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

EDO STATE OF NIGERIA

HIGH COURT

RULES OF EDO STATE

2018

All rights reserved. No part of this p
means, electronic, Mechanical or Ph
system of any nature, without the wr
Judiciary, application for which shal
The Chief Registrar
Edo State Judiciary
High Court of Justice Complex
Sapele Road
Benin City, Edo State

HIGH COURT OF EDO STATE (CIVIL PROCEDURE) RULES, 2018

In exercise of the powers conferred on me by Sections 274 and 315 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 53 of the High Court Law Cap. 65 Volume III Laws of the defunct Bendel State of Nigeria, 1976 as made applicable to Edo State by virtue of Section 11 of States (Creation and Transitional Provisions) Decree No. 37 of 1991 (now Act), I, Hon. Justice Esohe Frances Ikponmwen, the Chief Judge of Edo State hereby make these Rules:

1. Rules of Civil Procedure

(1) The Civil Procedure Rules set out in the First Schedule hereinafter called: "The Rules" shall be the Rules of procedure to be applied to all civil cases/proceedings in the High Court of Edo State.

(2) Where no rules exist: where a matter arises in which no provisions or no adequate provision exist in these Rules, a court shall adopt a procedure as may do substantial justice between the parties concerned.

2. Construction of reference under these Rules

(1) A reference in these Rules to anything done under these Rules includes a reference to anything done before the commencement of these Rules under any enactment or rule of court ceasing to have effect on the commencement of these Rules.

(2) Except where the context otherwise requires, any reference in these Rules to any enactment shall be construed as a reference to that enactment as amended, extended or applied by or under other enactment.

3. Forms

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

4. Short title and commencement

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

5. Cessation of application

The Edo State High Court (Civil Procedure) Rules, 2012 shall cease to apply to Edo State upon the coming into effect of these Rules.

Dated this 1st day of November, 2018

Honourable Justice Esohe Frances Ikponmwen

CHIEF JUDGE, EDO STATE.

FIRST SCHEDULE

HIGH COURT OF EDO STATE

(CIVIL PROCEDURE) RULES 2018

ARRANGEMENT OF RULES

RULE ORDER PAGE

ORDER 1

APPLICATION AND INTERPRETATION

1. Application....1
2. Interpretation of terms. 1

ORDER 2

PLACE OF INSTITUTING AND TRIAL OF SUITS

1. Suits relating to land and personal property distrained or seized…. 4
2. Suits for recovery of penalties, forfeitures and against public officers 4
3. Suits upon contract…. 4
4. Other suits… 4
6. Transfer of proceedings 5
7. Transfer of suits to Magistrate Court… 5
8. Power to transfer Suits where court has no Jurisdiction… 5
9 Electronic Service… 5

ORDER 3

FORM AND COMMENCEMENT OF ACTION

1. Form and Commencement of Action… 6
2. Proceedings which must be commenced by writ… 6
3. Mode of beginning Civil Proceedings… 6
4. Claimant to provide copies of processes…. 6
5. Where Claimant fails to comply…. 6
6. If pleadings are amended…. 7
7. Form of writ: Civil Form 1 7
8. Form of Writ for service outside Nigeria… 7

9. Proceedings which may be commenced by originating summons…. 7
10. Any person claiming legal or equitable rights which depend upon questions of construction of an enactment…. 7
11. Discretion of the Judge…. 7
12. Forms of originating summons: Civil Forms 3, 4, 5 7
13. Service outside Edo State; Edo State 1990 L.F.N…. 8
14. Originating process to be tested by its date…. 8
15. Consolidation of causes…. 8
16. Screening for ADR…. 8
17. Certificate of Pre-action counseling… 8
18. Affixing of NBA seal by Counsel on court process…. 9

ORDER 4

ENDORSEMENT OF CLAIM AND ADDRESS

1. Endorsement…. 10
2. Endorsement to show representative capacity… 10
3. Probate actions…. 10
4. Endorsement where the claim is liquidated…. 10
5. Ordinary account 10
6. Endorsement of address by claimant or his legal practitioner… 10
7. Originating process for service on Defendant outside Jurisdiction 11
8. Originating Process to contain endorsement by Registrar…. 11
9. Originating Process without an address or with fictitious address… 11

ORDER 5

EFFECT OF NON-COMPLIANCE

1. Non-compliance with Rules…. 12
2. Judge to give direction to regularise such steps…. 12
3. Application to set aside for irregularity…. 12

