

FAMILY COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2012

RULES OF COURT TO REGULATE PROCEEDINGS RELATING TO THE RIGHTS, ADVANCEMENT AND WELFARE OF THE CHILD UNDER THE LAGOS STATE CHILD'S RIGHTS LAW NO. 11 2007 AND FOR OTHER CONNECTED AND PURPOSES

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**THE CHILD'S RIGHTS LAW OF LAGOS STATE 2007
FAMILY COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2012**

In the exercise of the powers conferred on me by section 150 of the Child's Rights Law of Lagos State 2007 and all other powers enabling me in that behalf, I, HONOURABLE JUSTICE INUMIDUN ENITAN AKANDE, OFR, the Chief Judge of Lagos State hereby make the following Rules for the procedure that shall be applicable in the Family Court of Lagos State.

PREAMBLE

- 1. The Child's Right Law was passed by the Lagos State House of Assembly and assented to by the Governor of Lagos State on the 28th of May, 2007 to provide a Law to enforce the rights of the child, and to amend and consolidate all legislations relating to the protection and welfare of the child in Lagos State and for other connected and incidental purposes.
- 2. Sections 138 and 139 of the Child's Rights Law established for Lagos State a Court to be known and referred to as the Family Court at

the level of the High Court of Lagos State and at the level of the Magistrate Court of Lagos State for the purpose of hearing matters relating to children.

3. Section 150 of the Child's Rights Law empowers the Chief Judge of Lagos State to make Rules for the procedure that shall be applicable in the Family Court.
4. The Court shall constantly and conscientiously seek to give effect to the overriding objectives of the Rules at *every* stage of an action to enforce the rights of the child especially whenever it exercises any power given it by these Rules or any other law and whenever it applies or interprets any Rule.
5. Parties and their legal representatives shall help the Court to further the overriding objectives of the Rules.

Short Title - The Family Court of Lagos State (Civil Procedure) Rules 2012

[Commencement (6th June 2012)]

Order 1

(1) The Family Court (Civil Procedure) Rules 2012 (hereinafter referred to as "the Rules") shall be the Rules to be followed by the Family Court in the Lagos State.

(2) The Rules may be cited as the Family Court of Lagos State (Civil Procedure) Rules 2012 and come into force on the 6th of June, 2012.

2. interpretation

(1) In these Rules and unless the context otherwise requires:
"Appropriate Authority" has the same meaning as ascribed to it in the Law.

"Attorney General" means the Attorney General & Commissioner for Justice Lagos State.

"Care Order" has the same meaning as ascribed to it in the Law

"Child assessment order" has the same meaning as ascribed to it in the Law.

"Child proceedings" means proceedings for a care order under the Law

"Child's Right Law" means the Child's Rights Law of Lagos State 2007 with the subsequent amendments thereto.

"Contribution order" has the same meaning as ascribed to in the Law.

"Court" means "High Court or a Magistrate Court designated as Family Court.

"Education supervision order" has the same meaning as ascribed to it in the Law.

"Emergency protection order" has the same meaning as ascribed to it in the Law.

"Enforcement order" has the same meaning as ascribed to it in the Law.

"Financial compensation order" has the same meaning as ascribed to it in the Law.

"Guardianship order" has the same meaning as ascribed to it in the Law.

"Interim order" means an interim care order or an interim supervision order referred to in the Law.

"Juvenile" means a person under the age of seventeen years who is abandoned, or whose parents and other relatives are unknown or cannot be traced after due enquiry.

"Law" means Lagos State Child's Rights Law, 2007 with the subsequent amendments thereto or any re-enactment thereof

"Litigation Friend" means any person who conducts proceedings on behalf of a child.

"MCA" means Matrimonial Causes Act Cap M7 Laws of the Federation of Nigeria 2004.

"Registrar of Court" 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 in the family Court.

"Supervision proceedings" means proceedings for a supervision order.

"Warning notice" means a notice attached to an order.

- (2) Words and terms defined under the Child's Rights Law shall have the same meaning in this context.

Order2 OVERRIDING OBJECTIVE

1. These Rules are made with the overriding objective of giving protection and care as necessary for the well being of the child, taking into consideration the rights and duties of the child's parents, legal guardians, individuals, institutions, services, agencies, organizations or bodies legally responsible for the child.
2. In achieving (1) above, the Court shall deal with cases justly, having regard to the best interest and welfare of any Child involved.
3. Dealing with a case Justly, so far as is practicable, includes-
 - (a) ensuring that it is dealt with expeditiously and fairly;
 - (b) taking cognizance of the nature, importance and complexity of the issues;
 - (c) having regard to the special need of the child as a party; and
 - (d) saving time and expense.
4. Application by the Court of the overriding objective

The Court shall seek to give effect to the overriding Objective when it-

- (a) exercises any power given to it by these Rules; or
- (b) interprets any portion of these Rules.

5. Court's duty to manage cases

The Court must further the overriding objective by actively managing cases.

- (1) Active case management includes-
 - (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
 - (b) Identifying at an early stage the issues and who should be a party to the proceedings;
 - (c) deciding promptly which issues need full investigation and hearing and the procedure to be followed;
 - (d) encouraging the parties to use an alternative dispute resolution procedure if the Court considers that appropriate and facilitating the use of such procedure;
 - (e) helping the parties to settle the whole or part of the case;

- (f) dealing with as many aspects of the case as it can on the same occasion;
- (g) making use of technology; and
- (b) giving directive to ensure that the case proceeds quickly and efficiently.

Order 3 APPLICATION OF THE RULES

- 1(1) Unless the context otherwise requires, these Rules apply to proceedings in –
- (a) High Court; and
 - (b) Magistrate Court
designated as 'Family Court'.
- (2) Nothing in the Rules shall be construed as purporting to apply to proceedings in a High Court or a Magistrate Court not designated as Family Court.

