any other capacity.

Service of writ of summons

95. \n probate actions service of a writ of summons i_ 1 .CTJI-II J^.T may by leave of a Judge be allowed out of Nigeria.

Pleadings and further actions

96. In probate actions a party shal 1 state with regard to every defence which is pleaded, what is the substance of the case on which it is intended to rely; and further where it is pleaded that the testator was not of sound mind, memory and understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial and except by leave of a

Judge no evidence shall be given of any other instances at the trial.

97. In probate actions where the claimant disputes the interest of the defendant, he shall allege in djsputes his statement of claim that he denies the defendant's interest. NV1^ere defendant's interest

98. In probate actions the party opposing a Will Notice in may, with his defence, give notice to the party setting up Pr°bate the Will that he merely insists upon the Will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the Will, and he shall thereupon

be at liberty to do so and shall not in any event be liable to pay the costs of the other side unless the Judge finds that there was no reasonable ground for opposing the Will.

99. A judgment or order for a general account Enquiry as to of the personal estate of a testator or intestate shall outstanding contain a direction for any inquiry as to what parts (if pcrsona es any) of such personal estate are outstanding or undisposed of, unless the Court or a Judge shall otherwise direct.

100. Where a person is or has been a party to Discretion to any proceedings in the capacity of trustee, personal order costs representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of such proceeding in so far as they are not recovered from or paid by any other person out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may

otherwise order only on the ground that the trustee. personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefi rather than for the benefit of the fund.

Originating summons relating to deceased person

101. The executors or administrators of £ deceased person or any of them, and the trustees undei any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor. beneficiary, next-of-kin, heir-at-law of a deceased person, or as Cestui que trust under the trust of any deed or instrument, or as claiming by assignment or administration otherwise under any such creditor or other person as aforesaid, may take out an originating summons for such relief as listed hereunder as may be specified by the summons and as the circumstances of the case may require; that is, the determination without an administration of the estate or trust of any of the following questions or matters:

(d) any question affecting the rights or interests of the person claiming to be creditor, beneficiary, next-of-kin, or heir-at-law or cestui que trust;
(e) the ascertainment of any class of creditors, beneficiary, next- of-kin, or others;
(f) the furnishing of any particular accounts by the executors or administrators or trustees and the vouching (when necessary) of such accounts;

High Court (Civil Procedure) Rules of Cross River State, 2008

Order 46: Probate and Administration OR. 46 PG 52/56
(d) the payment into court of any money
in the hands of the executors or
administrators or trustees;
j (e) directing the executors or admini-
strators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;
(h) the approval of any sale, purchase, compromise, or other transaction;
(i) the determination of any question arising in the administration of the estate or trust.
Order for administration of estate of deceased and of trust
102. Any of the persons named in Rule 101 of
this Order may in like manner apply for and obtain an
order for:
(d) the administration of the personal or real estate of the deceased;
(e) the administration of the trust;
(f) any act to be done or step to be taken which the Judge could have ordered to be done or taken if any such administration order as aforesaid has previously been made.
103. The persons to be served with the summons persons to be under Rules 101 and 102 of this Order in the first instance served shall be the following:
(a) for the determination of any question, under paragraph (a) (c), (f) or (g) of Rule 101 of this Order, the persons, or
High Court (Civil Procedure) Rules of Cross River State, 2008

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OR. 46 PC 53/56

Where summons taken out by any other person
Judge not bound to order administration

one of the persons, whose rights cr interests, are sought to be affected;
(f) for the determination of any question, underparagraph(b)ofRule 101 of this Order any member or alleged member-of the class;
(g) for the determination of any question, under paragraph (c) of Rule 101 of this Order, any person interested in taking such accounts;
(h) for the determination of any question under paragraph (d) Rule 101 of this Order, any person interested in taking such money
(i) for relief under paragraph (a) of Rule
102 of this Order, the residuary legatees. or next of kin (or some of them) or the residuary devisees, or heirs, or some of them, as the case may be;
(f) for relief under paragraph (b) of Rule
102 of this Order, the Cestui que trust or some of them;
(g) if there are more than one executor
or administrator or trustee and they do
not all concur in taking out the summons,
those who do not concur;
(h) where the summons is taken out by any person other than the executors, administrators or trustees, the said executors, administrators or trustees, or some of them, must be served.
104. It shall not be obligatory on the Judge to

pronounce or make judgment or order, whether on summons or otherwise for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined without such judgment or order.
105. Upon an application for administration or order which execution of trusts by a creditor or beneficiary under a may be made Will, intestacy, or deed of trust, where no accounts or °n a^p !cat'on

' •" ' for administra-
insufficient accounts have been rendered, the Judge may, tion or
in addition to the powers already existing: execution of
trusts, where
(a) order that the application shall stand no account or
over for a certain time, and that the I^J^
executors, administrators or trustees in been rendered.
the meantime shall render to the
applicant a proper statement of their
accounts, with an intimation that if this
is not done they may be made to pay the costs of the proceeding;
(b) when necessary, to prevent proceeding
by other creditors, or by persons
beneficially interested, make the usual
judgment or order for administration
with a proviso that no proceeding are
to be taken under such judgment or
order without leave of the Judge.

106. The issue of a summons under Rule 101 interference
with discn of trustee
of this Order shall not interfere with or control any power with discretion or discretion vested in any executor, administrator or trustee except so far as such interference or control may necessarily be involved in the particular relief sought.
High Court (Civil Procedure) Rules of Cross River State. 2008

Order 46: Probate and Administration

OR. 46 PG 55/56

Application by sumons
Appointment of new trustees and vesting order
Vesting order on sale, etc
Payment out of court

107. Any of the following applications may be made by summons:
(e) an application for the appointment of a new trustee with or without a vesting or other consequential order;
(f) an application for a vesting order or other order consequential on the appointment of a new trustee whether the appointment is made by the court or otherwise;

(g) an application for vesting or other consequential order in any case where a judgment or order has been given or made for the sale, conveyance, or transfer of any land or stock or the suing for or recovering any chose in action;
(h) an application relating to a fund paid into Court in any case coming within the provisions of Rule 8 of this Order.

Interpretation Law of Cross River State to apply

108.-(1) The provisions of the Interpretation Law shall apply to the interpretation of this Order.
(2) In this Order, unless the context otherwise requires:
"authorised officer" means any officer of the Registry who is for the time being authorised by law to administer any oath or to take any affidavit required for any purpose connected with his duties;

"gross value" in relation to any estate means the value of the estate without deduction for debts, encumbrances,
High Court (Civil Procedure) Rules of Cross River State, 2008

Order 46: Probate and Administration

OR. 46 PG 56/56

j funeral expenses or estate duty;
| "oath" means the oath required by this Order to be j sworn by every applicant for grant;
"personal applicant" means a person other than a ' trust corporation who seeks to obtain a grant without I employing a Legal Practitioner, and i
"personal application" has a corresponding meaning;
j "Poor person" means a person whose monthly income is less than N5,000.00.
"Registrar" means the Probate Registrar;
"Registry" or "Probate Registry" means the Probate Registry of the Court;
"Will" includes a codicil and any testamentary document or copy or reconstruction of it;
(3) Unless the context otherwise requires, any reference in this Order to any rule or enactment shall be construed as a reference

to that rule or enactment as amended, extended or applied by any other rule or enactment as amended or extended.
High Court (Civil Procedure) Rules of Cross River State, 2008

Demurrer abolished

ORDER 47 PROCEEDINGS IN LIEU OF DEMURRER
1. No demurrer shall be allowed.

2. -(1) Any party may by his pleading raise am
Points of law . -.,,,. ,. ^, •
may be raised Point of law and the Judge may dispose of the point sc by pleadings raised before or at the trial.
(2) If in the opinion of the Judge, the decision n such point of law substantially disposes of the whole proceedings or of any distinct part thereof, the Judge may make such decision as may be just.

ORDER 48 APPEALS FROM MAGISTRATE'S COURT, ETC.
1. Every appeal shall be brought by Notice of Notice of Appeal which shall be lodged in the lower Court within APPeal 30 days ofthe decision appealed from and served on all other parties affected by the appeal within that period.
| 2- (1) The Notice of appeal shall set out the Contents, etc.
reference number ofthe proceedings in which the decision of Notlce of complained of was given, the names ofthe parties, the date ofthe decision and the grounds for appeal in full.
(5) Where the appellant complains only of a part ofthe decision, the Notice of appeal shall specify the part complained of; otherwise the appeal shall be taken to be against the decision as a whole.
(6) The Notice of appeal shall give an address j within the Judicial Division in which is situated the lower Court appealed from, to which notices can be sent to the appellant.
(7) The Notice of appeal shall be in Form 47 in Form 47 the appendix and may be varied to suit the circumstances
I ofthe case but so that no variation of substance shall be 'made.
3.-(1) The Registrar ofthe lower Court shall, Copies of ! within 3 months ofthe decision appealed from, prepare recor °
i rr r r proceedings
as many certified copies ofthe record of proceedings,

including the Notice of Appeal, required for the
| consideration ofthe appeal as there are parties on record.

High Court (Civil Procedure) Rules of Cross River State, 2008

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Order 48: Appeals from Magistrate's Court. Etc. OR. 48 PG 2/12
(2) The Registrar shall within 7 days of preparir g
the certified copies of the record of proceedings an:
Notice of Appeal referred to in sub-rule 1 of this Rul e
notify the parties to come forward and collect their own
copies upon payment of necessary fees, and shall sen i
copies also to the Registrar of the Court in the Judicia]
Division in which the lower Court is situated, and th e
appeal shall be decided by the Judge of the Division.
(3) Except where the fees for preparing the
copies are remitted, a deposit decided upon by the
Registrar as likely to cover the fees, shall be made by
the appellant before the preparation of the copies.
Fining of address 4.-(1) The appellant shall within 30 days of the receipt of the Record of Proceedings from the lowe r
Court file in the Court a written address which snail
contain succinct statement of his argument in the appeai.
(4) The respondent shall also within 30 days c■ f the service of the written address of the appellant on him file the respondent's written address, which shal answer all material points of substance contained in the appellant's written address and contain all the points raised therein which the respondent wishes to concede as well as reasons why the appeal ought to be dismissed.
(5) The appellant may if necessary, within 14 days of the service on him of the respondent's written address file and serve a reply written address which shall deal with all new points arising from the respondent's written address.
High Court (Civil Procedure) Rules of Cross River State, 2001

Order 48: Appeals from Magistrate s Court, Etc. OR. 48 PG 3/12
(4) All parties, whose interests are identical or joint, shall file a joint written address, and separate written addresses may be filed only by those parties whose interests are separate or in conflict.
5. The times prescribed in Rules 1 to 4 may be proceeding
enlarged at any time by the Court on such terms (if any) time

as may seem fit, after notice is given to the respondent by the appelant ofhis application for enlargement of time.

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

Constitution

7. All civil appeals from lower Court shall be 0f Court heard by one Judge of the Court. hearing appeals

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

9.-(l) If, on the day of hearing or at any where adjournment of the case, the appellant does not appear, appellant fails the appeal shall be struck out and the decision shall be t0 appear affirmed, unless the Court thinks fit, for sufficient cause to order otherwise.

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(2) If, in any such case the respondent appears, the judgement shall be with costs of the appeal against the appellant, unless the Court expressly orders otherwise; but if the respondent does not appear, the cost of the appeal shall be at the discretion of the Court.

where 10. If, on the day of hearing and at any appci lant adjournment of the case, the appellant appears, the Court appears shall, whether the respondent appears or not, proceed to the hearing or further hearing and determination of the appeal and shall give judgement according to the merits of the case without regarding any imperfection or defect of form; but if it appears or is so proved to the Court that the appellant has not complied with requirements precedent to the hearing of an appeal hereinbefore contained, the Court shall dismiss the appeal and affirni the decision, with or without costs of the appeal against the appellant.

Appeal limited to grounds given in notice.

11. On hearing, it shall not be competent for the appellant to go into any other reasons for appeal than those set forth in his notice of grounds of appeal; but where, in the opinion of the Court, other grounds of appeal than those set forth in the memorandum of grounds of appeal should have been given, or the statement of grounds of appeal is defective, the Court, in its discretion, may allow such amendments of the memorandum of grounds of appeal upon such conditions as to service upon the respondent and as to costs as it may think fit.

Request to confirm judgement on other urounds.

12.- (1) The respondent may give notice tha: he intends at the hearing to ask the Court to confirm the

judgement of the lower Court on grounds other than those stated by that Court.

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

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

13.- (1) the respondent may file grounds of appeal against any part of the judgement of the lower Court.

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

14.- (1) No objection on account of any defect in the form of setting forth any ground of appeal shall be objections to form of

aUowe^unlesstheCourtisoftheopinionthattheground f°u"a[s °

of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the respondent to enquire into the subject-matter thereof or to prepare for the hearing.

(2) In any case where the Court is of the opinion that any objection to any ground of appeal ought to prevail, the Court may, if it thinks fit, cause the ground

Defects in proceedings under appeal.

of appeal forthwith to be amended upon such terms and conditions, if any, as the Court may think just.

15. On any appeal from a decision of a lower Court; no objection shall be taken or allowed to any proceeding in such Court for any defect or error which might have been amended by that Court, or to any complaint, summons, warrant, or other process to or of such Court for any variance between any complaint or summons and the evidence adduced in support thereof in such Court:

Defects in notice of appeal or recognisance

Provided, however, that if any error, defect, or variance mentioned in this Rule appears to the Court at the hearing of any appeal to be such that the appellant has been thereby deceived or misled, it shall be lawful for the Court either to refer the case back to the lower Court with directions to re-hear and determine it or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.

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

adjournment, if any, being made on such terms as the Court may think just.

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

(c) order such evidence to be adduced before the Court on some day to be fixed in that behalf; or
(d) refer the case back to the lower Court to take such evidence, and may in such case either direct the lower Court to adjudicate afresh after taking such evidence and subject to such directions in law, if any, as the Court think fit to give, or direct it, after taking such evidence, to report specific findings of fact forthe information of the Court, and on any such reference, the case shall, so far as may be practicable and necessary, be dealt with as if it were being heard in the first instance.
18.-(1) When additional evidence is to be taken Mode of by the Court and specific findings of fact reported, it ^"8 shall certify the evidence to the Court which shall thereupon proceed to dispose of the appeal.
(2) The appellant or his Legal Practitioner shall be present when the additional evidence is taken.
High Court (Civil Procedure) Rules of Cross River State, 2008

(3) Evidence taken in pursuance of Rule 17 shall be taken as if it were evidence taken at the trial before the lower Court.
(4) When forwarding to the Court any additional evidence taken by a lower Court in pursuance of Rule •17 the lower Court may express its opinion on the demeanour of the witnesses and of the value of their evidence and may also, if it is the same Court against whose decision the appeal has been made, state whether or not it would have come to a different decision had the additional evidence been brought forward at the trial.
Fees. Second Schedule
19. The fees in the Second Schedule shall be chargeable in civil appeals save where they would have to be paid by a Government officer acting in his official capacity or where the lower Court or the Court waives or remits the fees on the ground of the poverty of the person changeable therewith where it appears that there are substantial grounds of appeal.
Stay of execution
20.—(1) On application being made for stay of execution under any enactment establishing the lower Court, the lower Court or the Court may impose one or more of the following conditions-
(a) that the appellant shall deposit a sum fixed by the Court not exceeding the amount of the money or the value of the property

affected by the decision or judgement appealed from, or give security to the satisfaction of the Court for the said sum;
High Court (Civil Procedure) Rules of Cross River State, 2008

Order 48: Appeals from Magistrate's Court, Etc. OR. 48 PG 9/12
(f) that the appellant shall deposit a sum equal to the amount of the costs allowed against him or give security to the satisfaction of the Court for the said sum;
(g) that the appellant shall, where the decision or judgement appealed from relates to possession or lands or houses, give security to the satisfaction of the Court for the performance of the decision or judgement in the event of the appeal being dismissed;
(h) that the appellant's property shall be seized and attached pending the making of a deposit or the giving of security as aforesaid, including a deposit or security for the expenses incidental to the seizure and attachment;
(i) that the appellant's property shall be seized, and attached and sold and the net proceeds deposited in Court pending determination of the appeal.
(2) Any order made on any such application shall limit the time (not being more than thirty days) for the performance of the conditions imposed, and direct that in default of the performance within the period of time so limited, execution may issue or proceed.
(3) An application for stay of execution under the enactment establishing the lower Court may be made at any time after lodgement of the Notice of appeal and shall in the first instance be made to the lower Court; but
High Court (Civil Procedure) Rules of Cross River State, 2008

Order 48: Appeals from Magistrate s Court, Etc. OR. 48 PG10/12
where execution has been ordered by the Court the application shall not be made to the lower Court but to the Court.
(7) The application may be ex-parte but the Court may direct notice thereof to be given to the other party to the appeal; and where an order is made ex-parte the Registrar of the Court shall notify the other party of the order made.
(8) Where the appellant proposes to give security instead of making a deposit, the application shall state the nature of the security and the name of the surety proposed (if any).
(9) Any party dissatisfied with an order made by the lower Court may apply to the Court by motion (original or interlocutory,

as the case may require) with notice to the other party for a review of the order, and the Court may thereupon make such order as may seem just.