ORDER 6

ISSUANCE OF ORIGINATING PROCESS

1. Preparing originating process....13
2. Signing and sealing of originating process....13
3. What is to be done after signing and sealing… 13
4. Copies to be served....13
5. Probate actions: affidavit with originating process 13
6. Renewal of originating process: (Civil Form 7)....13

7. Endorsement renewal… 14
8. Loss of originating process… 14
9. Concurrent originating process… 14
10. Concurrent originating process for service within and out of jurisdiction… 14

ORDER 7

SERVICE OF PROCESSES

1. Persons to serve originating Process 15
(1) By whom service is to be effected… 15
(2) Person serving to have privileges and liabilities of an officer of the court..... 15
(3) Counsel to counsel service….....15
2. Service of originating process, etc., how effected….....15
3. Service of originating process on legal practitioner… 15
4. Mode of service when not personal 15
5. Persons under legal disability….....15
6. Prisoner or detainee… 16
7. Partners….....16
8. Corporation or company 16
9. Foreign corporation or company 16
10. Local agent of principal who is out of jurisdiction… 16
11. Substituted Service…..... 17
12. Where violence is threatened..... 17
13. Proof of service generally… 18
14. Expenses of service….....18
15. Time of service 18
16. Service of advance copies via email… 18
17. Service of hearing notice via email….....18
18. Recording of Service… 18

ORDER 8

SERVICE OUT OF NIGERIA AND SERVICE OF FOREIGN PROCESS

1. Cases where service of originating process, etc,
are allowed out of Nigeria… 20
2. Agreement as to service… 21
3. Service abroad by letter of request.....21
4. Where leave is granted or not required….....22
5. Service of foreign processes….....23
6. Inapplicability of Rule 4… 24

7. Service on behalf of foreign tribunals… 24
8. Substituted service of foreign process…..... 24

ORDER 9

APPEARANCE

1. Mode of entry of appearance: Civil Form 12….....25
2. Defendants appearing in person or represented….....25
3. Fictitious address..... 25
4. Defendants appearing through same legal practitioner.....25
5. Late appearance….....25
6. Intervener in probate matters… 26
7. Recovery of land… 26
8. Landlord appearing… 26
9. Person under legal disability appearing… 26
10. Tenant… 26

ORDER 10

DEFAULT OF APPEARANCE

1. Default of Appearance by person under legal disability… 27
2. Default of appearance.....27
3. Liquidate demand.....27
4. Liquidated demand several defendants….....27
5. Judgment in default of appearance….....27
6. Several defendants… 27
7. Detention of goods damage and liquidated demand… 28
8. Recovery of land… 28
9. Mesne Profit….....28
10. Judgment for costs upon payment….....28
11. Setting aside of Judgment… 28
12. Default of appearance in actions not specially provided for….....28
13. Compulsory Service….....28

ORDER 11

SUMMARY JUDGMENT

1. Where claimant believes there is no defence… 29
2. Delivery of extra copies….....29
3. Service… 29

4. Where defendant intends to defend…. 29
5. Where defendant has good defence, or has no good defence or has good defence of part of the claim…. 29
6. Where there are several defendants… 30
7. Oral submission on written brief… 30

ORDER 12

APPLICATION FOR ACCOUNT

1. Order for account… 31
2. Application how made… 31
3. Account may be taken by a Judge or Referee… 31
4. Account to be made verified, etc…. 31
5. Erroneous account… 31
6. Allowance…. 32
7. Delay in Prosecution of account, etc…. 32
8. Distribution of fund before all entitled Persons are ascertained…. 32

ORDER 13

PARTIES GENERALLY

1. Persons claiming jointly or severally…. 33
2. Action in the name of wrong claimant… 33
3. Misjoinder and counter-claim 33
4. Any person may be joined as defendant 33
5. Action in the name of wrong defendant… 33
6. Defendants need not be interested in all the reliefs sought…. 33
7. Joinder of persons severally liable…. 34
8. Person against whom redress is to be sought…. 34
9. Persons unknown…. 34
10. Substitution of Mesne… 34
11. Persons under legal disability…. 34
12. Guardian…. 34
13. Trustees, Executors sued as representing the estate…. 34
14. Numerous persons… 35
15. Representation of persons or classes of persons in certain proceedings…. 35
16. Power to approve compromise… 36
17. Where there is no Personal Representative… 36
18. Proceedings not defeated by misjoinder or non-joinder… 36