Order 4 ALTERNATIVE DISPUTE RESOLUTION: POWERS OF THE COURT

1. Scope of this Order

- (1) This Order contains the powers of the Court to encourage the parties to use alternative dispute resolution and to facilitate its use.

When the Court will adjourn proceedings or hearing in proceedings

- (2) If the Court considers that alternative dispute resolution is appropriate, the Court may direct that the proceedings, or a hearing in the proceedings, be adjourned for such specified period as it considers appropriate –
- (a) to enable the parties to obtain information and advice about alternative dispute resolution: and
 - (b) where the parties agree, to enable alternative dispute resolution to take place.
- (3) The Court may give directions under this Order on an application of the parties or of its own initiative.
- (4) Where the Court directs an adjournment under this Order, it will give directions about the timing and method by which the parties

must tell the Court if any of the issues in the proceeding have been resolved.

Order 5 GENERAL CASE MANAGEMENT POWERS

The General Powers of the Court

The list of powers in this Order is in addition to any powers given to the Court by any other Order or practice direction or by any other enactment or any powers it may otherwise have.

Except where these Rules provide otherwise, the Court may-

- (a) extend or shorten the time for compliance with the Rules, practice direction or Court order (even if an application for extension is made after the time for compliance has expired);
 - (b) make such order for disclosure and inspection, including specific disclosure of documents, as it thinks fit;
 - (c) adjourn or bring forward a hearing;
 - (d) require a party or a party's legal representative to attend the Court, subject to the party's right to a counsel of his choice;
 - (e) consolidate proceedings;
 - (f) direct any party to file and serve an estimate of costs.
3. When the Court makes an order, it may make it subject to conditions, including a condition to pay a sum of money into Court and specify the consequence of failure to comply with the order or a condition.
4. Power of the Court under these Rules to make an order includes the power to vary or vacate the order
5. Any provision in these Rules-
- (a) requiring or permitting a direction to be given by the Court is to be taken as including provision for such directions to be varied or vacated; and
 - (b) requiring or permitting a date to be set is to be taken as including provision for that date to be changed or cancelled.

Power to strike out Application

- (1) The Court may strike out any Application if it appears to the Court
 - (a) that the Application discloses no reasonable grounds;

- (b) that the Application is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings.

Order 6 COMMENCEMENT

1. How to start proceedings

Proceedings under these Rules shall be commenced by way of an Originating Motion filed in the Family Court Registry at the High Court or Magistrate Court as the case maybe.

- 2. The Originating Motion shall contain the relief or remedy sought: the full names and address or the Applicant including telephone numbers and email address, if any and the full names and addresses of the Respondent or Respondents including telephone numbers and email addresses, if known to *the* Applicant. Where the Originating Motion is filed by a legal practitioner, it shall also contain the address within the jurisdiction of the Court, telephone numbers and email address of the legal practitioner.

3. The Originating Motion shall be supported by

- (a) a statement of case;
- (b) affidavit of facts
- (c) statement of arrangement for children
- (d) all other necessary documents
- (e) a statement or truth verifying the above mentioned processes and documents.

4. The Originating Motion shall be heard by

- (a) a Judge of the Family Court
- (b) a Chief Magistrate sitting at the Family Court.

5. Procedure in the High and Magistrate Court after filing Originating Motion:

- (1) Duties of Court and of the Parties upon issuance of Originating Motion

On commencement of an action either at the High or Magistrate Court designated as Family Court pursuant to the Child Right Law:

- (a) The Sheriff of Court within 5 (five) days beginning with the date on which the Originating Motion was filed or such longer time

as the Court may allow in *the* case of a Respondent outside jurisdiction, shall-

- (i) serve a copy of the Originating Motion on the Respondent; and
 - (ii) file a certificate of service which shall be accompanied by a statement of truth verifying the service.
- (b) The Court shall fix a first hearing not less than one (1) week and not more than two (2) weeks after the date of the filing of the Application or seven days after the service as in (a) above, whichever is the later.
 - (c) The Sheriff shall within three (3) days of the Court fixing a date of first hearing, give notice of the date of the first hearing to the Applicant and the Respondent.
 - (d) A Respondent served with the Originating Motion may, within fourteen (14) days beginning with the date of service or receipt or such longer time as the Court may allow in the case of a Respondent outside jurisdiction, file a statement in answer and the statement shall be accompanied by an affidavit of facts and all necessary documents.
 - (e) The statement in answer as well as the affidavit of facts and other documents of the Respondent must be verified by a statement of truth.
6. The date fixed under paragraph 5 (b) above, or for any subsequent hearing shall not be cancelled except with the Court's leave and, if cancelled, the Court must immediately fix a new date.

Order 7 STATEMENT OF TRUTH

1. Documents to be verified by a statement of truth

Subject to sub-rule (8) of this Order, the following documents must be verified by a statement of truth:-

- (a) a statement of case;
- (b) an affidavit of facts;
- (c) a certificate of service;
- (d) a statement of arrangements for children;
- (e) a statement in answer;

- (f) all document sought to be relied by the parties in the proceedings;
and
 - (g) any other document where a rule or practice direction requires it.
2. Where a statement of case or a statement in answer is amended, the amendment must be verified by a statement of truth unless the court orders otherwise.
 3. Subject to sub-rule (4) of this Order, a statement of truth is a statement that:-
 - (a) that the party putting forward the statement or document;
 - (b) in the case of an affidavit of facts, that the maker of the affidavit; or
 - (c) in the case of a certificate of service, the person who signs the certificate are true.
 4. If a party is conducting proceedings with a litigation friend, the statement of truth in:-
 - (a) a statement of case or statement in answer; or
 - (b) an Application notice,

is a statement that the litigation friend believes the facts stated in the statement or document being verified are true.