(7) An appeal shall not operate as a stay of execution under the decision or judgement appealed from except so far as the lower Court or the Court may order; and no intermediate act or proceeding shall be invalidated except so far as either Court may direct.

Costs 21. The Court may make such order as to the payment of costs by orto the appellant as it may consider to be just and the order may be made also in any case where an appeal has not been entered into or prosecuted.

High Court (Civil Procedure) Rules of Cross River State. 2008

Order 48: Appeals from Magistrate's Court, Etc. OR. 48 PG11/12

22.- (1) The Court may, in special circumstances, Security of upon application on notice by motion (original or costs* interlocutory as the case may require), supported by affidavit, order the appellant to deposit such sum or give such security as may seem fit for the respondent's cost of appeal including the costs incidental to the application.

(2) The order shall limit the time (not exceeding 30 days) within which the deposit or security shall be made or given and may direct that in default of its being made or given within the time so limited the appeal shall without further order stand dismissed.

(3) Where an appeal so stands dismissed the respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such costs may be stated in the order in anticipation or may be assessed at any time by the Court of its own motion or on application made ex-parte or on notice, as the Court may see it.

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I (4) Where an appeal so stands dismissed the

\ appellant shall take no further step or proceeding therein

\ save by leave of the Court or for reinstatement of the

\ appeal, which may be granted on such terms (if any) as

\ may seem fit upon application by motion on notice given

\ within a month of such dismissal (but not otherwise).

(5) Subject and without prejudice to the discretion of the Court to grant costs where it seems proper on an application made under sub rule (1), cost shall not normally be granted to the applicant

save where the net proceeds of execution levied on the appellant's

Order 48: Appeals from Magistrate s Court, Etc. OR. 48 PG12/12

goods are sufficient to satisfy the amount payable under the judgment or decision appealed from.

Orders of High Court to Court.

23.- (1) When a case is decided on appeal the Court shall certify its judgment or order to the lower Court in bC ^stnrtC,d l° wmc^ me decision appealed against was pronounced.

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

Enforcement of judgement

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

Enforcement 0 or ers*

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

High Court may enlarge tjme>

26. TheCourtmay,ifitthinksfit,enIargeanyperiod _. „ ,,,.-., of time prescribed by this Order.

interpretation

27. In this Order- "the lower Court" means tins Court whose judgement is appealed against. " Judgement" includes an order or ruling.

ORDER 49 FEES AND ALLOWANCES

1. Subject to the provisions of any written law and of the foregoing Orders- Fees: 1st and 2nd Schedule

(c) the fees set out in the First and Second Schedules hereunder shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in those Schedules;
(d) the allowances set out in Part II of the Allowances.
Third Schedule shall be payable to the Part H of 3rd
r- . Schedule
various categories of witnesses mentioned therein by any person at whose instance the testify:
Provided that a witness who testifies at the instance of the Court acting on its own motion shall be paid out of public revenue.
2. The regulations set out in the Fourth Schedule Regulations:
shall be observed by all officers of Court concerned 4th Schedule
with the rendering of services, or collection of fees
payable, under the provisions of the foregoing Order.
High Court (Civil Procedure) Rules of Cross River State, 2008

HIGH COURT OF CROSS RIVER STATE (CIVIL PROCEDURE) RULES
APPENDIX List of Forms

Form No. Title
1. General Form of Writ of Summons
2. Writ for service out of the Jurisdiction
3. General Form of Orginating Summons
4. Originating Summons
5. Form of Ex-parte Originating Summons
6. Notice of appointment to hear Originating Summons
7. Form of Memorandum for Renewed Originating Process
8. Request to Minister of Foreign Affairs to transmit Writ to Foreign Government.
9. Request for Service Abroad
10. Letter Forwarding Request for Substituted Service
11. Request to Minister of Foreign Affairs to transmit Notice of Writ to a Foreign Government
12. Memorandum of Appearance
13. Notice of Counter-Claim
14. Concession to defence
15. Interrogatories
16. Answer to interrogatories
17. Affidavit as to documents
18. Hearing Notice for pre-trial conference
19. Pre-trial Sheet
20. Form for guarantee for the acts and default of a

receiver
21. Receiver's Security by undertaking
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33. Receiver's Account
34. Affidavit verifying Receiver's Account
35. Form of Order for Account and Inquiries
36. Notice of Payment into Court
37. Acceptance of Sum paid into Court
38. Acceptance of sum paid into Court by one of several defendants
39. Legal practitioner's undertaking as to expenses
40. Letter of request to take evidence abroad (Con¬vention Country)
41. Order for appointment of the Nigerian Diplomatic agent as Special examiner (in Convention Country)
42. Form of Praecipe
43. Subpoena ad Testificandum
3 3. Habeas Corpus ad Testificandum
34. Subpoena duces Tecum
3 5. Originating Summons for Possession
47. Order for Possession
48. Order for payment of Principal Moivv. interest, secured by Mortgage or charge.
49. Order for possession of property forming a security for payment to the claimant of any principal money or interest
50. Order for payment of principal money or interest secured by mortgage or charge and for possession of property comprised therein
51. Certificate of the Chief Registrar
52. Surety's guarantee
53. Surety's guarantee on application for resealing
54. Caveat
55. Warning to Caveator
56. Appearance to warning of citation
57. Notice of election to redeem life interest
High Court (Civil Procedure) Rules of Cross River State, 2008 251

HIGH COURT OFCROSS RIVER STATE (CIVIL PROCEDURE) RULES
FORM1
General Form of Writ of Summons
(0.7,r.3)

/ /20
(Here put the Judicial Division letter and number of the suit (see note (a) following this form).
In the High Court of Cross River State
In the Judicial Division
Between
A.B .' Claimant
and
CD Defendant
To CD. of in the of
You are hereby commanded that within eight days after the service of this writ on you, inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit A.B and take notice that in default of your so doing the Claimant may proceed therein, and judgment may be given in your absence.
DATED this day of 20
Registrar Memorandum to be subscribed on the writ
252 High Court (Civil Procedure) Rules of Cross River State, 2008
Order 46: Probate and Administration

OR. 46 PG 46/56

together with any consent in writing to the application given by any person not under disability who would be prejudiced by the grant.
81. An application for an order for a grant of Grants Durant special administration where a personal representative absentia is residing outside the State shall be made to the Court by a motion.
Notice of election by surviving spouse to redeem life interest. Form 46
82.—(1) Where a surviving spouse who is the sole personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to the Registrar by filing a notice in Form 46 with such variations as circumstances may require.
(2) A notice filed under this Rule shall be notice on the grant and the record shall be open to inspection.
Photocopy of Wills or other documents maybe certified and sealed
83.-(1) Where copies are required of original Wills or other documents deposited under the provisions of any written law,

such copies may be photocopies sealed with the seal of the Registry and issued as office copies, and where such office copies are available copies certified under the hand of a Registrar to be true copies shall be issued only if it is required that the seal of the court be affixed thereto.
(2) Copies, not being photocopies of original Wills or other documents deposited as aforesaid shall be examined against the documents of which they purport
High Court (Civil Procedure) Rules of Cross River State, 2008

Order 46: Probate and Administration

OR. 46 PG 47/56

Power to require
application to be made by summons or motion
Duties and powers to be performed and exercised by Probate Judge/ Probate Registrar

to be copies if so required by the person demanding the copy, and in such case the copy shall be certified under the hand of a Registrar to be a true copy and may in addition be sealed with the seal of the Court.
88. The Registrar may require any application under this Order to be made by motion or summons.
89. The duties imposed and powers conferred upon the Court or Judge as the case may be by this Order shall be performed and exercised by the Probate Registrar on behalf of the Court subject to any directions which the Chief Judge may give restricting or enlarging this delegation to the Probate Registrar of the duties and powers of the Court under this Order or the Probate Judge designated by the Chief judge pursuant to Rule 16 hereof.

Exercise of powers of Judge

86.-(1) Any person aggrieved by a decision or requirement of the Registrar may by summons apply to a Judge for that decision or requirement to be reviewed.
(6) If in the case of a summons for review under sub-rule 1 of this Rule, any person besides the applicant appeared or was

represented before the Registrar from whose decision orrequirement the application for review is brought, the summons shall be issued within 7 days thereof for hearing on the first available day and shall be served on every such person concerned.

(7) On such review the Judge shall have power to cancel or amend anything which may have been done by the Probate Registrar.

87. The Court may refuse to entertain any application under Rule 86 of this Order if it considers that there has been unreasonable delay by the applicant in making his application.

Court may review application to

88.-(1) A Judge or the Registrar may direct that a motion on notice or summons for the service of which no other provision is made in this Order shall be served on such person or persons as the Judge or Registrar may direct.

Service of mo|lon on summons

(2) Where by the provisions of this Order or by any direction given under sub-rule 1 of this Rule a motion on notice or summons is required to be served on any person, it shall be served not less than 5 days, before the hearing of the motion or summons.

89. Unless the Registrar otherwise directs or this Order provides, any notice or other document required to be given or served on any person may be given or served by leaving it at, or by sending it by courier to that person's address for service, or if he has no address for service, his last known address.

service of notice and documents

94. An affidavit used in non-contentious probate business shall satisfy the requirements of Order 32.

Affidavit

95. The provisions of Order 5 shall apply to the -nme computation, enlargement and abridgement of time under this Order.

92. Subject in any particular case to any direction Application given by a Judge, this Order shall apply to any proceeding

which is pending on the date on which these Rules come into operation as well as to any proceeding commence on or after that date:

Provided that where the deceased died before the commencement of these Rules, the right to a grant shall, subject to the provisions of any enactment, be determined by the principles and Rules in accordance with which the Court would have acted at the date of the death.

Contentious ofsuits' 0rm 93. Suits in respect of probate shall be instituted an<* carr*ed on as nearly as possible in the like manner and subject to the same Rules of procedure as suits in respect of civil claims.

III. Proceeding Generally

Probate actions

94. In Probate actions, the originating process shall state whether the Claimant claims as creditor, executor, administrator, beneficiary, next-of- kin or in any other capacity.

Service of writ of summons 95. \n probate actions service of a writ of summons i_ 1 .CTJI-II J^.T may by leave of a Judge be allowed out of Nigeria.

Pleadings and further actions 96. In probate actions a party shal 1 state with regard to every defence which is pleaded, what is the substance of the case on which it is intended to rely; and further where it is pleaded that the testator was not of sound mind, memory and understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial and except by leave of a

Judge no evidence shall be given of any other instances at the trial.

97. In probate actions where the claimant NV1^ere disputes the interest of the defendant, he shall allege in djsputes his statement of claim that he denies the defendant's defendant's interest. interest

98. In probate actions the party opposing a Will Notice in may, with his defence, give notice to the party setting up Pr°bate the Will that he merely insists upon the Will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the Will, and he shall thereupon be at liberty to do so and shall not in any event be liable to pay the costs of the other side unless the Judge finds that there was no reasonable ground for opposing the Will.

99. A judgment or order for a general account Enquiry as to of the personal estate of a testator or intestate shall outstanding contain a direction for any inquiry as to what parts (if pcrsona es any) of such personal estate are outstanding or undisposed of, unless the Court or a Judge shall otherwise direct.

100. Where a person is or has been a party to Discretion to any proceedings in the capacity of trustee, personal order costs representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of such proceeding in so far as they are not recovered from or paid by any other person out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may

otherwise order only on the ground that the trustee. personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefi rather than for the benefit of the fund.

Originating summons relating to deceased person

101. The executors or administrators of £ deceased person or any of them, and the trustees undei any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor. beneficiary, next-of-kin, heir-at-law of a deceased person, or as Cestui que trust under the trust of any deed or instrument, or as claiming by assignment or administration otherwise under any such creditor or other person as aforesaid, may take out an originating summons for such relief as listed hereunder as may be specified by the summons and as the circumstances of the case may require; that is, the determination without an administration of the estate or trust of any of the following questions or matters:

(g) any question affecting the rights or interests of the person claiming to be creditor, beneficiary, next-of-kin, or heir-at-law or cestui que trust;

(h) the ascertainment of any class of creditors, beneficiary, next- of-kin, or others;

(i) the furnishing of any particular accounts by the executors or administrators or trustees and the vouching (when necessary) of such accounts;

High Court (Civil Procedure) Rules of Cross River State, 2008

Order 46: Probate and Administration OR. 46 PG 52/56

(d) the payment into court of any money
in the hands of the executors or
administrators or trustees;

j (e) directing the executors or admini-
strators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;

(j) the approval of any sale, purchase, compromise, or other transaction;

(k) the determination of any question arising in the administration of the estate or trust.

Order for administration of estate of deceased and of trust

102. Any of the persons named in Rule 101 of
this Order may in like manner apply for and obtain an
order for:

(g) the administration of the personal or real estate of the deceased;

(h) the administration of the trust;

(i) any act to be done or step to be taken which the Judge could have ordered to be done or taken if any such administration order as aforesaid has previously been made.

103. The persons to be served with the summons persons to be under Rules 101 and 102 of this Order in the first instance served shall be the following:

(a) for the determination of any question, under paragraph (a) (c), (f) or (g) of Rule 101 of this Order, the persons, or

Where summons taken out by any other person
Judge not bound to order administration

one of the persons, whose rights cr interests, are sought to be affected;

(j) for the determination of any question, underparagraph(b)ofRule 101 of this Order any member or alleged member-of the class;

(k) for the determination of any question, under paragraph (c) of Rule 101 of this Order, any person interested in taking such accounts;

(l) for the determination of any question under paragraph (d) Rule 101 of this Order, any person interested in taking such money

(m) for relief under paragraph (a) of Rule
102 of this Order, the residuary legatees. or next of kin (or some of them) or the residuary devisees, or heirs, or some of them, as the case may be;

(f) for relief under paragraph (b) of Rule
102 of this Order, the Cestui que trust or some of them;

(g) if there are more than one executor
or administrator or trustee and they do
not all concur in taking out the summons,
those who do not concur;

(h) where the summons is taken out by any person other than the executors, administrators or trustees, the said executors, administrators or trustees, or some of them, must be served.

104. It shall not be obligatory on the Judge to

pronounce or make judgment or order, whether on summons or otherwise for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined without such judgment or order.