19. Application to add or strike out… 37
20. Where defendant is added…. 37
21. Third parties may be joined by any of the parties… 37
22. Appearance by third party…. 38
23. Default by third party…. 38
24. Subsequent third party…. 38
25. Claim against co-defendant… 38
26. Actions by and against firms…. 38
27. Disclosure of partner names… 38
28. Appearance of Partners. 39
29. Application of Rules to action between co-partners… 39
30. Persons trading as firm… 39
31. Action not abated where cause of action survives. 39
32. Order to carry on Proceedings…. 39
33. In case of assignment creation or devolution of estate or title… 40
34. Application to discharge order by person under disability having a guardian. 40
35. By persons under disability having no guardian…. 40

ORDER 14

JOINDER OF CAUSE OF ACTION

1. All causes of action may be joined… 41
2. Recovery of land… 41
3. Executor and Administrator…. 41
4. Claims by Joint-claimants… 41

ORDER 15

PLEADINGS

1. Filing of pleadings…. 42
2. Pleadings to state material facts and not evidence…. 42
3. Particulars to be given where necessary… 43
4. Further and better statement or particulars… 43
5. Denial…. 43
6. Conditions precedent…. 43
7. Defence, certain facts surprise to be specifically pleaded…. 43
8. Pleadings to be consistent… 43
9. Joinder of Issues 44
10. Effect of (documents to be stated… 44
11. Notice. 44

12. Implied contract or relationship… 44
13. Presumption of law… 44
14. Stated or settled account…..... 44
15. Technical objection…..... 44
16. Striking out of pleadings… 44
17. Defamation..... 45
18. Where pleadings disclose no reasonable cause of action…..... 45
19. Close of pleadings…..... 45

ORDER 16

STATEMENT OF CLAIM

1. Statement of claim… 47
2. Claim beyond endorsement…..... 47

ORDER 17

STATEMENT OF DEFENCE AND COUNTER-CLAIM

1. Statement of defence…..... 48
2. Evasive denial…..... 48
3. Denial generally…..... 48
4. Persons in representative capacity…..... 48
5. Pleading to damages… 48
6. Set-off and counter-claim… 48
7. Title of counter-claim…..... 48
8. Claim against persons not partys (Civil Form 13)… 49
9. Appearance…..... 49
10. Reply to counter-claim…..... 49
11. Discontinuance: the claimant's claim…..... 49
12. Judgment balance… 49
13. Ground of defence after action brought…..... 49
14. Further defence or reply… 49
15. Concession to defendant (Civil Form 14)… 49
16 . Defence to originating summons… 50

ORDER 18

REPLY

1. Filing of reply… 51
2. Reply to counter-claim …..... 51

ORDER 19

ADMISSIONS

1. Notice of admission of facts…..... 52
2. Notice to admit document…..... 52
3. Notice to admit facts… 52
4. Judgment or Order upon admission of facts… 52
5. Cost of notice where documents are unnecessary… 53

ORDER 20

DEFAULT OF PLEADINGS

1. Claim for debt or liquidated demand… 54
2. Several defendants: default of one… 54
3. Damages and detention of goods… 54
4. Default of one or more defendants… 54
5. Debt or damages and detention of goods… 54
6. Recovery of land… 55
7. Claim for mesne-profits, arrears or damages…..... 55
8. Defence to part of Claim only… 55
9. Defendant in default… 55
10. One of several defendants in default… 56
11. Default of third party… 56
12. Default of defence to counter-claim…..... 56
13. Setting aside judgment by default… 56

ORDER 21

PAYMENT INTO AND OUT OF COURT

1. Payment into and out of court… 57
Civil Form 15. 57
2. Claim may take out money: (Civil Form 16)… 57
3. Money remainingin Court…… 58
4. Several defendants.. …… 58
Form 17…..... 58
Civil Form 18……... 58
5. Counter-claims…… 58
6. Personsunder legal disability…… 59
7. Payment into and withdrawal of money from court…… 59

ORDER 22

PROCEEDINGS IN LIEU OF DEMURRER

1. Demurrer abolished…… 60
2. Points of law may be raised by pleadings…….. 60
3. Dismissal of action……. 60
4. Striking out pleadings where no reasonable cause of action is disclosed…… 60
5. Declaratory judgment……. 61