5. The statement of truth must be signed by:-
 - (1) in the case of a statement of case or statement in answer; or
 - (i) the party or litigation friend; or
 - (ii) the legal representative on behalf of the party or litigation friend; and
 - (2) In the case of an affidavit of facts or statements of arrangements for children, the maker of the affidavit or statement.
6. A statement of truth, which is not contained in the document which it verifies, must clearly identify that document.
7. A statement of truth in a statement of case or statement in answer may be made by: -
 - (a) a person who is not a party; or
 - (b) by two parties jointly,where this is permitted by a practice direction.

8. An Application that does not contain a statement of facts need not be verified by a statement of truth.
9. Failure to verify a Statement of case
 - (1) If a party fails to verify that party's statement of case or statement in answer by a statement of truth:-
 - (a) the statement shall remain effective unless struck out; but
 - (b) the party may not rely on the statement as evidence of any of the matters set out in it.
 - (2) *The Court* may strike out a statement of case or statement in answer which is not verified by a statement of truth.
 - (3) Any party may apply for an order under sub-rule (2) above.
10. Failure to verify an affidavit of facts

If the maker of an affidavit of facts fails to verify the affidavit by a statement of truth, the Court may direct that it shall not be admissible as evidence.

11. Power of the Court to require a document to be verified
 - (1) The Court may order a person who has failed to verify a document in accordance with these provisions to verify the document.
 - (2) Any party may apply for an order under sub rule 11 of order 16.
12. False Statements
 - (1) Proceedings for contempt of Court may be brought against a person who make, or causes to be, a false Statement in a document verified by a statement of truth without an honest belief in its truth.
 - (2) Proceedings under this rule may be brought only:-
 - (a) by the Attorney General; or
 - (b) by a party with the leave of the Court.

Order 8 APPLICATIONS

Application for Interim Orders

- (1) A party may apply at any stage of the proceedings for-
 - (a) an order for maintenance pending commencement of an action;
 - (b) an order for maintenance pending outcome of proceedings;

- (c) An order for interim periodical payment;
 - (d) an interim variation order; or
 - (e) any other form of interim order.
2. Where there *is* a pending application by party in Court under this Order before filing a financial statement, the affidavit shall: -
- (a) explain why the order is necessary; and
 - (b) give up to date information about that party's financial circumstances.
3. Unless the Respondent has filed a financial Statement, the Respondent shall, at least 7 days before the Court deals with the Application, file a statement of his means and serve a copy on the Applicant.
4. An Application pursuant to sub rule 1 (e) of this Order may be made without notice.
5. Application by parent, guardian etc for financial remedy in respect of children
- (1) The following people may apply for a financial remedy in respect of a child –
- (a) a parent, guardian or special guardian of a child;
 - (b) any person in whose favour a residence order has been made with respect to a child of the family, and any applicant for such an order;
 - (c) any other person who is entitled to apply for a residence order with respect to a child;
 - (d) approved orphanages and remand homes under whose care the child is placed;
 - (e) the child's Solicitor;
 - (f) a child who has been given permission by the Court to apply for a financial remedy.
6. Service of Application for financial remedy on Mortgagees, Trustees, Executors, Administrators, etc.
- (1) Where an Application for a financial remedy includes an application for an order for a variation of settlement or an order for payment of money out of any estate or trust, the Applicant must serve copies of the Application-
- (a) the Trustees of the settlement;

- (b) the Settlor if living;
 - (c) the Executors or Administrators of the estate; and
 - (d) such other person as the Court directs.
- (2) In the case of an application for avoidance of disposition order, the Applicant must serve copies of the application on the person in whose favour the disposition is alleged to have been made.
 - (3) Where an application for a financial remedy includes an application relating to land the Applicant must serve a copy of the Application on any mortgagee of whom particulars are given in the application.
 - (4) Any person served under sub-Rules (1), (2) or (3) of this Order may make a request to the Court in writing, within 7 days beginning with the date of service of the Application, for a copy of the Applicant's financial statement or any relevant part of that statement.
 - (5) Any person who: -
 - (a) is served with copies of the Application in accordance with sub-Rules (1), (2) or (3) of this Order; or
 - (b) receives a copy of a financial statement, or a relevant part of that statement following an application made under sub-Rule (4) of this Order;may within 14 days beginning with the date of service or receipt file a statement in answer.
 - (6) Where a copy of an application is served under sub-Rules (1), (2) or (3) of this Order, the Applicant shall file a certificate of service at or before the first hearing and the certificate of service must be verified by a statement of truth.
 - (7) A statement in answer filed under sub-Rule (5) of this Order must be verified by a statement of truth.

7. Children to be separately represented on certain Applications

- (1) Where an Application for a financial remedy includes an application for an order for a variation of settlement, the Court must, unless it is satisfied that the proposed variation does not adversely affect the rights or interests of any child concerned, direct that the child be separately represented on the Application.
- (2) On any other Application for a financial remedy the Court may direct that the child be separately represented
- (3) Where a direction is made under sub-rule (1) or (2) of this Rule, the Court may, if the person to be appointed so consents, appoint -

- (a) a person other than the Solicitor on Record, or
 - (b) Social Development Officer
8. Power court to direct a party to provide Information
- (1) Subject to sub-Rule (2) of this Rule, where a party has access information which is not reasonably available to another party, the Court may, on Application by the other party, direct the party who has access to the information to prepare, file and serve a document recording the information.
 - (2) In proceedings for application in adoption, placement and related proceedings;
 - (a) the Court may direct the party with access to the information to prepare and file a document recording the information; and
 - (b) a Court officer will send a copy of that document to the other party.