105. Upon an application for administration or order which execution of trusts by a creditor or beneficiary under a may be made Will, intestacy, or deed of trust, where no accounts or °n a^p !cat'on ' •" ' for administra- insufficient accounts have been rendered, the Judge may, tion or in addition to the powers already existing: execution of trusts, where

(a) order that the application shall stand no account or over for a certain time, and that the I^J^ executors, administrators or trustees in been rendered. the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceeding;

(b) when necessary, to prevent proceeding by other creditors, or by persons beneficially interested, make the usual judgment or order for administration with a proviso that no proceeding are to be taken under such judgment or order without leave of the Judge.

106. The issue of a summons under Rule 101 interference with discn of trustee of this Order shall not interfere with or control any power with discretion or discretion vested in any executor, administrator or trustee except so far as such interference or control may necessarily be involved in the particular relief sought.

Application by sumons
Appointment of new trustees and vesting order
Vesting order on sale, etc
Payment out of court

107. Any of the following applications may be made by summons:
(i) an application for the appointment of a new trustee with or without a vesting or other consequential order;
(j) an application for a vesting order or other order consequential on the appointment of a new trustee whether the appointment is made by the court or otherwise;
(k) an application for vesting or other consequential order in any case where a judgment or order has been given or made for the sale, conveyance, or transfer of any land or stock or the suing for or recovering any chose in action;
(l) an application relating to a fund paid into Court in any case coming within the provisions of Rule 8 of this Order.

Interpretation Law of Cross River State to apply

108.-(1) The provisions of the Interpretation Law shall apply to the interpretation of this Order.
(2) In this Order, unless the context otherwise requires:
"authorised officer" means any officer of the Registry who is for the time being authorised by law to administer any oath or to take any affidavit required for any purpose connected with his duties;

"gross value" in relation to any estate means the value of the estate without deduction for debts, encumbrances,
High Court (Civil Procedure) Rules of Cross River State, 2008

Order 46: Probate and Administration

j funeral expenses or estate duty;

| "oath" means the oath required by this Order to be j sworn by every applicant for grant;
"personal applicant" means a person other than a ' trust corporation who seeks to obtain a grant without I employing a Legal Practitioner, and i
"personal application" has a corresponding meaning;
j "Poor person" means a person whose monthly income is less than N5,000.00.
"Registrar" means the Probate Registrar;
"Registry" or "Probate Registry" means the Probate Registry of the Court;
"Will" includes a codicil and any testamentary document or copy or reconstruction of it;
(3) Unless the context otherwise requires, any reference in this Order to any rule or enactment shall be construed as a reference to that rule or enactment as amended, extended or applied by any other rule or enactment as amended or extended.
High Court (Civil Procedure) Rules of Cross River State, 2008

Demurrer abolished

ORDER 47 PROCEEDINGS IN LIEU OF DEMURRER
1. No demurrer shall be allowed.

2. -(1) Any party may by his pleading raise am
Points of law . -.,,,. ,. ^, •
may be raised Point of law and the Judge may dispose of the point sc by pleadings raised before or at the trial.
(2) If in the opinion of the Judge, the decision n such point of law substantially disposes of the whole proceedings or of any distinct part thereof, the Judge may make such decision as may be just.

ORDER 48 APPEALS FROM MAGISTRATE'S COURT, ETC.
1. Every appeal shall be brought by Notice of Notice of Appeal which shall be lodged in the lower Court within APPeal 30 days ofthe decision appealed from and served on all other parties affected by the appeal within that period.
| 2- (1) The Notice of appeal shall set out the Contents, etc.

reference number ofthe proceedings in which the decision of Notlce of complained of was given, the names ofthe parties, the date ofthe decision and the grounds for appeal in full.

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

(9) The Notice of appeal shall give an address j within the Judicial Division in which is situated the lower Court appealed from, to which notices can be sent to the appellant.

(10) The Notice of appeal shall be in Form 47 in Form 47 the appendix and may be varied to suit the circumstances
I ofthe case but so that no variation of substance shall be 'made.

3.-(1) The Registrar ofthe lower Court shall, Copies of ! within 3 months ofthe decision appealed from, prepare recor °
i rr r r proceedings
as many certified copies ofthe record of proceedings,
including the Notice of Appeal, required for the
| consideration ofthe appeal as there are parties on record.

(2) The Registrar shall within 7 days of preparir g
the certified copies of the record of proceedings an:
Notice of Appeal referred to in sub-rule 1 of this Rul e
notify the parties to come forward and collect their own
copies upon payment of necessary fees, and shall sen i
copies also to the Registrar of the Court in the Judicia]
Division in which the lower Court is situated, and th e
appeal shall be decided by the Judge of the Division.

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

Fining of address

4.-(1) The appellant shall within 30 days of the receipt of the Record of Proceedings from the lowe r
Court file in the Court a written address which snail
contain succinct statement of his argument in the appeai.

(6) The respondent shall also within 30 days c■ f the service of the written address of the appellant on him file the respondent's

written address, which shal answer all material points of substance contained in the appellant's written address and contain all the points raised therein which the respondent wishes to concede as well as reasons why the appeal ought to be dismissed.

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

High Court (Civil Procedure) Rules of Cross River State, 2001

Order 48: Appeals from Magistrate s Court, Etc. OR. 48 PG 3/12

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

5. The times prescribed in Rules 1 to 4 may be proceeding enlarged at any time by the Court on such terms (if any) time as may seem fit, after notice is given to the respondent by the appelant ofhis application for enlargement of time.

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

Constitution

7. All civil appeals from lower Court shall be 0f Court heard by one Judge of the Court. hearing appeals

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

9.-(l) If, on the day of hearing or at any where adjournment of the case, the appellant does not appear, appellant fails the appeal shall be struck out and the decision shall be t0 appear affirmed, unless the Court thinks fit, for sufficient cause to order otherwise.

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High Court (Civil Procedure) Rules of Cross River State, 2008

Order 48: Appeals from Magistrate s Court. Etc. OR. 48 PG 4/12

(2) If, in any such case the respondent appears, the judgement shall be with costs of the appeal against the appellant, unless the Court expressly orders otherwise; but if the respondent does not

appear, the cost of the appeal shall be at the discretion of the Court.

where appci lant appears

10. If, on the day of hearing and at any adjournment of the case, the appellant appears, the Court shall, whether the respondent appears or not, proceed to the hearing or further hearing and determination of the appeal and shall give judgement according to the merits of the case without regarding any imperfection or defect of form; but if it appears or is so proved to the Court that the appellant has not complied with requirements precedent to the hearing of an appeal hereinbefore contained, the Court shall dismiss the appeal and affirni the decision, with or without costs of the appeal against the appellant.

Appeal limited to grounds given in notice.

11. On hearing, it shall not be competent for the appellant to go into any other reasons for appeal than those set forth in his notice of grounds of appeal; but where, in the opinion of the Court, other grounds of appeal than those set forth in the memorandum of grounds of appeal should have been given, or the statement of grounds of appeal is defective, the Court, in its discretion, may allow such amendments of the memorandum of grounds of appeal upon such conditions as to service upon the respondent and as to costs as it may think fit.

Request to confirm judgement on other urounds.

12.- (1) The respondent may give notice tha: he intends at the hearing to ask the Court to confirm the

judgement of the lower Court on grounds other than those stated by that Court.

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

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

13.- (1) the respondent may file grounds of appeal against any part of the judgement of the lower Court.

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

14.- (1) No objection on account of any defect in the form of setting forth any ground of appeal shall be allowed of

objections to form of

aUowe^unlesstheCourtisoftheopinionthattheground of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the respondent to enquire into the subject-matter thereof or to prepare for the hearing.

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(2) In any case where the Court is of the opinion that any objection to any ground of appeal ought to prevail, the Court may, if it thinks fit, cause the ground

Defects in proceedings under appeal.

of appeal forthwith to be amended upon such terms and conditions, if any, as the Court may think just.

15. On any appeal from a decision of a lower Court; no objection shall be taken or allowed to any proceeding in such Court for any defect or error which might have been amended by that Court, or to any complaint, summons, warrant, or other process to or of such Court for any variance between any complaint or summons and the evidence adduced in support thereof in such Court:

Defects in notice of appeal or recognisance

Provided, however, that if any error, defect, or variance mentioned in this Rule appears to the Court at the hearing of any appeal to be such that the appellant has been thereby deceived or misled, it shall be lawful for the Court either to refer the case back to the lower Court with directions to re-hear and determine it or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.

16. No objection shall be taken or allowed, on any appeal, to any Notice of Appeal or to recognisance entered into under this Order for the due prosecution of the appeal for any alleged error or

defect therein; but if the error or defect appears to the Court to be such that the respondent on the appeal has been thereby deceived or misled, it shall be lawful for the Court to amend it and, if it is expedient to do so, also to adjourn the further hearing of the appeal, the amendment and the

adjournment, if any, being made on such terms as the Court may think just.
17. The Court may, in any case where it Additional considers it necessary that evidence should be adduced, evidence-either-
(e) order such evidence to be adduced before the Court on some day to be fixed in that behalf; or
(f) refer the case back to the lower Court to take such evidence, and may in such case either direct the lower Court to adjudicate afresh after taking such evidence and subject to such directions in law, if any, as the Court think fit to give, or direct it, after taking such evidence, to report specific findings of fact forthe information of the Court, and on any such reference, the case shall, so far as may be practicable and necessary, be dealt with as if it were being heard in the first instance.
18.-(1) When additional evidence is to be taken Mode of by the Court and specific findings of fact reported, it ^"8 shall certify the evidence to the Court which shall thereupon proceed to dispose of the appeal.
(2) The appellant or his Legal Practitioner shall be present when the additional evidence is taken.

(3) Evidence taken in pursuance of Rule 17
shall be taken as if it were evidence taken at the trial
before the lower Court.
(4) When forwarding to the Court any additional
evidence taken by a lower Court in pursuance of Rule
•17 the lower Court may express its opinion on the
demeanour of the witnesses and of the value of their
evidence and may also, if it is the same Court against

whose decision the appeal has been made, state whether or not it would have come to a different decision had the additional evidence been brought forward at the trial.

Fees. Second Schedule

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

Stay of execution

20.—(1) On application being made for stay of execution under any enactment establishing the lower Court, the lower Court or the Court may impose one or more of the following conditions-

(a) that the appellant shall deposit a sum fixed by the Court not exceeding the amount of the money or the value of the property affected by the decision or judgement appealed from, or give security to the satisfaction of the Court for the said sum;

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

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

(l) that the appellant's property shall be seized and attached pending the making of a deposit or the giving of security as aforesaid, including a deposit or security for the expenses incidental to the seizure and attachment;

(m) that the appellant's property shall be seized, and attached and sold and the net proceeds deposited in Court pending determination of the appeal.

(2) Any order made on any such application shall limit the time (not being more than thirty days) for the performance of the conditions imposed, and direct that in default of the performance within the period of time so limited, execution may issue or proceed.

(3) An application for stay of execution under the enactment establishing the lower Court may be made at any time after

lodgement of the Notice of appeal and shall in the first instance be made to the lower Court; but
High Court (Civil Procedure) Rules of Cross River State, 2008

Order 48: Appeals from Magistrate s Court, Etc. OR. 48 PG10/12
where execution has been ordered by the Court the application shall not be made to the lower Court but to the Court.
(10) The application may be ex-parte but the Court may direct notice thereof to be given to the other party to the appeal; and where an order is made ex-parte the Registrar of the Court shall notify the other party of the order made.
(11) Where the appellant proposes to give security instead of making a deposit, the application shall state the nature of the security and the name of the surety proposed (if any).
(12) Any party dissatisfied with an order made by the lower Court may apply to the Court by motion (original or interlocutory, as the case may require) with notice to the other party for a review of the order, and the Court may thereupon make such order as may seem just.
(7) An appeal shall not operate as a stay of
execution under the decision or judgement appealed from
except so far as the lower Court or the Court may order;
and no intermediate act or proceeding shall be invalidated
except so far as either Court may direct.
Costs 21. The Court may make such order as to the
payment of costs by orto the appellant as it may consider to be just and the order may be made also in any case where an appeal has not been entered into or prosecuted.
High Court (Civil Procedure) Rules of Cross River State. 2008

Order 48: Appeals from Magistrate's Court, Etc. OR. 48 PG11/12
22.- (1) The Court may, in special circumstances, Security of upon application on notice by motion (original or costs* interlocutory as the case may require), supported by affidavit, order the appellant to deposit such sum or give such security as may seem fit for the respondent's cost of appeal including the costs incidental to the application.
(2) The order shall limit the time (not exceeding 30
days) within which the deposit or security shall be made
or given and may direct that in default of its being made
or given within the time so limited the appeal shall without
further order stand dismissed.

(3) Where an appeal so stands dismissed the respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such costs may be stated in the order in anticipation or may be assessed at any time by the Court of its own motion or on application made ex-parte or on notice, as the Court may see it.

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I (4) Where an appeal so stands dismissed the \ appellant shall take no further step or proceeding therein \ save by leave of the Court or for reinstatement of the \ appeal, which may be granted on such terms (if any) as \ may seem fit upon application by motion on notice given \ within a month of such dismissal (but not otherwise).

(5) Subject and without prejudice to the discretion of the Court to grant costs where it seems proper on an application made under sub rule (1), cost shall not normally be granted to the applicant save where the net proceeds of execution levied on the appellant's

goods are sufficient to satisfy the amount payable under the judgment or decision appealed from.

Orders of 23.- (1) When a case is decided on appeal the Court High Court to shall certify its judgment or order to the lower Court in bC ^stnrtC,d l° wmc^ me decision appealed against was pronounced.

Court.

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

Enforcement 24. After the pronouncement of the judgement of of judgement me Court, the lower Court from which the appeal came shall have the same jurisdiction and power to enforce, and shall enforce, any decision which may have been affirmed, modified, amended, or substituted by the Court or any judgement which may have been pronounced by the Court, in the same manner in all respects as if such decision or judgement had been pronounced by itself.

Enforcement 25. Any order given or made by the Court may be

0 or ers* enforced by the Court or by the lower Court as may be most expedient.

High Court may enlarge tjme> of time

26. TheCourtmay,ifitthinksfit,enIargeanyperiod _. „ ,,,.-.,

prescribed by this Order.

interpretation

27. In this Order- "the lower Court" means tins Court whose judgement is appealed against. " Judgement" includes an order or ruling.

ORDER 49 FEES AND ALLOWANCES

1. Subject to the provisions of any written law and of the foregoing Orders-

Fees: 1st and 2nd Schedule

(e) the fees set out in the First and Second Schedules hereunder shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in those Schedules;

(f) the allowances set out in Part II of the Allowances.

Third Schedule shall be payable to the various categories of witnesses mentioned therein by any person at whose instance the testify:

Part H of 3rd r- . Schedule

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

2. The regulations set out in the Fourth Schedule shall be observed by all officers of Court concerned with the rendering of services, or collection of fees payable, under the provisions of the foregoing Order.