ORDER 23
NOTICE OF DISCONTINUANCE

1. Claimant may discontinue before defence..... 62
2. Withdrawal by consent…… 62

ORDER 24
AMENDMENT

1. Amendment of originating process and pleadings……. 63
2. Application……. 63
3. Amendment of originating process…… 63
4. Failureto amend after order…… 63
5. Filing and service of amended process…….. 63
6. Date of order and amendment to be displayed…… 63
7. Clerical mistakes and accidental omissions…… 63
8. General power to amend…… 63

ORDER 25
TRIAL CONFERENCES AND SCHEDULING

1. Period for settlement…… 64
2. Formulation of issues for determination…… 64
3. Party may apply for issue to be tried…… 64
4. Court may amend or frame additional issues ……. 64
4. Formulation of issues by Court..... 64

ORDER 26
ALTERNATIVE DISPUTE RESOLUTION
A-REFERENCE TO ADR

1. Judge to encourage Adr…… 65
2. Cosent cases to be referred to ESMDC Civil form 18 time within which to report settlement ……. 65
3. ADR Directives and sanctions……. 65
4. Cost…… 66
5. Extension of time to report settlement…… 66

6. Where settlementhas broken down…… 66
7. Consent judgment within application for consent judgment 66
8. Chief Judge designate ADR judge…… 66
9. Settlement week…..... 66
10. Sifter Committee…… 66
11. Arbitration… 66
12. Arbitration Proceedings…… 67
13. Enforcement of Arbitral Awards…… 68
14. Registration of Foreign arbitration award…… 68

ORDER 27
DISCOVERY AND INSPECTION

1. Discovery by Interrogatories……..... 69
2. Civil Form 17……. 69
3. Corporation or Companies …… 69
4. Objection to interrogatories by answer…… 69
5. Affidavit in answer: filing of……. 69
6. Form of affidavit in answer or answer: Civil Form 18……... 69
7. Order to answer or answer further. …… 69
8. Application for discovery of documents: Civil Form 19..... 69
9. Verification of business books..... …… 70
10. Committal of party after service on him…….. 70
11. Liability of legal practitioner…… 70
12. Using answer to interrogatories at trial……... 70
13. Discovery against sheriff…….. 70
14. Order to apply to person under legal disability…….. 71

ORDER 28
ISSUES, INQUIRIES, ACCOUNTS AND REFERENCE TO REFEREES

1. Issues of facts..... 72
2. Referenceto referee…… 72
3. Instructions to referee..... …… 72
4. General powers of referee.. ……... 72
5. Evidence..... 72
6. Report made in pursuance of reference under order…….. 73
7. Special directions as to mode of taking account …….. 73
8. Accounts to be verified by affidavit, numbered and left in the registry…. 74
9. Mode of vouching accounts……. 74
10. Surcharge…… 74
11. Accounts and inquiries to be numbered: Civil Form 22…….. 74
12. Just allowance…… 74
13. Expediting proceedings in case of undue delay. …… 74

ORDER 29
SPECIAL CASE

1. Special case by consent……. 75

2. Special case by order before trial……. 75
3. Special case to be signed…….. 75
4. Application to set down where a person under disability is a party……. 75
5. Agreement to payment of money and cost……..... 75
6. Direction…… 75
7. Application of order ……. 75

ORDER 30
PROCEEDINGS AT TRIAL

1. Attendance by proxy…… 76
2. Non-appearance: both parties……. 76
3. Default of appearance by defendant at trial…… 76
4. Default of appearance by claimant …….. 76
5. Judgment by default may be set aside on terms…… 76
6. Adjournment of trial ……. 76
7. Times of commencement and termination of trial…… 76
8. Penalty for filling motion to delay trial…… 76
9. Burden of proof by party to begin …….. 77
10. Documentary evidence…… 77
11. Additional witness…….. 77
12. Close of case of parties…….. 77
13. Exhibits during trial ……... 77
14. Written address by party beginning…….. 77
15. Written address by the other party ……. 77
16. Written address of party beginning……... 78
17. Right of reply…….. 78
18. Custody of exhibit after trial……... 78
19. Office copy of list of exhibits……. 78
20. Indolent prosecution…… 78