Order 9 CHILD'S GUARDIAN

1. Appointment of a Child's Guardian
- (1) The Court may make an order appointing as Child's Guardian any person or persons fit and suitable upon a satisfactory assessment report on the person issued by appropriate officers as may be specified by the Court.
 - (2) An order appointing a Child's Guardian may be made by the Court of its own initiative or on the application of:-
 - (a) a person who wishes to be a Child's Guardian;
 - (b) a party to the proceedings; or
 - (c) the appropriate authority as specified in section 77(2) of the Childs Rights Law.
 - (3) The Court may at any time direct that a party make an application for an order under sub-Rule (2) of this Order.
 - (4) An Application for an order appointing a Child's Guardian must be supported by evidence of and fitness of the Applicant or of the person sought to be made the guardian.
 - (5) The Court may not appoint a Child's Guardian under this Order unless it is satisfied that that person –
 - (a) can fairly and competently conduct proceedings on behalf of the child;

- (b) has no interest adverse to that of the child; and
 - (c) undertakes to pay any costs which the child may be ordered to pay in relation to the proceedings, subject to any right that person may have to be repaid from the assets of the child.
2. Court's power to change Child's Guardian and to prevent person acting as Child's Guardian
- (1) The Court may –
 - (a) direct that a person may not act as a Child's Guardian;
 - (b) terminate the appointment of a Child's Guardian; or
 - (c) appoint a new Child's Guardian in substitution for an existing one.
 - (2) An Application for an order or direction under sub-Rule (1) of this Rule must be supported by evidence of unsuitability and unfitness of the person concerned to act as guardian.
 - (3) The Court may not appoint a Child's Guardian under this Order unless it is satisfied that the person to be appointed complies with the conditions specified in Rule (1) sub-rule (5) of this Order.
3. **When appointment of child's guardian comes to an end**

When a child reaches the age of 18, the appointment of a child's guardian comes to an end.

Order 10 WELFARE REPORT

1. Request by Court for a welfare report in respect of a child
- (1) In proceedings under the Child's Rights Law, it shall be the duty of the Social Development Officer in the Department of Youth and Social Development of the Ministry of Youth, Sports and Social Development to comply with any court order requesting for welfare report in respect of a child.
 - (2) It is the duty of such officer to: -
 - (a) comply with any request for a report under this Order; and
 - (b) provide the Court with such other assistance as it may require.
 - (3) A report to the Court under this Order *is* confidential.
 - (4) A party may question the officer about oral or written advice tendered by that officer to the Court.

- (5) *The Registrar of Court shall notify the officer of a direction given at a hearing at which the officer is not present.*

Order 11 EVIDENCE GENERALLY

1. Power of Court to control evidence

- (1) The Court may control the evidence by giving directions as to:-
- (a) the issues on which it requires evidence;
 - (b) the nature of the evidence which it requires to decide those issues; and
 - (c) the way in which the evidence is to be placed before the Court.
- (2) The Court may use its power under this Rule to exclude evidence that would otherwise be admissible.
- (3) The Court may permit a party to adduce evidence, or to seek to rely on a document, in respect of which that party has failed to comply with the requirements of Order 7 of these Rules.
- (4) The Court may limit cross-examination.

2. Evidence of witness: General rule

- (1) The general rule *is* that any fact which needs to be proved by the evidence of witnesses may be so proved-
- (a) at the hearing, by both oral; and
 - (b) documentary evidence in writing.
- (2) The provisions of sub Rule (1) or Rule 2 of this Order is without prejudice to compliance with the provisions of the Child's Rights Law on specific orders (e.g., Emergency Protection Orders) and Practice Directions to be introduced from time to time by the Chief Judge.

3. Evidence by video link or other means

The Court may allow a witness to give evidence through a video linker by other means.

4. Affidavit of facts

- (1) An affidavit of facts is a written affidavit signed by a person which contains the evidence which that person would be allowed to give orally.
- (2) An affidavit of facts must comply with the requirements set out in the Evidence Act.

- (3) An affidavit of facts shall be verified by a statement of truth.
5. Service of affidavits of facts for use at the bearing
 - (1) The Court may give directions as to service on the other parties of any affidavit of facts of the oral evidence on which a party intends to rely in relation to any issues of fact to be decided at the hearing.
 - (2) The Court may give directions as to: -
 - (a) the order in which affidavit of facts are to be served; and
 - (b) whether or not the affidavit of facts are to be filed.
 - (3) Where the Court directs that a Sheriff is to serve an affidavit of fact on the other parties, any reference in these Rules to a party serving an affidavit of fact is to be read as including a reference to Sheriff serving the affidavit.
 6. Use at the hearing of affidavits of facts which have been served
 - (1) If a party: -
 - (a) has served an affidavit of facts; and
 - (b) wishes to rely at the hearing on the evidence of the witness who made the affidavit,

that party must produce the witness in court to affirm the making of the affidavit unless the court directs otherwise.
 - (c) where the Court directs otherwise as in (b) above, the use to which such affidavit of facts is to be put shall be at the discretion of the court.
 - (2) The affidavit of facts of a witness produced in Court under sub-Rule 1 of this Rule is to stand as the evidence in chief of that witness unless the Court directs otherwise.
 - (3) A witness produced in Court at the hearing may with the permission of the Court be called:-
 - (a) to give oral evidence to amplify his affidavit of facts; and/or
 - (b) give evidence in relation to new matters which have arisen since the affidavit of facts was served on the other parties.
 - (4) The Court shall grant leave under sub-Rule (3) of this Rule only if it considers that there is good reason not to confine the evidence of the witness to the contents of the affidavit of facts.
 - (5) If a party who has served an affidavit of facts does not produce the witness in Court to affirm the making of the affidavit or

it becomes impossible for the witness to be produced such affidavit shall be dealtwith as in sub-Rule 1 (c) of this Rule and any other party may put the affidavit or facts in as hearsay evidence.