Regulations: 4th Schedule

High Court (Civil Procedure) Rules of Cross River State, 2008

HIGH COURT OF CROSS RIVER STATE (CIVIL PROCEDURE) RULES

APPENDIX List of Forms

Form No.	Title
1.	General Form of Writ of Summons
2.	Writ for service out of the Jurisdiction
3.	General Form of Orginating Summons
4.	Originating Summons
5.	Form of Ex-parte Originating Summons
6.	Notice of appointment to hear Originating Summons

7. Form of Memorandum for Renewed Originating Process
8. Request to Minister of Foreign Affairs to transmit Writ to Foreign Government.
9. Request for Service Abroad
10. Letter Forwarding Request for Substituted Service
11. Request to Minister of Foreign Affairs to transmit Notice of Writ to a Foreign Government
12. Memorandum of Appearance
13. Notice of Counter-Claim
14. Concession to defence
15. Interrogatories
16. Answer to interrogatories
17. Affidavit as to documents
18. Hearing Notice for pre-trial conference
19. Pre-trial Sheet
20. Form for guarantee for the acts and default of a receiver
21. Receiver's Security by undertaking

44. Receiver's Account
45. Affidavit verifying Receiver's Account
46. Form of Order for Account and Inquiries
47. Notice of Payment into Court
48. Acceptance of Sum paid into Court
49. Acceptance of sum paid into Court by one of several defendants
50. Legal practitioner's undertaking as to expenses
51. Letter of request to take evidence abroad (Con¬vention Country)
52. Order for appointment of the Nigerian Diplomatic agent as Special examiner (in Convention Country)
53. Form of Praecipe
54. Subpoena ad Testificandum
3 3. Habeas Corpus ad Testificandum
34. Subpoena duces Tecum
3 5. Originating Summons for Possession
58. Order for Possession
59. Order for payment of Principal Moivv. interest, secured by Mortgage or charge.
60. Order for possession of property forming a security for payment to the claimant of any principal money or interest

61. Order for payment of principal money or interest secured by mortgage or charge and for possession of property comprised therein
62. Certificate of the Chief Registrar
63. Surety's guarantee
64. Surety's guarantee on application for resealing
65. Caveat
66. Warning to Caveator
67. Appearance to warning of citation
68. Notice of election to redeem life interest

HIGH COURT OFCROSS RIVER STATE (CIVIL PROCEDURE) RULES

FORM1

General Form of Writ of Summons

(0.7,r.3)

/ /20

(Here put the Judicial Division letter and number of the suit (see note (a) following this form).

In the High Court of Cross River State

In the Judicial Division

Between

A.B .' Claimant

and

CD Defendant

To CD. of in the of

You are hereby commanded that within eight days after the service of this writ on you, inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit A.B and take notice that in default of your so doing the Claimant may proceed therein, and judgment may be given in your absence.

DATED this day of 20

Registrar Memorandum to be subscribed on the writ

Order 46: Probate and Administration

together with any consent in writing to the application given by any person not under disability who would be prejudiced by the grant.

81. An application for an order for a grant of Grants Durant special administration where a personal representative absentia is residing outside the State shall be made to the Court by a motion.
Notice of election by surviving spouse to redeem life interest. Form 46
82.—(1) Where a surviving spouse who is the sole personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to the Registrar by filing a notice in Form 46 with such variations as circumstances may require.
(2) A notice filed under this Rule shall be notice on the grant and the record shall be open to inspection.
Photocopy of Wills or other documents maybe certified and sealed
83.-(1) Where copies are required of original Wills or other documents deposited under the provisions of any written law, such copies may be photocopies sealed with the seal of the Registry and issued as office copies, and where such office copies are available copies certified under the hand of a Registrar to be true copies shall be issued only if it is required that the seal of the court be affixed thereto.
(2) Copies, not being photocopies of original Wills or other documents deposited as aforesaid shall be examined against the documents of which they purport
High Court (Civil Procedure) Rules of Cross River State, 2008

Order 46: Probate and Administration

OR. 46 PG 47/56

Power to require
application to be made by summons or motion
Duties and powers to be performed and exercised by Probate Judge/ Probate Registrar

to be copies if so required by the person demanding the copy, and in such case the copy shall be certified under the hand of a Registrar to be a true copy and may in addition be sealed with the seal of the Court.
90. The Registrar may require any application under this Order to be made by motion or summons.

91. The duties imposed and powers conferred upon the Court or Judge as the case may be by this Order shall be performed and exercised by the Probate Registrar on behalf of the Court subject to any directions which the Chief Judge may give restricting or enlarging this delegation to the Probate Registrar of the duties and powers of the Court under this Order or the Probate Judge designated by the Chief judge pursuant to Rule 16 hereof.

Exercise of powers of Judge

86.-(1) Any person aggrieved by a decision or requirement of the Registrar may by summons apply to a Judge for that decision or requirement to be reviewed.
(8) If in the case of a summons for review under sub-rule 1 of this Rule, any person besides the applicant appeared or was represented before the Registrar from whose decision orrequirement the application for review is brought, the summons shall be issued within 7 days thereof for hearing on the first available day and shall be served on every such person concerned.
(9) On such review the Judge shall have power to cancel or amend anything which may have been done by the Probate Registrar.

87. The Court may refuse to entertain any application under Rule 86 of this Order if it considers that there has been unreasonable delay by the applicant in making his application.
Court may review
„ „„,■„• tn rr application to
88.-(1) A Judge or the Registrar may direct that a motion on notice or summons for the service of which mo|lon on
Service of

no other provision is made in this Order shall be served summons on such person or persons as the Judge or Registrar may direct.

(2) Where by the provisions of this Order or by any direction given under sub-rule 1 of this Rule a motion on notice or summons is required to be served on any person, it shall be served not less than 5 days, before the hearing of the motion or summons.

89. Unless the Registrar otherwise directs or this Order provides, any notice or other document required to be given or served on any person may be given or served by leaving it at, or by sending it by courier to that person's address for service, or if he has no address for service, his last known address. service of notice and documents

96. An affidavit used in non-contentious probate business shall satisfy the requirements of Order 32. Affidavit

97. The provisions of Order 5 shall apply to the computation, enlargement and abridgement of time under this Order. -nme

92. Subject in any particular case to any direction given by a Judge, this Order shall apply to any proceeding Application

which is pending on the date on which these Rules come into operation as well as to any proceeding commence on or after that date:

Provided that where the deceased died before the commencement of these Rules, the right to a grant shall, subject to the provisions of any enactment, be determined by the principles and Rules in accordance with which the Court would have acted at the date of the death.

93. Suits in respect of probate shall be instituted and subject to the same Rules of procedure as suits in respect of civil claims. Contentious ofsuits' 0rm an<* carr*ed on as nearly as possible in the like manner

III. Proceeding Generally

Probate actions

94. In Probate actions, the originating process shall state whether the Claimant claims as creditor, executor, administrator, beneficiary, next-of- kin or in any other capacity.

Service of writ 95. \n probate actions service of a writ of

of summons i_ 1 .CTJI-II J^.T
summons may by leave of a Judge be allowed out of Nigeria.
Pleadings and 96. In probate actions a party shal 1 state with
further actions regard to every defence which is pleaded, what is the substance of the case on which it is intended to rely; and further where it is pleaded that the testator was not of sound mind, memory and understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial and except by leave of a
High Court (Civil Procedure) Rules of Cross River State, 2008

Order 46: Probate and Administration

OR. 46 PG 50/56

Judge no evidence shall be given of any other instances at the trial.
97. In probate actions where the claimant NV1^ere
disputes the interest of the defendant, he shall allege in djsputes
his statement of claim that he denies the defendant's defendant's
interest. interest
98. In probate actions the party opposing a Will Notice in
may, with his defence, give notice to the party setting up Pr°bate
the Will that he merely insists upon the Will being proved
in solemn form of law and only intends to cross-examine the witnesses produced in support of the Will, and he shall thereupon be at liberty to do so and shall not in any event be liable to pay the costs of the other side unless the Judge finds that there was no reasonable ground for opposing the Will.
99. A judgment or order for a general account Enquiry as to
of the personal estate of a testator or intestate shall outstanding
contain a direction for any inquiry as to what parts (if pcrsona es
any) of such personal estate are outstanding or
undisposed of, unless the Court or a Judge shall otherwise
direct.
100. Where a person is or has been a party to Discretion to any
proceedings in the capacity of trustee, personal order costs
representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of such proceeding in so far as they are not recovered from or paid by any other person out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may

otherwise order only on the ground that the trustee. personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefi rather than for the benefit of the fund.

Originating summons relating to deceased person

101. The executors or administrators of £ deceased person or any of them, and the trustees undei any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor. beneficiary, next-of-kin, heir-at-law of a deceased person, or as Cestui que trust under the trust of any deed or instrument, or as claiming by assignment or administration otherwise under any such creditor or other person as aforesaid, may take out an originating summons for such relief as listed hereunder as may be specified by the summons and as the circumstances of the case may require; that is, the determination without an administration of the estate or trust of any of the following questions or matters:

(j) any question affecting the rights or interests of the person claiming to be creditor, beneficiary, next-of-kin, or heir-at-law or cestui que trust;

(k) the ascertainment of any class of creditors, beneficiary, next- of-kin, or others;

(l) the furnishing of any particular accounts by the executors or administrators or trustees and the vouching (when necessary) of such accounts;

(d) the payment into court of any money in the hands of the executors or administrators or trustees;

j (e) directing the executors or admini-

strators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;

(l) the approval of any sale, purchase, compromise, or other transaction;

(m) the determination of any question arising in the administration of the estate or trust.

Order for administration of estate of deceased and of trust

102. Any of the persons named in Rule 101 of this Order may in like manner apply for and obtain an order for:

(j) the administration of the personal or real estate of the deceased;

(k) the administration of the trust;

(l) any act to be done or step to be taken which the Judge could have ordered to be done or taken if any such administration order as aforesaid has previously been made.

103. The persons to be served with the summons under Rules 101 and 102 of this Order in the first instance shall be the following:

(a) for the determination of any question, under paragraph (a) (c), (f) or (g) of Rule 101 of this Order, the persons, or

Where summons taken out by any other person
Judge not bound to order administration

one of the persons, whose rights cr interests, are sought to be affected;

(n) for the determination of any question, underparagraph(b)ofRule 101 of this Order any member or alleged member-of the class;

(o) for the determination of any question, under paragraph (c) of Rule 101 of this Order, any person interested in taking such accounts;

(p) for the determination of any question under paragraph (d) Rule 101 of this Order, any person interested in taking such money

(q) for relief under paragraph (a) of Rule

102 of this Order, the residuary legatees. or next of kin (or some of them) or the residuary devisees, or heirs, or some of them, as the case may be;
(f) for relief under paragraph (b) of Rule 102 of this Order, the Cestui que trust or some of them;
(g) if there are more than one executor or administrator or trustee and they do not all concur in taking out the summons, those who do not concur;
(h) where the summons is taken out by any person other than the executors, administrators or trustees, the said executors, administrators or trustees, or some of them, must be served.
104. It shall not be obligatory on the Judge to

pronounce or make judgment or order, whether on summons or otherwise for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined without such judgment or order.
105. Upon an application for administration or order which execution of trusts by a creditor or beneficiary under a may be made Will, intestacy, or deed of trust, where no accounts or °n a^p !cat'on
' •" ' for administra-
insufficient accounts have been rendered, the Judge may, tion or in addition to the powers already existing: execution of trusts, where
(a) order that the application shall stand no account or over for a certain time, and that the I^J^ executors, administrators or trustees in been rendered. the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceeding;
(b) when necessary, to prevent proceeding by other creditors, or by persons beneficially interested, make the usual judgment or order for administration with a proviso that no proceeding are

to be taken under such judgment or
order without leave of the Judge.

106. The issue of a summons under Rule 101 interference with discn of trustee
of this Order shall not interfere with or control any power with discretion or discretion vested in any executor, administrator or trustee except so far as such interference or control may necessarily be involved in the particular relief sought.
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Order 46: Probate and Administration

OR. 46 PG 55/56

Application by sumons
Appointment of new trustees and vesting order
Vesting order on sale, etc
Payment out of court

107. Any of the following applications may be made by summons:
(m) an application for the appointment of a new trustee with or without a vesting or other consequential order;
(n) an application for a vesting order or other order consequential on the appointment of a new trustee whether the appointment is made by the court or otherwise;
(o) an application for vesting or other consequential order in any case where a judgment or order has been given or made for the sale, conveyance, or transfer of any land or stock or the suing for or recovering any chose in action;
(p) an application relating to a fund paid into Court in any case coming within the provisions of Rule 8 of this Order.

Interpretation Law of Cross River State to apply

108.-(1) The provisions of the Interpretation Law shall apply to the interpretation of this Order.
(2) In this Order, unless the context otherwise requires:
"authorised officer" means any officer of the Registry who is for the time being authorised by law to administer any oath or to

take any affidavit required for any purpose connected with his duties;

"gross value" in relation to any estate means the value of the estate without deduction for debts, encumbrances,
High Court (Civil Procedure) Rules of Cross River State, 2008

Order 46: Probate and Administration

OR. 46 PG 56/56

j funeral expenses or estate duty;
| "oath" means the oath required by this Order to be j sworn by every applicant for grant;
"personal applicant" means a person other than a ' trust corporation who seeks to obtain a grant without I employing a Legal Practitioner, and i
"personal application" has a corresponding meaning;
j "Poor person" means a person whose monthly income is less than N5,000.00.
"Registrar" means the Probate Registrar;
"Registry" or "Probate Registry" means the Probate Registry of the Court;
"Will" includes a codicil and any testamentary document or copy or reconstruction of it;
(3) Unless the context otherwise requires, any reference in this Order to any rule or enactment shall be construed as a reference to that rule or enactment as amended, extended or applied by any other rule or enactment as amended or extended.
High Court (Civil Procedure) Rules of Cross River State, 2008

Demurrer abolished

ORDER 47 PROCEEDINGS IN LIEU OF DEMURRER
1. No demurrer shall be allowed.

2. -(1) Any party may by his pleading raise am
Points of law . -.,,,. ,. ^, •
may be raised Point of law and the Judge may dispose of the point sc by pleadings raised before or at the trial.
(2) If in the opinion of the Judge, the decision n such point of law substantially disposes of the whole proceedings or of any distinct part thereof, the Judge may make such decision as may be just.

ORDER 48 APPEALS FROM MAGISTRATE'S COURT, ETC.

1. Every appeal shall be brought by Notice of Notice of Appeal which shall be lodged in the lower Court within APPeal 30 days ofthe decision appealed from and served on all other parties affected by the appeal within that period.

| 2- (1) The Notice of appeal shall set out the Contents, etc. reference number ofthe proceedings in which the decision of Notlce of complained of was given, the names ofthe parties, the date ofthe decision and the grounds for appeal in full.

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

(12) The Notice of appeal shall give an address j within the Judicial Division in which is situated the lower Court appealed from, to which notices can be sent to the appellant.

(13) The Notice of appeal shall be in Form 47 in Form 47 the appendix and may be varied to suit the circumstances
I ofthe case but so that no variation of substance shall be 'made.

3.-(1) The Registrar ofthe lower Court shall, Copies of ! within 3 months ofthe decision appealed from, prepare recor °
i rr r r proceedings
as many certified copies ofthe record of proceedings,
including the Notice of Appeal, required for the
| consideration ofthe appeal as there are parties on record.

(2) The Registrar shall within 7 days of preparir g
the certified copies of the record of proceedings an:
Notice of Appeal referred to in sub-rule 1 of this Rul e
notify the parties to come forward and collect their own
copies upon payment of necessary fees, and shall sen i
copies also to the Registrar of the Court in the Judicia]
Division in which the lower Court is situated, and th e
appeal shall be decided by the Judge of the Division.

(3) Except where the fees for preparing the

copies are remitted, a deposit decided upon by the Registrar as likely to cover the fees, shall be made by the appellant before the preparation of the copies.

Fining of address

4.-(1) The appellant shall within 30 days of the receipt of the Record of Proceedings from the lowe r Court file in the Court a written address which snail contain succinct statement of his argument in the appeai.

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

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

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

5. The times prescribed in Rules 1 to 4 may be proceeding enlarged at any time by the Court on such terms (if any) time as may seem fit, after notice is given to the respondent by the appelant ofhis application for enlargement of time.

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

Constitution

7. All civil appeals from lower Court shall be 0f Court heard by one Judge of the Court. hearing appeals

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

9.-(l) If, on the day of hearing or at any where adjournment of the case, the appellant does not appear, appellant fails the appeal

shall be struck out and the decision shall be t0 appear affirmed, unless the Court thinks fit, for sufficient cause to order otherwise.
i I
High Court (Civil Procedure) Rules of Cross River State, 2008

(2) If, in any such case the respondent appears, the judgement shall be with costs of the appeal against the appellant, unless the Court expressly orders otherwise; but if the respondent does not appear, the cost of the appeal shall be at the discretion of the Court.

where appci lant appears

10. If, on the day of hearing and at any adjournment of the case, the appellant appears, the Court shall, whether the respondent appears or not, proceed to the hearing or further hearing and determination of the appeal and shall give judgement according to the merits of the case without regarding any imperfection or defect of form; but if it appears or is so proved to the Court that the appellant has not complied with requirements precedent to the hearing of an appeal hereinbefore contained, the Court shall dismiss the appeal and affirni the decision, with or without costs of the appeal against the appellant.