ORDER 31
FILING OF WRITTEN ADDRESS

1. Application and final address…….. 79
2. Application……... 79
3. Summation of address…….. 79
4. Oral argument…… 79

ORDER 32
EVIDENCE GENERALLY

1. Recording of evidence…… 80
2. Facts how proved…… 80
3. Particular facts…… 80
4. Limitation of medical and expert evidence……. 80
5. Limitation on use of documentary evidence…….. 80
6. Revocation variation..... 80
7. Office copies admissible in evidence……. 81
8. Examination of witnesses abroad..... 81
Civil Form 23……. 81

Civil Form 24……. 81
9. Form of order for examination of witnesses abroad: Civil Form 25…… 81
10. Order for attendance of person to produce document…….. 81
11. Disobedience to order for attendance……. 81
12. Expenses of persons ordered to attend……. 81
13. Contempt of witnesses abroad……... 81
14. Examination of witnesses……... 82
15. Depositions not to be given in evidence without consent or by leave of a judge……... 82
16. Oaths…….. 82
17. Attendance of witness under a *sub poena*…….. 82
18. Practice as to taking of evidence at any stage of cause or matter……... 82
19. Special directions to taking evidence……. 82
20. Evidence in proceedings subsequent to trial…… 82
21. Form of praecipe of a *subpoena:* Civil Form 26 …….. 82
22. Form of *subpoena* Civil Forms 27,28,29 …… 83
23. *Subpoena* attendance of witness in chambers…….. 83
24. Correction of errors in *subpoena*……. 83
25. Personal service of *subpoena* …….. 83
26. Duration of *subpoena* …….. 83
27. Action to perpetuate testimony…….. 83
28. Examination of witnesses to perpetuate testimony…… 83
29. Such action not to be set down for trial…….. 83
30. Recall of witness…….. 83
31. Evidence of Protected witness…… 83

ORDER 33
AFFIDAVITS

1. Evidence on motions, etc……. 84
2. Title of affidavit…… 84
3. Use of defective affidavit……. 84
4. Special time for filing affidavits……... 84
5. Affidavit in support of *ex-parte* application…… 84
6. Notice of intention to use affidavit …… 84
7. Alterations in accounts to be initiated ……. 84
8. Exhibits……. 84
9. Certificate of exhibit…… 84

ORDER 35
COMMITTAL FOR CONTEMPT OF COURT

1. Committal for contempt of court… 88
2. Application to court… 88
3. Saving for power to commit without application for the purpose… 88
4. Provision as to hearing… 88
5. Contempt in face of court: saving for… 89
6. Power to suspend execution of committal

order… 89
7. Discharge of person committed… 89
8. Saving for other power… 89
9. Return… 89

ORDER 36
GARNISHEE PROCEEDINGS

1. Application…… 90
2. How Application is made…….. 90
3. Service of Garnishee order……. 90
4. Garnishee absolute……. 90
5. Determination of issue by the Court……. 91
6. Where a third person makes claim…… 91
7. Compliance as discharge of liability…… 91

ORDER 37
DRAWING UP OF ORDERS

1. Date of order when drawn……. 92
2. What orders need not be drawn up…… 92
3. Form of order……. 92

ORDER 38
TRANSFER AND CONSOLIDATION

Transfer

1. Order transferring proceedings to High Court Cap.97…… 93
2. Payment of filing fees…… 93
3. Duties of Registrar……. 93
4. Directions…… 93
5. Party failing to attend……. 93
6. Construction……... 94
7. Transfer of cause or matter……. 94
8. Re-assignment of cause or matter…… 94
9. Action by the Chief Judge on transfer…….. 94
10. Consolidation…… 94

ORDER 39
INTERLOCUTORY AND OTHER ORDERS

1. Preservation or interim custody of subject matter of disputed contract… 95
2. Early trial of cause or inspection……. 95
3. Order for Sale of perishable good…….. 95
4. Detention, Preservation of Property……... 95
5. Sale of property in possession of court……. 95
6. Recovery of property other than land subject to lien…….. 96
7. Allowance of income property pendente lite…….. 96
8. Injuction against repetitan of wrongful act for breach of contract…….. 96
9. Appointment of a receiver by way of equitable execution …….. 96

10. Receivers security and remuneration…… . 96
11. Where receiver appointed in court: adjournment to give security…… 97
12. Fixing of days for receivers to leave and pay their accounts…… 97
13. Form of Receivers accounts, Civil Form 32…… 97
14. Leaving account or the Registry Civil Form 33…….. 97
15. Consequences of default by receiver…… 97
16. Passing of Guardian accounts…… 97