7. Order for cross-examination

- (1) Where at a hearing a witness testifies as in Rule 6 sub-Rule 4 of this Order, any party may apply for leave of the Court to cross examine the witness.
- (2) If the Court grants leave under sub Rule (1) of this Rule but the witness in question does not attend, that witness' evidence may not be used unless the Court directs otherwise.

8. Consequence of failure to serve affidavit of facts

If an affidavit of facts for use at the hearing is not served in respect of an intended witness within the time specified by the Court, then the witness may not be called to give oral evidence unless the Court grants leave.

9. Cross Examination on an affidavit of facts.

A witness who is called to give evidence at the hearing may be cross-examined on the affidavit of facts. whether or not the affidavit or any part of it was referred to during the witness' evidence in chief.

10. Affidavit made outside the jurisdiction

- (1) A person may make an affidavit off facts outside the jurisdiction in accordance with: -
 - (a) the provisions of the Evidence Act 2011 Laws of the Federation of Nigeria; or
 - (b) the law of the place where the affidavit is made.

11. Notice to admit facts

- (1) A party may serve notice on another party requiring the other party to admit the facts, or the part of the *case* of the serving party, specified in the notice.
- (2) A notice to admit facts must be served not later than fourteen (14) days before the hearing.
- (3) Where the other party makes any admission in answer to the notice, the admission may be used against that party:-
 - (a) in the proceedings in which the notice to admit is served; and
 - (b) by the party who served the notice.

(4) The Court may allow a party to amend or withdraw any admission made by that party on such terms as it thinks just.

12. Notice to admit or produce documents

(1) A party to whom a document is disclosed is deemed to admit the authenticity of that document unless notice is served by that party that the party wishes the document to be proved at the hearing

(2) A notice to prove a document must be served:-

(a) by the latest date for serving affidavit of facts; or

(b) within seven (7) days beginning with the date of service of the document, whichever is the later.

13. Notarial Acts and Instruments

A notarial act or instrument may be received in evidence, without further proof as duly authenticated in accordance with the requirements of law unless the contrary is proved. \

14. Where a person to be examined is in another State

(1) This Rule applies where a party wishes to take a deposition from a person who is:-

(a) outside the jurisdiction of the Court; and

(b) any place outside Nigeria

(2) The Court may order the issue of a request to a designated court ("the Requested Court") in the place outside Nigeria in which the proposed deponent is.

(3) If the Court makes an order for the issue of a request, the party who sought the order must file:-

(a) a request for the taking of evidence,

(b) except where sub-Rule (4) of this Rule applies, a translation of the form to English language 'hall be required:

(c) an undertaking to be responsible for costs sought by the requested Court in relation to-

(i) fees paid to experts and interpreters; and

(ii) where requested by that party, the use of special procedures or communications technology; and

(d) an undertaking to be responsible for the Court's expenses.

- (4) There shall be no need to file a translation if:-
- (a) English is one of the official languages of the place where the examination is to take place; or
 - (b) the Court of the place has indicated, in accordance with the taking of evidence, that English is a language which it will accept.
- (5) Where the taking of evidence (direct taking of evidence by the requested Court) allows evidence to be taken directly in another place. the Court may make an order for the submission of a request in accordance with these Rules.
- (6) If the court makes an order for the submission of a request under sub-Rule (5) of this Rule, the party who sought the order must file:-
- (a) a request form for the taking of evidence;
 - (b) except where sub-Rule (4) of this Rule applies, a translation on of the form; and
 - (c) an undertaking to be responsible for the Court's expenses.

Order 12 EXPERTS AND ASSESSORS

1. Duty to restrict expert evidence

Expert evidence will be restricted to that which is reasonably required to resolve the proceedings.

2. A reference to an "expert" in this Order-

- (a) is a reference to person who has been instructed to give or prepare expert evidence for the purpose or family proceedings;
- (b) such person or expert may include officers of the Welfare Department of the Ministry of Youth and Social development; Department of Child development of the Ministry of Women Affairs and Poverty Alleviation;
- (c) in the case of adoption, such person/experts shall include officers from the Services.

3. Experts: Overriding duty to the Court

- (1) It is the duty of experts to help the Court on matters within their expertise.
- (2) This duty overrides any obligation to the person from whom experts have received instruction or by whom they are paid.

4. Court's power to restrict expert evidence

- (1) No party may call an expert or put in evidence an expert's report without the leave of Court.
- (2) When parties apply for leave, they must identify:-
 - (a) the field in which the expert evidence is required: and
 - (b) where practicable, the name of the proposed expert.
- (3) If leave of Court is granted, it shall be in relation only to the expert named or the field identified under sub Rule (2) of this Rule.
- (4) The Court may limit the amount of a party's expert's fees and expenses that may be recovered from any other party.

5. General requirement for expert evidence to be given in a written report

- (1) Expert evidence is to be given in a written report unless the Court directs otherwise.
- (2) The Court will not direct an expert to attend a hearing unless it is necessary to do so in the interest of Justice.

6. Written questions to experts

- (1) A party may put written questions about an expert report which must be proportionate to:-
 - (a) an expert instructed by another party; or
 - (b) a single Joint expert appointed under this Order
- (2) Written question under sub-Rule 1 of this Rule-
 - (a) may be put once only;
 - (b) may be put within 3 days beginning with the date on which the expert's report was served; and
 - (c) must be for the purpose only of clarification of the report, unless in any case:-
 - (i) the Court directs otherwise; or
 - (ii) a practice direction provides otherwise.
- (3) An expert's answers to question put in accordance with sub-Rule (1) of this Rule shall be treated as part of the expert's report.
- (4) Where

- (a) a party has put a written question to an expert instructed by another party; and
- (b) the expert does not answer that question,
the Court may make use of one or both of the following orders in relation to the party who instructed the expert-
 - (i) that the party may not rely on the evidence of that expert; or
 - (ii) that the party may not recover the fees and expenses of that expert from any other party.