Appeal limited to grounds given in notice.

11. On hearing, it shall not be competent for the appellant to go into any other reasons for appeal than those set forth in his notice of grounds of appeal; but where, in the opinion of the Court, other grounds of appeal than those set forth in the memorandum of grounds of appeal should have been given, or the statement of grounds of appeal is defective, the Court, in its discretion, may allow such amendments of the memorandum of grounds of appeal upon such conditions as to service upon the respondent and as to costs as it may think fit.

Request to confirm judgement on other urounds.

12.- (1) The respondent may give notice tha: he intends at the hearing to ask the Court to confirm the

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judgement of the lower Court on grounds other than those stated by that Court.

(2) The notice shall be accompanied by a clear

statement of the grounds on which the respondent intends to ask the Court to confirm the judgement of the lower Court.

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

13.- (1) the respondent may file grounds of appeal against any part of the judgement of the lower Court.

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

14.- (1) No objection on account of any defect in the form of setting forth any ground of appeal shall be allowed unless the Court is of the opinion that the ground of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the respondent to enquire into the subject-matter thereof or to prepare for the hearing.

objections to form of

aUowe^unlesstheCourtisoftheopinionthattheground f°u"a[s °

(2) In any case where the Court is of the opinion that any objection to any ground of appeal ought to prevail, the Court may, if it thinks fit, cause the ground

Defects in proceedings under appeal.

of appeal forthwith to be amended upon such terms and conditions, if any, as the Court may think just.

15. On any appeal from a decision of a lower Court; no objection shall be taken or allowed to any proceeding in such Court for any defect or error which might have been amended by that Court, or to any complaint, summons, warrant, or other process to or of such Court for any variance between any complaint or summons and the evidence adduced in support thereof in such Court:

Defects in notice of appeal or recognisance

Provided, however, that if any error, defect, or variance mentioned in this Rule appears to the Court at the hearing of any appeal to be such that the appellant has been thereby deceived or misled, it shall be lawful for the Court either to refer the case back to the lower Court with directions to re-hear and determine it or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.

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

adjournment, if any, being made on such terms as the Court may think just.

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

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

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

18.-(1) When additional evidence is to be taken Mode of by the Court and specific findings of fact reported, it ^"8 shall certify the evidence to the Court which shall thereupon proceed to dispose of the appeal.

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

(3) Evidence taken in pursuance of Rule 17 shall be taken as if it were evidence taken at the trial before the lower Court.
(4) When forwarding to the Court any additional evidence taken by a lower Court in pursuance of Rule •17 the lower Court may express its opinion on the demeanour of the witnesses and of the value of their evidence and may also, if it is the same Court against whose decision the appeal has been made, state whether or not it would have come to a different decision had the additional evidence been brought forward at the trial.
Fees. Second Schedule
19. The fees in the Second Schedule shall be chargeable in civil appeals save where they would have to be paid by a Government officer acting in his official capacity or where the lower Court or the Court waives or remits the fees on the ground of the poverty of the person changeable therewith where it appears that there are substantial grounds of appeal.
Stay of execution
20.—(1) On application being made for stay of execution under any enactment establishing the lower Court, the lower Court or the Court may impose one or more of the following conditions-
(a) that the appellant shall deposit a sum fixed by the Court not exceeding the amount of the money or the value of the property affected by the decision or judgement appealed from, or give security to the satisfaction of the Court for the said sum;

(n) that the appellant shall deposit a sum equal to the amount of the costs allowed against him or give security to the satisfaction of the Court for the said sum;
(o) that the appellant shall, where the decision or judgement appealed from relates to possession or lands or houses, give security to the satisfaction of the Court for the performance of the decision or judgement in the event of the appeal being dismissed;
(p) that the appellant's property shall be seized and attached pending the making of a deposit or the giving of security as aforesaid, including a deposit or security for the expenses incidental to the seizure and attachment;

(q) that the appellant's property shall be seized, and attached and sold and the net proceeds deposited in Court pending determination of the appeal.
(2) Any order made on any such application shall limit the time (not being more than thirty days) for the performance of the conditions imposed, and direct that in default of the performance within the period of time so limited, execution may issue or proceed.
(3) An application for stay of execution under the enactment establishing the lower Court may be made at any time after lodgement of the Notice of appeal and shall in the first instance be made to the lower Court; but
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Order 48: Appeals from Magistrate s Court, Etc. OR. 48 PG10/12
where execution has been ordered by the Court the application shall not be made to the lower Court but to the Court.
(13) The application may be ex-parte but the Court may direct notice thereof to be given to the other party to the appeal; and where an order is made ex-parte the Registrar of the Court shall notify the other party of the order made.
(14) Where the appellant proposes to give security instead of making a deposit, the application shall state the nature of the security and the name of the surety proposed (if any).
(15) Any party dissatisfied with an order made by the lower Court may apply to the Court by motion (original or interlocutory, as the case may require) with notice to the other party for a review of the order, and the Court may thereupon make such order as may seem just.
(7) An appeal shall not operate as a stay of
execution under the decision or judgement appealed from
except so far as the lower Court or the Court may order;
and no intermediate act or proceeding shall be invalidated
except so far as either Court may direct.
Costs 21. The Court may make such order as to the
payment of costs by orto the appellant as it may consider to be just and the order may be made also in any case where an appeal has not been entered into or prosecuted.
High Court (Civil Procedure) Rules of Cross River State. 2008

Order 48: Appeals from Magistrate's Court, Etc. OR. 48 PG11/12

22.- (1) The Court may, in special circumstances, Security of upon application on notice by motion (original or costs* interlocutory as the case may require), supported by affidavit, order the appellant to deposit such sum or give such security as may seem fit for the respondent's cost of appeal including the costs incidental to the application.

(2) The order shall limit the time (not exceeding 30 days) within which the deposit or security shall be made or given and may direct that in default of its being made or given within the time so limited the appeal shall without further order stand dismissed.

(3) Where an appeal so stands dismissed the respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such costs may be stated in the order in anticipation or may be assessed at any time by the Court of its own motion or on application made ex-parte or on notice, as the Court may see it.

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I (4) Where an appeal so stands dismissed the
\ appellant shall take no further step or proceeding therein
\ save by leave of the Court or for reinstatement of the
\ appeal, which may be granted on such terms (if any) as
\ may seem fit upon application by motion on notice given
\ within a month of such dismissal (but not otherwise).

(5) Subject and without prejudice to the discretion of the Court to grant costs where it seems proper on an application made under sub rule (1), cost shall not normally be granted to the applicant save where the net proceeds of execution levied on the appellant's

goods are sufficient to satisfy the amount payable under the judgment or decision appealed from.

Orders of 23.- (1) When a case is decided on appeal the Court
High Court to shall certify its judgment or order to the lower
Court in bC ^stnrtC,d l° wmc^ me decision appealed against was pronounced.
Court.

(2) The lower Court to which the Court certifies its judgement or order shall thereupon make such orders as are conformable to

the judgment or order of the Court, and, if necessary, the records shall be amended in accordance therewith.

Enforcement of judgement me

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

Enforcement 0 or ers*

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

High Court may enlarge tjme>

26. TheCourtmay,ifitthinksfit,enIargeanyperiod _. „ ,,,.-., of time prescribed by this Order.

interpretation

27. In this Order- "the lower Court" means tins Court whose judgement is appealed against. " Judgement" includes an order or ruling.

ORDER 49 FEES AND ALLOWANCES

Fees: 1st and 2nd Schedule

1. Subject to the provisions of any written law and of the foregoing Orders-

(g) the fees set out in the First and Second Schedules hereunder shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in those Schedules;

(h) the allowances set out in Part II of the Allowances.

Allowances: Part H of 3rd Schedule

Third Schedule shall be payable to the r- . various categories of witnesses mentioned therein by any person at whose instance the testify:

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

Regulations: 4th Schedule

2. The regulations set out in the Fourth Schedule shall be observed by all officers of Court concerned with the rendering of services, or collection of fees payable, under the provisions of the foregoing Order.

HIGH COURT OF CROSS RIVER STATE (CIVIL PROCEDURE) RULES
APPENDIX List of Forms

Form No. Title

1. General Form of Writ of Summons
2. Writ for service out of the Jurisdiction
3. General Form of Orginating Summons
4. Originating Summons
5. Form of Ex-parte Originating Summons
6. Notice of appointment to hear Originating Summons
7. Form of Memorandum for Renewed Originating Process
8. Request to Minister of Foreign Affairs to transmit Writ to Foreign Government.
9. Request for Service Abroad
10. Letter Forwarding Request for Substituted Service
11. Request to Minister of Foreign Affairs to transmit Notice of Writ to a Foreign Government
12. Memorandum of Appearance
13. Notice of Counter-Claim
14. Concession to defence
15. Interrogatories
16. Answer to interrogatories
17. Affidavit as to documents
18. Hearing Notice for pre-trial conference
19. Pre-trial Sheet
20. Form for guarantee for the acts and default of a receiver
21. Receiver's Security by undertaking

55. Receiver's Account
56. Affidavit verifying Receiver's Account
57. Form of Order for Account and Inquiries
58. Notice of Payment into Court
59. Acceptance of Sum paid into Court
60. Acceptance of sum paid into Court by one of several defendants
61. Legal practitioner's undertaking as to expenses
62. Letter of request to take evidence abroad (Con¬vention Country)

63. Order for appointment of the Nigerian Diplomatic agent as Special examiner (in Convention Country)
64. Form of Praecipe
65. Subpoena ad Testificandum
3 3. Habeas Corpus ad Testificandum
34. Subpoena duces Tecum
3 5. Originating Summons for Possession
69. Order for Possession
70. Order for payment of Principal Moivv. interest, secured by Mortgage or charge.
71. Order for possession of property forming a security for payment to the claimant of any principal money or interest
72. Order for payment of principal money or interest secured by mortgage or charge and for possession of property comprised therein
73. Certificate of the Chief Registrar
74. Surety's guarantee
75. Surety's guarantee on application for resealing
76. Caveat
77. Warning to Caveator
78. Appearance to warning of citation
79. Notice of election to redeem life interest

HIGH COURT OFCROSS RIVER STATE (CIVIL PROCEDURE) RULES

FORM1

General Form of Writ of Summons

(0.7,r.3)

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(Here put the Judicial Division letter and number of the suit (see note (a) following this form).

In the High Court of Cross River State

In the Judicial Division

Between

A.B .' Claimant

and

CD Defendant

To CD. of in the of

You are hereby commanded that within eight days after the service of this writ on you, inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit A.B and take notice that in default of your so doing the

Claimant may proceed therein, and judgment may be given in your absence.
DATED this day of 20
Registrar Memorandum to be subscribed on the writ
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Order 46: Probate and Administration

OR. 46 PG 46/56

together with any consent in writing to the application given by any person not under disability who would be prejudiced by the grant.
81. An application for an order for a grant of Grants Durant special administration where a personal representative absentia is residing outside the State shall be made to the Court by a motion.
Notice of election by surviving spouse to redeem life interest. Form 46
82.—(1) Where a surviving spouse who is the sole personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to the Registrar by filing a notice in Form 46 with such variations as circumstances may require.
(2) A notice filed under this Rule shall be notice on the grant and the record shall be open to inspection.
Photocopy of Wills or other documents maybe certified and sealed
83.-(1) Where copies are required of original Wills or other documents deposited under the provisions of any written law, such copies may be photocopies sealed with the seal of the Registry and issued as office copies, and where such office copies are available copies certified under the hand of a Registrar to be true copies shall be issued only if it is required that the seal of the court be affixed thereto.
(2) Copies, not being photocopies of original Wills or other documents deposited as aforesaid shall be examined against the documents of which they purport
High Court (Civil Procedure) Rules of Cross River State, 2008

Order 46: Probate and Administration

OR. 46 PG 47/56

Power to require
application to be made by summons or motion
Duties and powers to be performed and exercised by Probate Judge/ Probate Registrar

to be copies if so required by the person demanding the copy, and in such case the copy shall be certified under the hand of a Registrar to be a true copy and may in addition be sealed with the seal of the Court.

92. The Registrar may require any application under this Order to be made by motion or summons.

93. The duties imposed and powers conferred upon the Court or Judge as the case may be by this Order shall be performed and exercised by the Probate Registrar on behalf of the Court subject to any directions which the Chief Judge may give restricting or enlarging this delegation to the Probate Registrar of the duties and powers of the Court under this Order or the Probate Judge designated by the Chief judge pursuant to Rule 16 hereof.

Exercise of powers of Judge

86.-(1) Any person aggrieved by a decision or requirement of the Registrar may by summons apply to a Judge for that decision or requirement to be reviewed.

(10) If in the case of a summons for review under sub-rule 1 of this Rule, any person besides the applicant appeared or was represented before the Registrar from whose decision orrequirement the application for review is brought, the summons shall be issued within 7 days thereof for hearing on the first available day and shall be served on every such person concerned.

(11) On such review the Judge shall have power to cancel or amend anything which may have been done by the Probate Registrar.

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87. The Court may refuse to entertain any application under Rule 86 of this Order if it considers that there has been unreasonable delay by the applicant in making his application.

Court may review application to

88.-(1) A Judge or the Registrar may direct that a motion on notice or summons for the service of which no other provision is made in this Order shall be served on such person or persons as the Judge or Registrar may direct.

Service of motion on summons

(2) Where by the provisions of this Order or by any direction given under sub-rule 1 of this Rule a motion on notice or summons is required to be served on any person, it shall be served not less than 5 days, before the hearing of the motion or summons.

89. Unless the Registrar otherwise directs or this Order provides, any notice or other document required to be given or served on any person may be given or served by leaving it at, or by sending it by courier to that person's address for service, or if he has no address for service, his last known address.

Service of notice and documents

98. An affidavit used in non-contentious probate business shall satisfy the requirements of Order 32.

Affidavit

99. The provisions of Order 5 shall apply to the computation, enlargement and abridgement of time under this Order.

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92. Subject in any particular case to any direction given by a Judge, this Order shall apply to any proceeding

Application

which is pending on the date on which these Rules come into operation as well as to any proceeding commence on or after that date:

Provided that where the deceased died before the commencement of these Rules, the right to a grant shall, subject to the provisions of any enactment, be determined by the

principles and Rules in accordance with which the Court would have acted at the date of the death.

Contentious suits' 0rm ofsuits

93. Suits in respect of probate shall be instituted an<* carr*ed on as nearly as possible in the like manner and subject to the same Rules of procedure as suits in respect of civil claims.

III. Proceeding Generally

Probate actions

94. In Probate actions, the originating process shall state whether the Claimant claims as creditor, executor, administrator, beneficiary, next-of- kin or in any other capacity.

Service of writ of summons

95. \n probate actions service of a writ of summons i_ 1 .CTJI-II J^.T summons may by leave of a Judge be allowed out of Nigeria.

Pleadings and further actions

96. In probate actions a party shal 1 state with regard to every defence which is pleaded, what is the substance of the case on which it is intended to rely; and further where it is pleaded that the testator was not of sound mind, memory and understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial and except by leave of a

Judge no evidence shall be given of any other instances at the trial.

97. In probate actions where the claimant disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

NV1^ere djsputes defendant's interest

98. In probate actions the party opposing a Will Notice in may, with his defence, give notice to the party setting up Pr°bate the Will that he merely insists upon the Will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the Will, and he shall thereupon be at liberty to do so and shall not in any event be liable to pay the costs of the other side unless the Judge finds that there was no reasonable ground for opposing the Will.