ORDER 40
INTERLOCUTORY APPLICATIONS

1. Time to apply…… 98
2. Application by motion……. 98
3. Affidavit to be served with motion…….. 98
4. Adjournment……. 98
5. When notice of motion should be given……... 98
6. Affidavit in support of *ex-parte* motion……. 99
7. Arguments on motion…… 99
8. Orders on *ex-parte* motions …… 99
9. Court may vary or discharge order …….. 99
10. Motion on arbitral award……. 99
11. Service of motion with originating process…….. 100
12. Account by legal Practitioner……. 100
13. Interim Certificate……..…….. 100
14. Return day to be specified …….. 100
15. Counter evidence…… 100
16. Further service in cases……. 100
17. Appearance or proof service…… 100
18. General power as to order……..……..…… 100
19. Service of notice…… 100
20. Service of motion……..…….. 100
21. Service on solicitor……. 100
22. Copy of affidavit to be served with notice …….. 100
23. Order for service …… 101
24. Service with writ of summons……. 101
25. Oral evidence 101
26. Evidence in addition to or in lieu of affidavit…… 101
27. Notice to parties and interested persons……. 101
28. Evidence: how taken…… 101
29. Affidavit not filed with motion paper…….. 102
30. Registrar to have power of a Judge……. 102
31. Only legally qualified Registrar to hear application…….. 102
32. Application……. 102
33. Persons dissatisfied with ruling of Registrar may apply to the Court or a Judge in chambers……. 102

ORDER 41
APPLICATION FOR JUDICIAL REVIEW

1. Cases appropriate for application for judicial review..... 103

2. Joinder of claims for relief. …… 103
3. Grant of leave to apply for judicial review…… 103
4. Delay in applying for relief…… 104
5. Mode of applying for judicial review…… 104
6. Statement and affidavits……. 105
7. Claim for damages……. 105
8. Interlocutory Application……. 105

ORDER 42
JURISDICTION OF CHIEF REGISTRAR

1. Chief Registrar…….. 107
2. Business to be transacted by Chief Registrar…… 107
3. Chief Registrar may refer matters to the Chief Judge…….. 107
4. Appeal from order of Chief Registrar…….. 107
5. Chief Registrar's list…….. 107
6. Legal practitioner may represent party……. 107
7. Certificate……. 107
8. Reference to judgment, etc …… . 108
9. Form of certificate……. 108
Civil Form 234……. 108
10. When certificate becomes binding …….. 108
11. Bill of costs…….. 108
12. Discharge or variation of certificate after lapse of any time…… 108

ORDER 43
HABEAS CORPUS, ATTACHMENT FOR CONTEMPT

1. Application: how made…… 109
2. Power to issue order of release immediately…… 109
3. Service of notice…….. 109
4. Copies of affidavit ……. 109
5. Service of order to release …… 109
6. Statement and verifying affidavit …….. 110
7. Procedure at hearing …… 110
8. Bringing up prisoner to give evidence, etc……. 110
Civil Forms 29,30 and 31…… 110
9. Form of writ …… 110
10. Procedure for attachment…… 111
11. Procedure on disobedience to Court…… 111
12. Response…….. 111
13. Return …… 111

ORDER 44
INTERPLEADER

1. When relief by interpleader granted…….. 112
2. Matter to be provided by application……. 112
3. Adverse title of claimants……... 112
4. When application is to be made by a defendant … … … … … … … … … . . 112
5. Summons by applicant…….. 112
6.

Stay of action…….. 112
7. Order upon summons...…….....…….. 112
8. Questions of law…….. 112
9. Failure of claimant to appear, or neglect to obey summons ……..... 113
10. Costs., etc…….…..…. 113

ORDER 45
COMPUTATION OF TIME

1. Rules for Computation of time.....……..... 114
2. Holidays…… 114
3. Time of service……....….... 114
4. Court may extend time …… 114

ORDER 46
SITTING OF THE COURT AND VACATION

1. Days of sitting…….…….....……...……. 115
2. Public or private sitting of Court.....……..... 115
3. Office hours …….……..……..... 115
4. Days of sitting and long vacation……...……. 115
5. Vacation Court…….. …. 115
6. Vacation not reckoned in time for pleading…… 115
7. Chambers…….…….…... 115
8. What orders to be made…….…...….. 115
9. Recovery of penalties and costs…….. 115
10. Notices…….…….….. 116
11. Filing……...…… 116
12. How processes are addressed……..... 116
13. No fees where proceedings by Government department……..... 116
14. Regulation.……..... 116
15. Saving……...……..... 116