7. Court's power to direct that evidence is to be given by a single joint expert

- (1) Where two or more parties wish to submit expert evidence on a particular issue the Court may direct that the evidence on that issue be given by a single joint expert.
- (2) Where the parties who wish to submit the evidence ("the relevant parties") cannot agree on who should be the single Joint expert, the Court may:-
 - (a) select the expert from a list prepared or identified by the instructing parties; or
 - (b) direct that the expert be selected in such other matter as the court may direct.

8. Instructions to a single joint Expert

- (1) Where the Court gives a direction under this Order for a single Joint expert to be used, the instructions are to be contained in a jointly agreed letter unless the Court directs otherwise.
- (2) Where the instructions are to be contained in a jointly agreed letter, in default of agreement, the instructions may be determined by the Court on the written request of any relevant party copied to other relevant parties.
- (3) Where the Court permits the relevant parties to give separate instructions to a single joint expert, each instructing party must, when giving instruction to the expert, at the same time send copy of the instruction to the other relevant parties.
- (4) The Court may give directions about.-
 - (a) the payment of the expert's fees and expenses; and
 - (b) any inspection, examination or assessments which the experts wish to carry out.

(5) The Court may, before an expert is instructed, limit the amount that can be paid by way of fees and expenses to the expert.

(6) Unless *the* Court directs otherwise, the relevant parties are jointly and severally liable for the payment of the expert's fees and expenses.

9. Contents of report

(1) An expert's report must comply with the requirements of this Rule and as may be stipulated in Practice Direction.

(2) At the end of an expert's report there must be a statement that the expert understands and has complied with his duty to the Court.

(3) The instruction to the expert are not privileged against disclosure.

10. Use by one party of *expert's* report disclosed by another

Where a party has disclosed an expert's report, any party may use that expert's report as evidence at any relevant hearing.

11. Discussions between Experts

(1) The Court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to:-

(a) identify and discuss the expert issues in the proceedings; and

(b) where possible, reach an agreed opinion on those issues.

(2) The Court may specify the issues which the experts must discuss.

(3) The Court may direct that following a discussion between the experts they must prepare a statement for the court setting out those issues on which:-

(a) they agree; and

(b) they disagree

with a summary of their reasons for disagreeing.

12. Expert's right to ask Court for direction

(1) Experts may file written requests for directions for the purpose of assisting them in carrying out their functions.

(2) Experts must, unless the Court directs otherwise, provide copies of the proposed request for directions under sub-Rule (1) of this Rule.

(a) to the party instructing them, at least seven (7) days before they file requests; and

- (b) to all other parties, at least four(4) days before they file them.
- (3) The Court, when it gives directions, may also direct that a party be served with a copy of that directions.

13. Assessors

- (1) This Rule applies where the Court appoints one or more persons under section 70 of the Childs Rights Law 2007 or Section 63 of MCA as an Assessor.
- (2) An Assessor will assist the Court in dealing with a matter m which the assessor has skill and experience.
- (3) The assessor will take such part in the proceedings as the Court may direct and in particular the Court may direct an assessor to-
 - (a) prepare a report for the Court on any matter at issue in the proceedings; and
 - (b) attend the whole hearing to advise the Court in any such manner.
- (4) If the assessor prepares a report for the Court before the hearing has begun
 - (a) the Court will send a copy to each of the parties; and
 - (b) the parties may use it at the hearing.
- (5) Unless in the case of official Court assessors, where the Court appoints an assessor for the purpose of preparing a report on any matter at issue, party or parties may be ordered to pay a specified sum in respect of the assessor's fees.

Order 13 SPECIAL PROCEEDINGS RELATING TO CHILDREN

Applications under this put shall apply to

- (a) Emergency proceedings.
- (b) Private law proceedings:
- (c) Public law proceedings;
- (d) Proceedings relating to the exercise of the Court's inherent jurisdiction (other than applications for the Court's permission to start such proceedings);
- (e) Proceedings relating to child abduction and the recognition, and enforcement of decisions relating to custody;

(f) Any other proceedings which may be referred to in a practice direction.

2. "Emergency proceedings" means proceedings for:-

(1) (a) the disclosure of information as to the whereabouts of a Child under the Child's Rights Law;

(b) an order authorizing the taking charge of any delivery of a child under the Child's Rights Law;

(c) an emergency protection order and ancillary reliefs.

(2) Application under sub-Rule (1) or Rule 2 of this Order may be brought by:

(a) Appropriate authority;

(b) State Government.

(3) The Courts shall issue an Order for emergency proceedings where It is satisfied that relevant provisions of the Child's Rights Law have been complied with by the Applicant.

(4) The Court may vary any emergency protection order at its own discretion only in the interest of the child.

(5) Emergency protection orders made pursuant to the provisions of the Law shall not exceed nine (90) days provided that a Judge may upon application extend the effective period of an emergency protection order if he (Judge) is satisfied that it shall serve the interest and welfare of the child.

(6) Emergency Protection order may only be extended once.

(7) Any of the following persons may apply to the Court to have an emergency protection order discharged.

(a) The child;

(b) A parent of the child;

(c) A person who has parental responsibility for the child or a person with whom the child was living immediately before the making of the order.

Provided that no such application shall be brought to the Court before the expiration of seventy-two hours beginning with the making of the order.