99. A judgment or order for a general account Enquiry as to of the personal estate of a testator or intestate shall outstanding contain a direction for any inquiry as to what parts (if pcrsona es any) of such personal estate are outstanding or undisposed of, unless the Court or a Judge shall otherwise direct.

100. Where a person is or has been a party to Discretion to any proceedings in the capacity of trustee, personal order costs representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of such proceeding in so far as they are not recovered from or paid by any other person out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may

otherwise order only on the ground that the trustee. personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefi rather than for the benefit of the fund.

Originating summons relating to deceased person

101. The executors or administrators of £ deceased person or any of them, and the trustees undei any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor. beneficiary, next-of-kin, heir-at-law of a deceased person, or as Cestui que trust under the trust of any deed or instrument, or as claiming by assignment or administration otherwise under any such creditor or other person as aforesaid, may take out an originating summons for such relief as listed hereunder as may be specified by the summons and as the circumstances of the case may require; that is, the determination without an administration of the estate or trust of any of the following questions or matters:

(m) any question affecting the rights or interests of the person claiming to be creditor, beneficiary, next-of-kin, or heir-at-law or cestui que trust;

(n) the ascertainment of any class of creditors, beneficiary, next- of-kin, or others;
(o) the furnishing of any particular accounts by the executors or administrators or trustees and the vouching (when necessary) of such accounts;

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(d) the payment into court of any money
in the hands of the executors or
administrators or trustees;
j (e) directing the executors or admini-
strators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;
(n) the approval of any sale, purchase, compromise, or other transaction;
(o) the determination of any question arising in the administration of the estate or trust.
Order for administration of estate of deceased and of trust
102. Any of the persons named in Rule 101 of
this Order may in like manner apply for and obtain an
order for:
(m) the administration of the personal or real estate of the deceased;
(n) the administration of the trust;
(o) any act to be done or step to be taken which the Judge could have ordered to be done or taken if any such administration order as aforesaid has previously been made.
103. The persons to be served with the summons persons to be under Rules 101 and 102 of this Order in the first instance served shall be the following:
(a) for the determination of any question, under paragraph (a) (c), (f) or (g) of Rule 101 of this Order, the persons, or
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Where summons taken out by any other person
Judge not bound to order administration

one of the persons, whose rights cr interests, are sought to be affected;
(r) for the determination of any question, underparagraph(b)ofRule 101 of this Order any member or alleged member-of the class;
(s) for the determination of any question, under paragraph (c) of Rule 101 of this Order, any person interested in taking such accounts;
(t) for the determination of any question under paragraph (d) Rule 101 of this Order, any person interested in taking such money
(u) for relief under paragraph (a) of Rule
102 of this Order, the residuary legatees. or next of kin (or some of them) or the residuary devisees, or heirs, or some of them, as the case may be;
(f) for relief under paragraph (b) of Rule
102 of this Order, the Cestui que trust or some of them;
(g) if there are more than one executor
or administrator or trustee and they do
not all concur in taking out the summons,
those who do not concur;
(h) where the summons is taken out by any person other than the executors, administrators or trustees, the said executors, administrators or trustees, or some of them, must be served.
104. It shall not be obligatory on the Judge to

pronounce or make judgment or order, whether on summons or otherwise for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined without such judgment or order.
105. Upon an application for administration or order which execution of trusts by a creditor or beneficiary under a may be made Will, intestacy, or deed of trust, where no accounts or °n a^p !cat'on
' •" ' for administra-
insufficient accounts have been rendered, the Judge may, tion or
in addition to the powers already existing: execution of

trusts, where
(a) order that the application shall stand no account or
over for a certain time, and that the I^J^
executors, administrators or trustees in been rendered.
the meantime shall render to the
applicant a proper statement of their
accounts, with an intimation that if this
is not done they may be made to pay the costs of the proceeding;
(b) when necessary, to prevent proceeding
by other creditors, or by persons
beneficially interested, make the usual
judgment or order for administration
with a proviso that no proceeding are
to be taken under such judgment or
order without leave of the Judge.

106. The issue of a summons under Rule 101 interference
with discn of trustee
of this Order shall not interfere with or control any power with discretion or discretion vested in any executor, administrator or trustee except so far as such interference or control may necessarily be involved in the particular relief sought.
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Application by sumons
Appointment of new trustees and vesting order
Vesting order on sale, etc
Payment out of court

107. Any of the following applications may be made by summons:
(q) an application for the appointment of a new trustee with or without a vesting or other consequential order;
(r) an application for a vesting order or other order consequential on the appointment of a new trustee whether the appointment is made by the court or otherwise;
(s) an application for vesting or other consequential order in any case where a judgment or order has been given or made for

the sale, conveyance, or transfer of any land or stock or the suing for or recovering any chose in action;
(t) an application relating to a fund paid into Court in any case coming within the provisions of Rule 8 of this Order.

Interpretation Law of Cross River State to apply

108.-(1) The provisions of the Interpretation Law shall apply to the interpretation of this Order.
(2) In this Order, unless the context otherwise requires:
"authorised officer" means any officer of the Registry who is for the time being authorised by law to administer any oath or to take any affidavit required for any purpose connected with his duties;

"gross value" in relation to any estate means the value of the estate without deduction for debts, encumbrances,

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j funeral expenses or estate duty;
| "oath" means the oath required by this Order to be j sworn by every applicant for grant;
"personal applicant" means a person other than a ' trust corporation who seeks to obtain a grant without I employing a Legal Practitioner, and i
"personal application" has a corresponding meaning;
j "Poor person" means a person whose monthly income is less than N5,000.00.
"Registrar" means the Probate Registrar;
"Registry" or "Probate Registry" means the Probate Registry of the Court;
"Will" includes a codicil and any testamentary document or copy or reconstruction of it;
(3) Unless the context otherwise requires, any reference in this Order to any rule or enactment shall be construed as a reference to that rule or enactment as amended, extended or applied by any other rule or enactment as amended or extended.

Demurrer abolished

ORDER 47 PROCEEDINGS IN LIEU OF DEMURRER
1. No demurrer shall be allowed.

2. -(1) Any party may by his pleading raise am
Points of law . -.,,,. ,. ^, •
may be raised Point of law and the Judge may dispose of the point sc by pleadings raised before or at the trial.
(2) If in the opinion of the Judge, the decision n such point of law substantially disposes of the whole proceedings or of any distinct part thereof, the Judge may make such decision as may be just.

ORDER 48 APPEALS FROM MAGISTRATE'S COURT, ETC.
1. Every appeal shall be brought by Notice of Notice of Appeal which shall be lodged in the lower Court within APPeal 30 days ofthe decision appealed from and served on all other parties affected by the appeal within that period.
| 2- (1) The Notice of appeal shall set out the Contents, etc.
reference number ofthe proceedings in which the decision of Notlce of complained of was given, the names ofthe parties, the date ofthe decision and the grounds for appeal in full.
(14) Where the appellant complains only of a part ofthe decision, the Notice of appeal shall specify the part complained of; otherwise the appeal shall be taken to be against the decision as a whole.
(15) The Notice of appeal shall give an address j within the Judicial Division in which is situated the lower Court appealed from, to which notices can be sent to the appellant.
(16) The Notice of appeal shall be in Form 47 in Form 47 the appendix and may be varied to suit the circumstances
I ofthe case but so that no variation of substance shall be 'made.
3.-(1) The Registrar ofthe lower Court shall, Copies of ! within 3 months ofthe decision appealed from, prepare recor °
i rr r r proceedings
as many certified copies ofthe record of proceedings,
including the Notice of Appeal, required for the
| consideration ofthe appeal as there are parties on record.

(2) The Registrar shall within 7 days of preparir g the certified copies of the record of proceedings an: Notice of Appeal referred to in sub-rule 1 of this Rul e notify the parties to come forward and collect their own copies upon payment of necessary fees, and shall sen i copies also to the Registrar of the Court in the Judicia] Division in which the lower Court is situated, and th e appeal shall be decided by the Judge of the Division.
(3) Except where the fees for preparing the copies are remitted, a deposit decided upon by the Registrar as likely to cover the fees, shall be made by the appellant before the preparation of the copies.
Fining of address 4.-(1) The appellant shall within 30 days of the receipt of the Record of Proceedings from the lowe r Court file in the Court a written address which snail contain succinct statement of his argument in the appeai.
(10) The respondent shall also within 30 days c■ f the service of the written address of the appellant on him file the respondent's written address, which shal answer all material points of substance contained in the appellant's written address and contain all the points raised therein which the respondent wishes to concede as well as reasons why the appeal ought to be dismissed.
(11) The appellant may if necessary, within 14 days of the service on him of the respondent's written address file and serve a reply written address which shall deal with all new points arising from the respondent's written address.

(4) All parties, whose interests are identical or joint, shall file a joint written address, and separate written addresses may be filed only by those parties whose interests are separate or in conflict.
5. The times prescribed in Rules 1 to 4 may be proceeding enlarged at any time by the Court on such terms (if any) time as may seem fit, after notice is given to the respondent by the appelant ofhis application for enlargement of time.
6. Where the time available to the appellant for where time

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

Constitution

7. All civil appeals from lower Court shall be 0f Court
heard by one Judge of the Court. hearing
appeals

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

9.-(l) If, on the day of hearing or at any where adjournment of the case, the appellant does not appear, appellant fails the appeal shall be struck out and the decision shall be t0 appear affirmed, unless the Court thinks fit, for sufficient cause to order otherwise.

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(2) If, in any such case the respondent appears, the judgement shall be with costs of the appeal against the appellant, unless the Court expressly orders otherwise; but if the respondent does not appear, the cost of the appeal shall be at the discretion of the Court.

where 10. If, on the day of hearing and at any
appci lant adjournment of the case, the appellant appears, the Court
appears shall, whether the respondent appears or not, proceed
to the hearing or further hearing and determination of the appeal and shall give judgement according to the merits of the case without regarding any imperfection or defect of form; but if it appears or is so proved to the Court that the appellant has not complied with requirements precedent to the hearing of an appeal hereinbefore contained, the Court shall dismiss the appeal and affirni the decision, with or without costs of the appeal against the appellant.

Appeal limited to grounds given in notice.

11. On hearing, it shall not be competent for the appellant to go into any other reasons for appeal than those set forth in his notice of grounds of appeal; but where, in the opinion of the Court, other grounds of appeal than those set forth in the memorandum

of grounds of appeal should have been given, or the statement of grounds of appeal is defective, the Court, in its discretion, may allow such amendments of the memorandum of grounds of appeal upon such conditions as to service upon the respondent and as to costs as it may think fit.

Request to confirm judgement on other urounds.

12.- (1) The respondent may give notice tha: he intends at the hearing to ask the Court to confirm the

judgement of the lower Court on grounds other than those stated by that Court.

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

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

13.- (1) the respondent may file grounds of appeal against any part of the judgement of the lower Court.

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

14.- (1) No objection on account of any defect in the form of setting forth any ground of appeal shall be objections to form of aUowe^unlesstheCourtisoftheopinionthattheground f°u"a[s ° of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the respondent to enquire into the subject-matter thereof or to prepare for the hearing.

(2) In any case where the Court is of the opinion that any objection to any ground of appeal ought to prevail, the Court may, if it thinks fit, cause the ground

Defects in proceedings under appeal.

of appeal forthwith to be amended upon such terms and conditions, if any, as the Court may think just.

15. On any appeal from a decision of a lower Court; no objection shall be taken or allowed to any proceeding in such Court for any defect or error which might have been amended by that Court, or to any complaint, summons, warrant, or other process to or of such Court for any variance between any complaint or summons and the evidence adduced in support thereof in such Court:

Defects in notice of appeal or recognisance

Provided, however, that if any error, defect, or variance mentioned in this Rule appears to the Court at the hearing of any appeal to be such that the appellant has been thereby deceived or misled, it shall be lawful for the Court either to refer the case back to the lower Court with directions to re-hear and determine it or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.

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

adjournment, if any, being made on such terms as the Court may think just.

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

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

(j) refer the case back to the lower Court to take such evidence, and may in such case either direct the lower Court to

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

18.-(1) When additional evidence is to be taken Mode of by the Court and specific findings of fact reported, it ^"8 shall certify the evidence to the Court which shall thereupon proceed to dispose of the appeal.

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

(3) Evidence taken in pursuance of Rule 17 shall be taken as if it were evidence taken at the trial before the lower Court.

(4) When forwarding to the Court any additional evidence taken by a lower Court in pursuance of Rule •17 the lower Court may express its opinion on the demeanour of the witnesses and of the value of their evidence and may also, if it is the same Court against whose decision the appeal has been made, state whether or not it would have come to a different decision had the additional evidence been brought forward at the trial.

Fees. Second Schedule

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

Stay of execution

20.—(1) On application being made for stay of execution under any enactment establishing the lower Court, the lower Court or the Court may impose one or more of the following conditions-

(a) that the appellant shall deposit a sum fixed by the Court not exceeding the amount of the money or the value of the property affected by the decision or judgement appealed from, or give security to the satisfaction of the Court for the said sum;

(r) that the appellant shall deposit a sum equal to the amount of the costs allowed against him or give security to the satisfaction of the Court for the said sum;
(s) that the appellant shall, where the decision or judgement appealed from relates to possession or lands or houses, give security to the satisfaction of the Court for the performance of the decision or judgement in the event of the appeal being dismissed;
(t) that the appellant's property shall be seized and attached pending the making of a deposit or the giving of security as aforesaid, including a deposit or security for the expenses incidental to the seizure and attachment;
(u) that the appellant's property shall be seized, and attached and sold and the net proceeds deposited in Court pending determination of the appeal.
(2) Any order made on any such application shall limit the time (not being more than thirty days) for the performance of the conditions imposed, and direct that in default of the performance within the period of time so limited, execution may issue or proceed.
(3) An application for stay of execution under the enactment establishing the lower Court may be made at any time after lodgement of the Notice of appeal and shall in the first instance be made to the lower Court; but

where execution has been ordered by the Court the application shall not be made to the lower Court but to the Court.
(16) The application may be ex-parte but the Court may direct notice thereof to be given to the other party to the appeal; and where an order is made ex-parte the Registrar of the Court shall notify the other party of the order made.
(17) Where the appellant proposes to give security instead of making a deposit, the application shall state the nature of the security and the name of the surety proposed (if any).
(18) Any party dissatisfied with an order made by the lower Court may apply to the Court by motion (original or interlocutory, as the case may require) with notice to the other party for a review of the order, and the Court may thereupon make such order as may seem just.
(7) An appeal shall not operate as a stay of
execution under the decision or judgement appealed from

except so far as the lower Court or the Court may order;
and no intermediate act or proceeding shall be invalidated
except so far as either Court may direct.
Costs 21. The Court may make such order as to the
payment of costs by orto the appellant as it may consider to be just and the order may be made also in any case where an appeal has not been entered into or prosecuted.
High Court (Civil Procedure) Rules of Cross River State. 2008

Order 48: Appeals from Magistrate's Court, Etc. OR. 48
PG11/12
22.- (1) The Court may, in special circumstances, Security of upon application on notice by motion (original or costs* interlocutory as the case may require), supported by affidavit, order the appellant to deposit such sum or give such security as may seem fit for the respondent's cost of appeal including the costs incidental to the application.
(2) The order shall limit the time (not exceeding 30
days) within which the deposit or security shall be made
or given and may direct that in default of its being made
or given within the time so limited the appeal shall without
further order stand dismissed.
(3) Where an appeal so stands dismissed the
respondent shall be entitled to all reasonable costs
occasioned by the appeal and the amount of such costs
may be stated in the order in anticipation or may be
assessed at any time by the Court of its own motion or
on application made ex-parte or on notice, as the Court
may see it.
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I (4) Where an appeal so stands dismissed the
\ appellant shall take no further step or proceeding therein
\ save by leave of the Court or for reinstatement of the
\ appeal, which may be granted on such terms (if any) as
\ may seem fit upon application by motion on notice given
\ within a month of such dismissal (but not otherwise).
(5) Subject and without prejudice to the discretion of the Court to grant costs where it seems proper on an application made under sub rule (1), cost shall not normally be granted to the applicant save where the net proceeds of execution levied on the appellant's
High Court (Civil Procedure) Rules of Cross River State, 2008

goods are sufficient to satisfy the amount payable under the judgment or decision appealed from.