ORDER 47
ARREST OF ABSCONDING DEFENDANT

1. Application…….……..... 117
2. Defendant leaving Nigeria……... 117
3. Warrant to arrest…….....…. 117
Civil Form 38…….....….... 117
4. Bail for appearance or satisfaction……. 117
5. Deposit in lieu of bail……. 117
6. Committal in default……... 117
7. Cost of subsistence of person arrested ……..... 118

ORDER 48
PROCEEDINGS IN FORMA PAUPERIS

1. Application……. 119
2. Who may sue or defend in forma pauperis……..... 119
3. Conditions to be fulfilled……..... 119
4. Fees and costs……..... 119
5. Procedure to be followed……..... 119

6. Revocation of order, discontinuance, etc……..... 119
7. Payment to legal practitioner……..... 120
8. Duty of legal practitioner ……..... 120
9. Appeals……..…….…. 120

ORDER 49
CHANGE OF LEGAL PRACTITIONER

1. Legal practitioner to conduct cause or matter to final judgment…….... 121
2. Application for change of legal practitioner or withdrawal……..... 121
3. Service of application by legal practitioner…… 121

ORDER 50
COSTS

1. Principle to be observed in fixing costs…… 122
2. Rejection of offer of settlement costs……...…... 122
3. Security for costs…….…… 122
4. Security for costs by claimant temporarily within Jurisdiction …….. 122
5. Acten founded on judgment or bill of exchange…… 122
6. Bond as security for cost……..…… 122
7. Costs at discretion of court ……. 123
8. Costs out of fun or property……...… 123
9. Stay of proceeding at which costs to be dealt with …….……. 123
10. Stage of proceeding at which costs to be dealt with ……...……. 123
11. When costs follows events……. 123
12. Matter to be taken into account in exercising discretion…….…….. 123
13. Cost arising from misconduct or neglect……... 123
14. Personalliabilityof legal Practitionerfor costs…… 124
15. Taxation of Costs……. 124
16. Notice to other party…….. 124
17. Power of taxing other…….. 124
18. Supplementary power of taxing officer…… 125
19. Extension of time…… 125
20. Power of taxing officer where party liable to be paid and to pay costs…… 125
21. Mode of beginning proceeding for taxation…….. 125
22. Provisions as to bills costs…….. 125
23. Provisions as to taxation proceedings…… 126
24. Scale of costs……. 126
25. Certificate of taxation officer…… 126
26. Fees on taxation……. 126
27. Application for review…… 126
28. Application by summonss……. 126

ORDER 51
APPLICATION AND PROCEEDINGS IN CHAMBERS

1. Representation in chambers……..…… 128
2. Matter to be disposed of in chambers…….....….. 128
3. Evidence upon application for appointment of guardians and for maintenance..... 128
4. Further consideration of matter originating in Chambers…… 128

ORDER 52
FORECLOSURE AND REDEMPTION

1. Originating summons for foreclosure……. 129
2. Civil Forms 39,40 and 41 ……..…... 129
3. Service and execution of judgment…… 129

ORDER 53
SUMMONS TO PROCEED

1. Bringing in judgment, etc ……..… 130
2. Summons to proceed with accounts and inquiries: directions……... 130
3. Settling deed where parties differ……. 130
4. Where service of notice of judgment or order dispensed with……... 130
5. Stoppage of proceedings where all necessary parties have not been served with notice of judgment or order……. 130
6. Documents, copies for use……... 131
7. Entry in summons to proceed book……. 131

ORDER 54
SUMMARY PROCEEDINGS FOR POSSESSION OF LANDED PROPERTY OCCUPIED BY SQUATTERS OR WITHOUT THE OWNER'S CONSENT

1. Application of this order……..... 132
2. Proceedings to be brought by originating summons: Form 42……. 132
3. Affidavit in support……... 132
4. Service of originating summons…… 132
5. Application by occupier to be made a party…… 133
6. Order for possession: Form 43…….... 133
7. Writ of possession1…….... 133
8. Setting aside of order……. 133

ORDER 55
STAY OF EXECUTION PENDING APPEAL TO THE COURT OF APPEAL

1. Stay of execution pending appeal…….. 134
2. Court may grant or refuse order for stay…….….. 134
3. Formal order to be drawn up……..… 134