3. "Private law proceedings" means proceedings relating to:-

- (1)(a) an order relating to a child who is the subject of a *care* order under S. 49 of the Law;
 - (b) a parental responsibility order or an order terminating parental responsibility pursuant to section 45 of the Law;
 - (c) an order appointing a child's guardian or an order terminating the appointment pursuant to S. 77 and 78 the Law;
 - (d) appointment of a guardian ad litem pursuant to S. 83 of the Law;
 - (e) an order giving permission to change a child's surname or remove a child from the Federal Republic of Nigeria;
 - (f) a special guardianship order except where that order relates to a child who is subject of a care order;
 - (g) an enforcement order;
 - (h) a financial compensation order;
 - (i) an order following a breach of an enforcement order;
 - (j) an order revoking or amending an enforcement order; or
 - (k) an order that a warning notice be attached to a contact order.
- (2) In the case of a care order under S 49 of the Law, it shall have the effect as provided in S.51 of the same law.

4. "Public Law proceeding" means proceedings for:-

- (a) a residence order relating to a child who is the subject of a care order;
- (b) a special guardian order relating to a child who is the subject of a care order;
- (c) a secure accommodation order;
- (d) a care order, or the discharge of such an order
- (e) an order giving permission to change a child's surname or remove a child from the Federal republic of Nigeria;
- (f) a supervision order for the discharge or variation of such an order or the extension or further extension of such an order;
- (g) an order making provision regarding contact or an order varying or discharging such an order under S. 52 of the law;
- (h) an education supervision order, the extension of an education supervision order or the discharge of such an order pursuant to S.

54 of the law and the supplementary provisions set out in Part III of Schedule II to the Law;

- (i) an order varying directions made with an interim care order or interim supervision order;
- (j) an order varying a supervision order in so far as it affects a person with whom the child is living but who is not entitled to apply for the order to be discharged;
- (k) an order varying or discharging an interim care order in so far as it imposes an exclusion requirement on a person who is not entitled to apply for the order to be discharged;
- (l) an order varying or discharging an interim care order in so far as it confers a power of arrest attached to an exclusion requirement;
- (m) the substitution of a supervision order for a care order;
- (n) a child assessment order, or the variation of such an order;
- (o) an order permitting the social welfare office to arrange for any child in its care to live outside the Federal Republic of Nigeria;
- (p) a contribution order, or revocation of such an order.

PART 2

Order 14 PROCEDURE FOR APPLICATIONS IN ADOPTION, FOSTERING AND RELATED PROCEEDINGS

1 (1) The Rules in this Part shall apply to the following proceedings-

- (a) adoption;
- (b) fostering;
- (e) any other proceedings (e.g. placement) as maybe referred to in a Practice Direction.

(2) Parties in Adoption Proceedings

An Application for Adoption may be *made* by any of the following person(s) or institutions:-

- (i) By the prospective adopter(s);
- (ii) Any parent(s), person(s) with parental responsibility to look after or care for the child.

- (3) The Court may at any time direct that a child, who is not already a party to the proceedings be made a party where:-
 - (a) the child:-
 - (i) wishes to make an application; or
 - (ii) has evidence to give to the court or a legal submission to make which has not been given or made by any other party to the proceedings; or
 - (b) there are other special circumstances.
- (4) The Court may at any time direct that-
 - (a) any other person or body be made a Respondent to the proceedings; or
 - (b) a party be removed.
- (5) If the Court makes an order for the addition or removal of a party it may give consequential orders about-
 - (a) serving a copy of the application form on any new Respondent;
 - (b) serving relevant documents on the new party; and
 - (c) the management of the proceedings pursuant to rule 5 of this Order.

2. Service of Process

The general rules about service under the High Court Civil Procedure Rules and or the Magistrates Court Civil Procedure Rules shall apply.

3. Power of Court to make adoption orders

- (1) Subject to the provisions of the Child's Rights Law, and Schedule A 10 these Rules, the Court may, upon the application of a person, in the prescribed manner, make an order (hereafter referred to as an "adoption order") authorizing such person to adopt a child or a juvenile.
- (2) An adoption order may be made upon the application of spouses jointly to adopt a juvenile; but in no other case shall an adoption order be made granting leave to more than one person to adopt a juvenile.
- (3) Any child above the age of one year may be voluntarily given out for adoption by his parents.

4. General Restrictions on the Power of Court to grant Adoption orders

- (1) An adoption order shall not be made unless:-

- (a) the Applicant, or in the case of joint Applicants, one of them is not less than twenty-five years old and is at least twenty-one years older than the child.
 - (b) the Applicant or in the case of a joint applicant, both or at least one of them and the child are resident in Lagos State.
 - (c) The child had been in the care of the Applicant(s) for a period or at least three consecutive months immediately preceding the date on which the adoption order is made; and
 - (d) the Applicant has at least three months before the making of the order informed the Probation Officer of his intention to adopt the child.
- (2) An adoption order shall not be made by Court ID respect of a female juvenile where the sole Applicant is a male unless there are exceptional circumstances which the Court thinks justify the making of such an order.
 - (3) Any applicant(s) who by misrepresentation, fraud, or concealment of facts mislead the Court into granting an Adoption Order under these Rules shall be liable to a fine of Twenty-Five Thousand Naira (N25,000.00) in the case of an individual or joint applicants and fifty Thousand Naira (N50,000.00) in the case of an organization or six months imprisonment or both.

5. Consents to adoption

- (1) Where a married man or woman is the sole Applicant for an adoption order, the Court shall, if it thinks fit, refuse to make the order unless the consent of the wife or husband, as the case may be, *is* first obtained.
- (2) Where it appears to the Court that a person other than the father or mother or relative of a juvenile/child has any right or obligation in respect of the juvenile/child under any order of the Court or any agreement or under customary law, the Court shall, if it deems fit, refuse to make the adoption order unless the consent of that person is first obtained.
- (3) It shall be the duty of the Social Welfare Officer on an application for an adoption order in respect of a child, to prepare a report to assist the Court in determining whether any person who is not a parent or relative of the juvenile *has* any rights or obligation in respect of that juvenile and whether the consent of any such person ought first to be obtained.
- (4) Any consent under sub Rules (1) & (2) of this Rule maybe given either:-

- (i) unconditionally; or
- (ii) subject to conditions with respect to the religious persuasion in which the Juvenile is to be brought up;

In giving consent under this Rule it may not be necessary for the person giving the consent to know the identity of the child for the adoption order.