Orders of High Court to Court.

23.- (1) When a case is decided on appeal the Court shall certify its judgment or order to the lower Court in bC ^stnrtC,d l° wmc^ me decision appealed against was pronounced.

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

Enforcement of judgement

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

Enforcement 0 or ers*

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

High Court may enlarge tjme>

26. TheCourtmay,ifitthinksfit,enIargeanyperiod _. „ ,,,.-., of time prescribed by this Order.

interpretation

27. In this Order- "the lower Court" means tins Court whose judgement is appealed against. " Judgement" includes an order or ruling.

ORDER 49 FEES AND ALLOWANCES

1. Subject to the provisions of any written law and of the foregoing Orders- Fees: 1st and 2nd Schedule

(i) the fees set out in the First and Second Schedules hereunder shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in those Schedules;

(j) the allowances set out in Part II of the Allowances.

Third Schedule shall be payable to the Part H of 3rd
r- . Schedule
various categories of witnesses mentioned therein by any person at whose instance the testify:
Provided that a witness who testifies at the instance of the Court acting on its own motion shall be paid out of public revenue.
2. The regulations set out in the Fourth Schedule Regulations: shall be observed by all officers of Court concerned 4th Schedule with the rendering of services, or collection of fees payable, under the provisions of the foregoing Order.
High Court (Civil Procedure) Rules of Cross River State, 2008

HIGH COURT OF CROSS RIVER STATE (CIVIL PROCEDURE) RULES
APPENDIX List of Forms

Form No. Title
1. General Form of Writ of Summons
2. Writ for service out of the Jurisdiction
3. General Form of Orginating Summons
4. Originating Summons
5. Form of Ex-parte Originating Summons
6. Notice of appointment to hear Originating Summons
7. Form of Memorandum for Renewed Originating Process
8. Request to Minister of Foreign Affairs to transmit Writ to Foreign Government.
9. Request for Service Abroad
10. Letter Forwarding Request for Substituted Service
11. Request to Minister of Foreign Affairs to transmit Notice of Writ to a Foreign Government
12. Memorandum of Appearance
13. Notice of Counter-Claim
14. Concession to defence
15. Interrogatories
16. Answer to interrogatories
17. Affidavit as to documents
18. Hearing Notice for pre-trial conference
19. Pre-trial Sheet
20. Form for guarantee for the acts and default of a receiver
21. Receiver's Security by undertaking

66. Receiver's Account
67. Affidavit verifying Receiver's Account
68. Form of Order for Account and Inquiries
69. Notice of Payment into Court
70. Acceptance of Sum paid into Court
71. Acceptance of sum paid into Court by one of several defendants
72. Legal practitioner's undertaking as to expenses
73. Letter of request to take evidence abroad (Con¬vention Country)
74. Order for appointment of the Nigerian Diplomatic agent as Special examiner (in Convention Country)
75. Form of Praecipe
76. Subpoena ad Testificandum
3 3. Habeas Corpus ad Testificandum
34. Subpoena duces Tecum
3 5. Originating Summons for Possession
80. Order for Possession
81. Order for payment of Principal Moivv. interest, secured by Mortgage or charge.
82. Order for possession of property forming a security for payment to the claimant of any principal money or interest
83. Order for payment of principal money or interest secured by mortgage or charge and for possession of property comprised therein
84. Certificate of the Chief Registrar
85. Surety's guarantee
86. Surety's guarantee on application for resealing
87. Caveat
88. Warning to Caveator
89. Appearance to warning of citation
90. Notice of election to redeem life interest

HIGH COURT OFCROSS RIVER STATE (CIVIL PROCEDURE) RULES

FORM1

General Form of Writ of Summons

(0.7,r.3)

/ /20

(Here put the Judicial Division letter and number of the suit (see note (a) following this form).

In the High Court of Cross River State

In the Judicial Division

Between
A.B .' Claimant
and
CD Defendant
To CD. of in the of
You are hereby commanded that within eight days after the service of this writ on you, inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit A.B and take notice that in default of your so doing the Claimant may proceed therein, and judgment may be given in your absence.
DATED this day of 20
Registrar Memorandum to be subscribed on the writ
252 High Court (Civil Procedure) Rules of Cross River State, 2008
Order 46: Probate and Administration

together with any consent in writing to the application given by any person not under disability who would be prejudiced by the grant.
81. An application for an order for a grant of Grants Durant special administration where a personal representative absentia is residing outside the State shall be made to the Court by a motion.
Notice of election by surviving spouse to redeem life interest. Form 46
82.—(1) Where a surviving spouse who is the sole personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to the Registrar by filing a notice in Form 46 with such variations as circumstances may require.
(2) A notice filed under this Rule shall be notice on the grant and the record shall be open to inspection.
Photocopy of Wills or other documents maybe certified and sealed
83.-(1) Where copies are required of original Wills or other documents deposited under the provisions of any written law, such copies may be photocopies sealed with the seal of the Registry and issued as office copies, and where such office copies are available copies certified under the hand of a Registrar to be true copies shall be issued only if it is required that the seal of the court be affixed thereto.

(2) Copies, not being photocopies of original Wills or other documents deposited as aforesaid shall be examined against the documents of which they purport

High Court (Civil Procedure) Rules of Cross River State, 2008

Order 46: Probate and Administration

OR. 46 PG 47/56

Power to require
application to be made by summons or motion
Duties and powers to be performed and exercised by Probate Judge/ Probate Registrar

to be copies if so required by the person demanding the copy, and in such case the copy shall be certified under the hand of a Registrar to be a true copy and may in addition be sealed with the seal of the Court.

94. The Registrar may require any application under this Order to be made by motion or summons.

95. The duties imposed and powers conferred upon the Court or Judge as the case may be by this Order shall be performed and exercised by the Probate Registrar on behalf of the Court subject to any directions which the Chief Judge may give restricting or enlarging this delegation to the Probate Registrar of the duties and powers of the Court under this Order or the Probate Judge designated by the Chief judge pursuant to Rule 16 hereof.

Exercise of powers of Judge

86.-(1) Any person aggrieved by a decision or requirement of the Registrar may by summons apply to a Judge for that decision or requirement to be reviewed.

(12) If in the case of a summons for review under sub-rule 1 of this Rule, any person besides the applicant appeared or was represented before the Registrar from whose decision orrequirement the application for review is brought, the summons shall be issued within 7 days thereof for hearing on the first available day and shall be served on every such person concerned.

(13) On such review the Judge shall have power to cancel or amend anything which may have been done by the Probate Registrar.

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Order 46: Probate and Administration OR. 46 PG 48/56

87. The Court may refuse to entertain any application under Rule 86 of this Order if it considers that there has been unreasonable delay by the applicant in making his application.

Court may review application to

88.-(1) A Judge or the Registrar may direct that a motion on notice or summons for the service of which no other provision is made in this Order shall be served on such person or persons as the Judge or Registrar may direct.

Service of mo|lon on summons

(2) Where by the provisions of this Order or by any direction given under sub-rule 1 of this Rule a motion on notice or summons is required to be served on any person, it shall be served not less than 5 days, before the hearing of the motion or summons.

89. Unless the Registrar otherwise directs or this Order provides, any notice or other document required to be given or served on any person may be given or served by leaving it at, or by sending it by courier to that person's address for service, or if he has no address for service, his last known address.

service of notice and documents

100. An affidavit used in non-contentious probate business shall satisfy the requirements of Order 32.

Affidavit

101. The provisions of Order 5 shall apply to the computation, enlargement and abridgement of time under this Order.

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92. Subject in any particular case to any direction given by a Judge, this Order shall apply to any proceeding

Application

which is pending on the date on which these Rules come into operation as well as to any proceeding commence on or after that date:
Provided that where the deceased died before the commencement of these Rules, the right to a grant shall, subject to the provisions of any enactment, be determined by the principles and Rules in accordance with which the Court would have acted at the date of the death.
Contentious 93. Suits in respect of probate shall be instituted
ofsuits' 0rm an<* carr*ed on as nearly as possible in the like manner
and subject to the same Rules of procedure as suits in
respect of civil claims.
III. Proceeding Generally
Probate actions
94. In Probate actions, the originating process shall state whether the Claimant claims as creditor, executor, administrator, beneficiary, next-of- kin or in any other capacity.
Service of writ 95. \n probate actions service of a writ of
of summons i_ 1 .CTJI-II J^.T
summons may by leave of a Judge be allowed out of Nigeria.
Pleadings and 96. In probate actions a party shal 1 state with
further actions regard to every defence which is pleaded, what is the substance of the case on which it is intended to rely; and further where it is pleaded that the testator was not of sound mind, memory and understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial and except by leave of a

Judge no evidence shall be given of any other instances at the trial.
97. In probate actions where the claimant NV1^ere
disputes the interest of the defendant, he shall allege in djsputes
his statement of claim that he denies the
defendant's defendant's

interest. interest

98. In probate actions the party opposing a Will Notice in may, with his defence, give notice to the party setting up Pr°bate the Will that he merely insists upon the Will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the Will, and he shall thereupon be at liberty to do so and shall not in any event be liable to pay the costs of the other side unless the Judge finds that there was no reasonable ground for opposing the Will.

99. A judgment or order for a general account Enquiry as to of the personal estate of a testator or intestate shall outstanding contain a direction for any inquiry as to what parts (if pcrsona es any) of such personal estate are outstanding or undisposed of, unless the Court or a Judge shall otherwise direct.

100. Where a person is or has been a party to Discretion to any proceedings in the capacity of trustee, personal order costs representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of such proceeding in so far as they are not recovered from or paid by any other person out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may

otherwise order only on the ground that the trustee. personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefi rather than for the benefit of the fund.

Originating summons relating to deceased person

101. The executors or administrators of £ deceased person or any of them, and the trustees undei any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor. beneficiary, next-of-kin, heir-at-law of a deceased person, or as Cestui que trust under the trust of any deed or instrument, or as claiming by assignment or

administration otherwise under any such creditor or other person as aforesaid, may take out an originating summons for such relief as listed hereunder as may be specified by the summons and as the circumstances of the case may require; that is, the determination without an administration of the estate or trust of any of the following questions or matters:

(p) any question affecting the rights or interests of the person claiming to be creditor, beneficiary, next-of-kin, or heir-at-law or cestui que trust;

(q) the ascertainment of any class of creditors, beneficiary, next- of-kin, or others;

(r) the furnishing of any particular accounts by the executors or administrators or trustees and the vouching (when necessary) of such accounts;

(d) the payment into court of any money in the hands of the executors or administrators or trustees;

j (e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;

(p) the approval of any sale, purchase, compromise, or other transaction;

(q) the determination of any question arising in the administration of the estate or trust.

Order for administration of estate of deceased and of trust

102. Any of the persons named in Rule 101 of this Order may in like manner apply for and obtain an order for:

(p) the administration of the personal or real estate of the deceased;

(q) the administration of the trust;

(r) any act to be done or step to be taken which the Judge could have ordered to be done or taken if any such administration order as aforesaid has previously been made.

103. The persons to be served with the summons persons to be under Rules 101 and 102 of this Order in the first instance served shall be the following:

(a) for the determination of any question, under paragraph (a) (c), (f) or (g) of Rule 101 of this Order, the persons, or

Where summons taken out by any other person
Judge not bound to order administration

one of the persons, whose rights cr interests, are sought to be affected;
(v) for the determination of any question, underparagraph(b)ofRule 101 of this Order any member or alleged member-of the class;
(w) for the determination of any question, under paragraph (c) of Rule 101 of this Order, any person interested in taking such accounts;
(x) for the determination of any question under paragraph (d) Rule 101 of this Order, any person interested in taking such money
(y) for relief under paragraph (a) of Rule
102 of this Order, the residuary legatees. or next of kin (or some of them) or the residuary devisees, or heirs, or some of them, as the case may be;
(f) for relief under paragraph (b) of Rule
102 of this Order, the Cestui que trust or some of them;
(g) if there are more than one executor
or administrator or trustee and they do
not all concur in taking out the summons,
those who do not concur;
(h) where the summons is taken out by any person other than the executors, administrators or trustees, the said executors, administrators or trustees, or some of them, must be served.
104. It shall not be obligatory on the Judge to

pronounce or make judgment or order, whether on summons or otherwise for the administration of any trust or of the estate of

any deceased person if the questions between the parties can be properly determined without such judgment or order.

105. Upon an application for administration or order which execution of trusts by a creditor or beneficiary under a may be made Will, intestacy, or deed of trust, where no accounts or °n a^p !cat'on

' •" ' for administra-

insufficient accounts have been rendered, the Judge may, tion or in addition to the powers already existing: execution of trusts, where

(a) order that the application shall stand no account or over for a certain time, and that the I^J^ executors, administrators or trustees in been rendered. the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceeding;

(b) when necessary, to prevent proceeding by other creditors, or by persons beneficially interested, make the usual judgment or order for administration with a proviso that no proceeding are to be taken under such judgment or order without leave of the Judge.

106. The issue of a summons under Rule 101 interference with discn of trustee of this Order shall not interfere with or control any power with discretion or discretion vested in any executor, administrator or trustee except so far as such interference or control may necessarily be involved in the particular relief sought.

High Court (Civil Procedure) Rules of Cross River State. 2008

Order 46: Probate and Administration

OR. 46 PG 55/56

Application by sumons
Appointment of new trustees and vesting order
Vesting order on sale, etc
Payment out of court

107. Any of the following applications may be made by summons:
(u) an application for the appointment of a new trustee with or without a vesting or other consequential order;
(v) an application for a vesting order or other order consequential on the appointment of a new trustee whether the appointment is made by the court or otherwise;
(w) an application for vesting or other consequential order in any case where a judgment or order has been given or made for the sale, conveyance, or transfer of any land or stock or the suing for or recovering any chose in action;
(x) an application relating to a fund paid into Court in any case coming within the provisions of Rule 8 of this Order.

Interpretation Law of Cross River State to apply

108.-(1) The provisions of the Interpretation Law shall apply to the interpretation of this Order.
(2) In this Order, unless the context otherwise requires:
"authorised officer" means any officer of the Registry who is for the time being authorised by law to administer any oath or to take any affidavit required for any purpose connected with his duties;

"gross value" in relation to any estate means the value of the estate without deduction for debts, encumbrances,
High Court (Civil Procedure) Rules of Cross River State, 2008

Order 46: Probate and Administration

OR. 46 PG 56/56

j funeral expenses or estate duty;
| "oath" means the oath required by this Order to be j sworn by every applicant for grant;
"personal applicant" means a person other than a ' trust corporation who seeks to obtain a grant without I employing a Legal Practitioner, and i
"personal application" has a corresponding meaning;
j "Poor person" means a person whose monthly income is less than N5,000.00.
"Registrar" means the Probate Registrar;

"Registry" or "Probate Registry" means the Probate Registry of the Court;
"Will" includes a codicil and any testamentary document or copy or reconstruction of it;
(3) Unless the context otherwise requires, any reference in this Order to any rule or enactment shall be construed as a reference to that rule or enactment as amended, extended or applied by any other rule or enactment as amended or extended.
High Court (Civil Procedure) Rules of Cross River State, 2008

Demurrer abolished

ORDER 47 PROCEEDINGS IN LIEU OF DEMURRER
1. No demurrer shall be allowed.