- (5) The Court may dispense with any consent required under this Rule if it is satisfied that the person whose consent is required cannot be found or is incapable of giving his consent or is withholding his consent unreasonably.

6. Duty of Court in the grant of Adoption orders

- (1) The Court shall, before making an adoption order, satisfy itself that:
 - (a) every consent required pursuant to Section 124 of the Law which has not been dispensed with has been obtained;
 - (b) every person who has given his consent understands the nature and effect of the Adoption order for which the application is made;
 - (c) the order, if made, shall be for the welfare of and in the best interest of the child/juvenile with due consideration being given to the wishes of the Juvenile having regard to his age and understanding;
 - (d) The Applicant has not received or agreed to receive, and no person has made or agreed to grant or give to the Applicant any payment or other reward in consideration of the adoption other than what the Court shall approve.
- (2) The Court may, in granting an adoption order, impose such terms and conditions as the Court may deem fit, and in particular, may require the adopter, by bond or otherwise, to provide for the child/juvenile such provisions, if any, as in the opinion of the Court, are just and expedient.

7. Interim orders

- (1) Subject to the provisions of Section 127 of the Law, the Court may, on an application for an adoption order, postpone the determination of the application and make an interim order giving the custody of the child to the Applicant for a period not exceeding two years on probation and upon such terms as the Court deems fit as regards provision for the maintenance, education and supervision of the welfare of the child and otherwise.

- (2) The Court shall in granting an interim order under sub-Rule 1 of this Rule make the following interim orders:-
 - (a) that the Juvenile shall be under the supervision of such welfare officer as the Commissioner may appoint; and
 - (b) that the juvenile shall not be taken out of Lagos State without the consent of the Court.
- (3) The requirement of consents under sub-Rules (1) & (2) of Rule 5 of *this Order* and the power or court to dispense with such consent as provided under sub Rule 5 or Rule 5 of this Order 14 shall be applicable to the grant of an interim order.
- (4) An interim order shall not be made in any case where the making of an adoption order would be unlawful under the Child's Rights Law.
- (5) An Interim order shall not be deemed to be an adoption order within the meaning of the Child's Rights law.

8. Adoption where Correction orders is in place

The Court may, in an application for adoption order in respect of a juvenile over whom a corrective order is pending, on being satisfied that the adoption would be for the welfare of the juvenile concerned, suspend the corrective order, and grant an interim order so as to enable the Applicant co have the juvenile for aperiod of at least three consecutive months immediately preceding the date of the adoption order.

9. An Adoption order shall be granted in the form specified in schedule 5 to the Child's Rights Law of Lagos State.

10. Effect of Adoption Orders

Adoption order granted under this Order shall have the effect as contained in Section 133 of *the* Child's Rights Law.

Order 15 Application by a person who is not a citizen of Nigeria

Where the Application for an adoption order, or in the case of a joint application one of the Applicants is not a citizen of Nigeria the Court shall in the exercise of its powers under the Child's Rights Law postpone the determination of the application for a period of not less than six months and may make an interim order as it (Court) deems fit in the interim.

Order 16 Jurisdiction of the Court

Subject to any rule of Court made pursuant to Section 129 of the Child's Rights Law application for an adoption order may be made to a Family Court only.

Order 17 Appeal

An appeal shall lie to the High Court of Lagos State from the Magistrate Court sitting as a Family Court in respect of any decision on any application for an adoption order other than a decision to postpone the determination of the application for such an order and make interim order.

Order 18 Miscellaneous Provisions

1. The Appendix to the Rules shall form part of the Rules.
2. Where a matter affecting the welfare, interest and rights of a child arises and in respect which no adequate provisions are made in these Rules, the Court shall adopt such procedure as will in its view meet the best interest of the child.

Hon. Justice (Mrs.) Inumidun Enitan Akande
Honorable Chief Judge of Lagos State

APPENDIX

Schedule (Order 14 Rule 3 (1))

Basic Requirement for Adoption

Typed application letter, stating the reasons for the adoption, duly signed by the Adopters and addressed to:

The Special Adviser
Office of Youth and Social Development
Ministry of Youth, Sports and Social Welfare
The Secretariat
Block 18, Alausa
Ikeja

International:

Copies of Documents to be attached:

- Birth Certificate of Adopters
- Marriage Certificate of Adopters
- Medical certificate of fitness (original)
- 4 coloured passport photograph of applicant(s)
- Proof of Employment.

2 copies each

- Photocopy of identity card
- To whom it may concern from employer
- Letter of employment
- 3 months salary pay slip (Most recent)

- Utility bill for the last three months immediately preceding
- the application (Energy, water, gas, telephone. etc) 2 copies
- Statement of account for 6 months (Recent) 2 copies
- Data Page(s) of International Passport (coloured) 4 copies
- Tax Returns Certificate for immediate last 3 years 2 copies
- Home study report from country of domicile 2 copies
- Certificate of Naturalization (if applicable) 2 copies
- Law of Adoption from country of domicile 2 copies

- Submission of data pages of International passport
- Payment of prescribed fees
- Complete appropriate forms and obtain list of requirements
- Submission of relevant documents
- Administrative processing
- Collection of letter of approval
- Collection of Child from registered Orphanages
- Legalization at the Family Court after three (3) months