2. -(1) Any party may by his pleading raise am
Points of law . -.,,,. ,. ^, •
may be raised Point of law and the Judge may dispose of the point sc by pleadings raised before or at the trial.
(2) If in the opinion of the Judge, the decision n such point of law substantially disposes of the whole proceedings or of any distinct part thereof, the Judge may make such decision as may be just.

ORDER 48 APPEALS FROM MAGISTRATE'S COURT, ETC.
1. Every appeal shall be brought by Notice of Notice of Appeal which shall be lodged in the lower Court within APPeal 30 days ofthe decision appealed from and served on all other parties affected by the appeal within that period.
| 2- (1) The Notice of appeal shall set out the Contents, etc.
reference number ofthe proceedings in which the decision of Notlce of complained of was given, the names ofthe parties, the date ofthe decision and the grounds for appeal in full.
(17) Where the appellant complains only of a part ofthe decision, the Notice of appeal shall specify the part complained of; otherwise the appeal shall be taken to be against the decision as a whole.
(18) The Notice of appeal shall give an address j within the Judicial Division in which is situated the lower Court appealed from, to which notices can be sent to the appellant.

(19) The Notice of appeal shall be in Form 47 in Form 47 the appendix and may be varied to suit the circumstances
I ofthe case but so that no variation of substance shall be 'made.
3.-(1) The Registrar ofthe lower Court shall, Copies of ! within 3 months ofthe decision appealed from, prepare recor °
i rr r r proceedings
as many certified copies ofthe record of proceedings,
including the Notice of Appeal, required for the
| consideration ofthe appeal as there are parties on record.

(2) The Registrar shall within 7 days of preparir g
the certified copies of the record of proceedings an:
Notice of Appeal referred to in sub-rule 1 of this Rul e
notify the parties to come forward and collect their own
copies upon payment of necessary fees, and shall sen i
copies also to the Registrar of the Court in the Judicia]
Division in which the lower Court is situated, and th e
appeal shall be decided by the Judge of the Division.
(3) Except where the fees for preparing the
copies are remitted, a deposit decided upon by the
Registrar as likely to cover the fees, shall be made by
the appellant before the preparation of the copies.
Fining of address 4.-(1) The appellant shall within 30 days of the receipt of the Record of Proceedings from the lowe r
Court file in the Court a written address which snail
contain succinct statement of his argument in the appeai.
(12) The respondent shall also within 30 days c■ f the service of the written address of the appellant on him file the respondent's written address, which shal answer all material points of substance contained in the appellant's written address and contain all the points raised therein which the respondent wishes to concede as well as reasons why the appeal ought to be dismissed.
(13) The appellant may if necessary, within 14 days of the service on him of the respondent's written address file and serve a reply written address which shall deal with all new points arising from the respondent's written address.

(4) All parties, whose interests are identical or joint, shall file a joint written address, and separate written addresses may be filed only by those parties whose interests are separate or in conflict.
5. The times prescribed in Rules 1 to 4 may be proceeding enlarged at any time by the Court on such terms (if any) time as may seem fit, after notice is given to the respondent by the appelant ofhis application for enlargement of time.
6. Where the time available to the appellant for where time the taking of any step has expired before such step has expires been taken or completed, the respondent may, on notice to the appellant, apply to the Court to strike out the appeal, and the Court may strike out the appeal or enlarge the time to take that step for sufficient reason shown.
Constitution
7. All civil appeals from lower Court shall be 0f Court heard by one Judge of the Court. hearing
appeals
8. The appeal shall come on hearing at such Time and time and at such place as the Registrar of the Court shall place for notify to the parties. hearing
9.-(l) If, on the day of hearing or at any where adjournment of the case, the appellant does not appear, appellant fails the appeal shall be struck out and the decision shall be t0 appear affirmed, unless the Court thinks fit, for sufficient cause to order otherwise.
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(2) If, in any such case the respondent appears, the judgement shall be with costs of the appeal against the appellant, unless the Court expressly orders otherwise; but if the respondent does not appear, the cost of the appeal shall be at the discretion of the Court.
where 10. If, on the day of hearing and at any
appci lant adjournment of the case, the appellant appears, the Court
appears shall, whether the respondent appears or not, proceed
to the hearing or further hearing and determination of the appeal and shall give judgement according to the merits of the case without regarding any imperfection or defect of form; but if it

appears or is so proved to the Court that the appellant has not complied with requirements precedent to the hearing of an appeal hereinbefore contained, the Court shall dismiss the appeal and affirni the decision, with or without costs of the appeal against the appellant.

Appeal limited to grounds given in notice.

11. On hearing, it shall not be competent for the appellant to go into any other reasons for appeal than those set forth in his notice of grounds of appeal; but where, in the opinion of the Court, other grounds of appeal than those set forth in the memorandum of grounds of appeal should have been given, or the statement of grounds of appeal is defective, the Court, in its discretion, may allow such amendments of the memorandum of grounds of appeal upon such conditions as to service upon the respondent and as to costs as it may think fit.

Request to confirm judgement on other urounds.

12.- (1) The respondent may give notice tha: he intends at the hearing to ask the Court to confirm the

judgement of the lower Court on grounds other than those stated by that Court.

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

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

13.- (1) the respondent may file grounds of appeal against any part of the judgement of the lower Court.

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

14.- (1) No objection on account of any defect in the form of setting forth any ground of appeal shall be objections to form of

aUowe^unlesstheCourtisoftheopinionthattheground f°u"a[s °

of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the respondent to enquire into the

subject-matter thereof or to prepare for the hearing.
(2) In any case where the Court is of the opinion that any objection to any ground of appeal ought to prevail, the Court may, if it thinks fit, cause the ground

Defects in proceedings under appeal.

of appeal forthwith to be amended upon such terms and conditions, if any, as the Court may think just.
15. On any appeal from a decision of a lower Court; no objection shall be taken or allowed to any proceeding in such Court for any defect or error which might have been amended by that Court, or to any complaint, summons, warrant, or other process to or of such Court for any variance between any complaint or summons and the evidence adduced in support thereof in such Court:

Defects in notice of appeal or recognisance

Provided, however, that if any error, defect, or variance mentioned in this Rule appears to the Court at the hearing of any appeal to be such that the appellant has been thereby deceived or misled, it shall be lawful for the Court either to refer the case back to the lower Court with directions to re-hear and determine it or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.
16. No objection shall be taken or allowed, on any appeal, to any Notice of Appeal or to recognisance entered into under this Order for the due prosecution of the appeal for any alleged error or defect therein; but if the error or defect appears to the Court to be such that the respondent on the appeal has been thereby deceived or misled, it shall be lawful for the Court to amend it and, if it is expedient to do so, also to adjourn the further hearing of the appeal, the amendment and the

adjournment, if any, being made on such terms as the Court may think just.
17. The Court may, in any case where it Additional considers it necessary that evidence should be adduced, evidence-either-
(k) order such evidence to be adduced before the Court on some day to be fixed in that behalf; or
(l) refer the case back to the lower Court to take such evidence, and may in such case either direct the lower Court to adjudicate afresh after taking such evidence and subject to such directions in law, if any, as the Court think fit to give, or direct it, after taking such evidence, to report specific findings of fact forthe information of the Court, and on any such reference, the case shall, so far as may be practicable and necessary, be dealt with as if it were being heard in the first instance.
18.-(1) When additional evidence is to be taken Mode of by the Court and specific findings of fact reported, it ^"8 shall certify the evidence to the Court which shall thereupon proceed to dispose of the appeal.
(2) The appellant or his Legal Practitioner shall be present when the additional evidence is taken.
High Court (Civil Procedure) Rules of Cross River State, 2008

(3) Evidence taken in pursuance of Rule 17
shall be taken as if it were evidence taken at the trial
before the lower Court.
(4) When forwarding to the Court any additional
evidence taken by a lower Court in pursuance of Rule
•17 the lower Court may express its opinion on the
demeanour of the witnesses and of the value of their
evidence and may also, if it is the same Court against
whose decision the appeal has been made, state whether
or not it would have come to a different decision had the
additional evidence been brought forward at the trial.
Fees. Second Schedule
19. The fees in the Second Schedule shall be chargeable in civil appeals save where they would have to be paid by a Government officer acting in his official capacity or where the lower Court or the Court waives or remits the fees on the ground of the poverty of the person changeable therewith where it appears that there are substantial grounds of appeal.
Stay of execution

20.—(1) On application being made for stay of execution under any enactment establishing the lower Court, the lower Court or the Court may impose one or more of the following conditions-
(a) that the appellant shall deposit a sum fixed by the Court not exceeding the amount of the money or the value of the property affected by the decision or judgement appealed from, or give security to the satisfaction of the Court for the said sum;
High Court (Civil Procedure) Rules of Cross River State, 2008

(v) that the appellant shall deposit a sum equal to the amount of the costs allowed against him or give security to the satisfaction of the Court for the said sum;
(w) that the appellant shall, where the decision or judgement appealed from relates to possession or lands or houses, give security to the satisfaction of the Court for the performance of the decision or judgement in the event of the appeal being dismissed;
(x) that the appellant's property shall be seized and attached pending the making of a deposit or the giving of security as aforesaid, including a deposit or security for the expenses incidental to the seizure and attachment;
(y) that the appellant's property shall be seized, and attached and sold and the net proceeds deposited in Court pending determination of the appeal.
(2) Any order made on any such application shall limit the time (not being more than thirty days) for the performance of the conditions imposed, and direct that in default of the performance within the period of time so limited, execution may issue or proceed.
(3) An application for stay of execution under the enactment establishing the lower Court may be made at any time after lodgement of the Notice of appeal and shall in the first instance be made to the lower Court; but
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where execution has been ordered by the Court the application shall not be made to the lower Court but to the Court.
(19) The application may be ex-parte but the Court may direct notice thereof to be given to the other party to the appeal; and where an order is made ex-parte the Registrar of the Court shall notify the other party of the order made.

(20) Where the appellant proposes to give security instead of making a deposit, the applic ation shall state the nature of the security and the name of the surety proposed (if any).
(21) Any party dissatisfied with an order made by the lower Court may apply to the Court by motion (original or interlocutory, as the case may require) with notice to the other party for a review of the order, and the Court may thereupon make such order as may seem just.
(7) An appeal shall not operate as a stay of execution under the decision or judgement appealed from except so far as the lower Court or the Court may order; and no intermediate act or proceeding shall be invalidated except so far as either Court may direct.
Costs 21. The Court may make such order as to the payment of costs by orto the appellant as it may consider to be just and the order may be made also in any case where an appeal has not been entered into or prosecuted.
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Order 48: Appeals from Magistrate's Court, Etc. OR. 48 PG11/12
22.- (1) The Court may, in special circumstances, Security of upon application on notice by motion (original or costs* interlocutory as the case may require), supported by affidavit, order the appellant to deposit such sum or give such security as may seem fit for the respondent's cost of appeal including the costs incidental to the application.
(2) The order shall limit the time (not exceeding 30 days) within which the deposit or security shall be made or given and may direct that in default of its being made or given within the time so limited the appeal shall without further order stand dismissed.
(3) Where an appeal so stands dismissed the respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such costs may be stated in the order in anticipation or may be assessed at any time by the Court of its own motion or on application made ex-parte or on notice, as the Court may see it.
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I (4) Where an appeal so stands dismissed the
\ appellant shall take no further step or proceeding therein
\ save by leave of the Court or for reinstatement of the
\ appeal, which may be granted on such terms (if any) as

\ may seem fit upon application by motion on notice given
\ within a month of such dismissal (but not otherwise).
(5) Subject and without prejudice to the discretion of the Court to grant costs where it seems proper on an application made under sub rule (1), cost shall not normally be granted to the applicant save where the net proceeds of execution levied on the appellant's

goods are sufficient to satisfy the amount payable under the judgment or decision appealed from.

Orders of High Court to Court.

23.- (1) When a case is decided on appeal the Court shall certify its judgment or order to the lower Court in bC ^stnrtC,d l° wmc^ me decision appealed against was pronounced.

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

Enforcement of judgement

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

Enforcement 0 or ers*

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

High Court may enlarge tjme>

26. TheCourtmay,ifitthinksfit,enIargeanyperiod _. „ ,,,.-., of time prescribed by this Order.

interpretation

27. In this Order- "the lower Court" means tins Court whose judgement is appealed against. " Judgement" includes an order or ruling.

ORDER 49 FEES AND ALLOWANCES

1. Subject to the provisions of any written law and Fees: 1st and
of the foregoing Orders- 2nd Schedule

(k) the fees set out in the First and Second Schedules hereunder shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in those Schedules;

(l) the allowances set out in Part II of the Allowances.
Third Schedule shall be payable to the Part H of 3rd
r- . Schedule
various categories of witnesses mentioned therein by any person at whose instance the testify:

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

2. The regulations set out in the Fourth Schedule Regulations:
shall be observed by all officers of Court concerned 4th Schedule
with the rendering of services, or collection of fees
payable, under the provisions of the foregoing Order.

High Court (Civil Procedure) Rules of Cross River State, 2008

HIGH COURT OF CROSS RIVER STATE (CIVIL PROCEDURE) RULES
APPENDIX List of Forms

Form No.	Title
1.	General Form of Writ of Summons
2.	Writ for service out of the Jurisdiction
3.	General Form of Orginating Summons
4.	Originating Summons
5.	Form of Ex-parte Originating Summons
6.	Notice of appointment to hear Originating Summons
7.	Form of Memorandum for Renewed Originating Process
8.	Request to Minister of Foreign Affairs to transmit Writ to Foreign Government.
9.	Request for Service Abroad
10.	Letter Forwarding Request for Substituted Service
11.	Request to Minister of Foreign Affairs to transmit Notice of Writ to a Foreign Government
12.	Memorandum of Appearance
13.	Notice of Counter-Claim
14.	Concession to defence
15.	Interrogatories
16.	Answer to interrogatories

17. Affidavit as to documents
18. Hearing Notice for pre-trial conference
19. Pre-trial Sheet
20. Form for guarantee for the acts and default of a receiver
21. Receiver's Security by undertaking

77. Receiver's Account
78. Affidavit verifying Receiver's Account
79. Form of Order for Account and Inquiries
80. Notice of Payment into Court
81. Acceptance of Sum paid into Court
82. Acceptance of sum paid into Court by one of several defendants
83. Legal practitioner's undertaking as to expenses
84. Letter of request to take evidence abroad (Con¬vention Country)
85. Order for appointment of the Nigerian Diplomatic agent as Special examiner (in Convention Country)
86. Form of Praecipe
87. Subpoena ad Testificandum
3 3. Habeas Corpus ad Testificandum
34. Subpoena duces Tecum
3 5. Originating Summons for Possession
91. Order for Possession
92. Order for payment of Principal Moivv. interest, secured by Mortgage or charge.
93. Order for possession of property forming a security for payment to the claimant of any principal money or interest
94. Order for payment of principal money or interest secured by mortgage or charge and for possession of property comprised therein
95. Certificate of the Chief Registrar
96. Surety's guarantee
97. Surety's guarantee on application for resealing
98. Caveat
99. Warning to Caveator
100. Appearance to warning of citation
101. Notice of election to redeem life interest

HIGH COURT OFCROSS RIVER STATE (CIVIL PROCEDURE) RULES

FORM1

General Form of Writ of Summons

(0.7,r.3)

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(Here put the Judicial Division letter and number of the suit (see note (a) following this form).

In the High Court of Cross River State

In the Judicial Division

Between

A.B .' Claimant

and

CD Defendant

To CD. of in the of

You are hereby commanded that within eight days after the service of this writ on you, inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit A.B and take notice that in default of your so doing the Claimant may proceed therein, and judgment may be given in your absence.

DATED this day of 20

Registrar Memorandum to be subscribed on the writ

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