ORDER 56
PROCEEDINGS IN REVENUE MATTERS

1. Application…… 135
2. Revenue Court……. 135
3. Commencement form 40 ……. 135
4. Further information…… 135
5. Payment into Court…… 135
6. Filing of the Answer…… 135
7. Reply……. 135
8. Hearing…… 136
9. Order of hearing…… 136
10. Duration…….. 136
11. Default of Answer…… 136
12. Non-appearance of parties…… 136
13. Proceedings of parties……. 136
14. Interpretation…… 136

ORDER 57
FAST TRACK CASES

1. Fast track Judges…….. 137
2. Pre-trial conference…… 137
3. Co-ordination, fast track Division…….. 137
4. Jurisdiction of fast track Division, Form 45…… 137
5. Assignment of cases…….. 138
6. Procedure for filing cases…….. 138
7. Accounts for fees, Civil from 49…… 138
8. Service of process…….. 138
9. Hearing dates…… 138
10. Adjournment …… 138
11. Absence of counsel…… 139
12. Time table for taking steps…… 139
13. Compliance with time table…….. 139
14. Absence of parties……. 139
15. Form of addresses, Objections and application…….. 140
16. Application of Transcript, Civil form 50……. 140

ORDER 58
PROBATE AND ADMINISTRATION
GRANT OF PROBATE OR ADMINISTRATION IN GENERAL

1. Petition to be made to probate registrar……..... 141
2. Preservation of property……..... 141
3. Unauthorised persons intermeddling with property…….. 141
4. Production of testamentary papers ……...…. 141
5. Court may order production…… 142
6. Examination respecting papers……... 142
7. Notice to executor to come in and prove……. 142
8. Liability of executor neglecting to apply for probate……. 142

9. Identity……..…….…….. 142
10. Court may refuse grant until all persons interested are given due notice…….. 142
11. Value of property……..... 143
12. Answers required before grant……..…….. 143
13. Notice to prohibit grant……..…. 143
14. Effect of notice……..…….. 143
15. Form of suits ……..……. 143
16. Testator may deposit will……... 143
17. Custody of wills of which probate granted……. 143
18. Will not given out without order of court ……. 144
19. Examination of will as to its execution…….. 144
20. Proof of execution where attestation clause is defective ……. 144
21. Where will was not executed according to law……. 144
22. Evidence on failure of attesting witnesses…… 144
23. Will of blind or illiterate testator…… 144
24. Interlineations, erasures, obliterations…… 145
25. Documents referred to in a will: or annexed or attached ……...… 145
26. Executor dying without proving or not appearing……. 145
27. Marking of will or copy sworn to…… 145
28. Viva voce examination of persons making affidavits……..... 146
29. Form of administration not with will annexed……... 146
30. Administration bond ……..….. 146
31. Assignment of bond……..….... 146
32. Administration summons……... 146
33. Order for administration…… 146
34. Orders relating to property……. 147
35. Administration may be granted to off…… 147
36. Officer to act under direction of court…… 147
37. Court may appoint persons to be administrator…….. 147
38. Remuneration of administrator……... 147
39. Securingand collectionof estate…… 148
40. Application by consular officer or person authorized by him to administer estate……..... 148
41. Accounts to be filed ……... 148
42. Duties and powers to be performed and exercised by probate registrar…… 149
43. Court may refuse application……. 149
44. Grant to be signed by probate registrar…….. 149

ORDER 59
PROBATE (NON-CONTENTIOUS) PROCEDURE

1. Production of testamentary papers 150
2. Court may order production……... 150
3. Examination respecting paper…… 150
4. Notice to executor to come in and prove……

150
5. Liability of executor to come in and prove…… 150
6. Petition to be made to probate registrar……. 150
7. Application for grants through legal practitioners……. 151
8. Personal applications……..…. 151
9. Duty of registrar on receiving application for grant…….
151
10. Oath in support of grant……..…. 151
11. Grant in additional name…… 152
12. Marking of Wills…… 152
13. Engrossment for purposes of record…….. 152
14. Evidence as to due execution of Will…… 152
15. Execution of Will of blind or illiterate testator…….. 153
16. Evidence as to terms, conditions and date of execution of Will … … … … … …
153
17. Attempted revocation of Will…… 153
18. Affidavit as to due execution, terms, etc, of Will ……. 153
19. Wills of persons on military service and seamen …….. 153

20. Evidence of foreign law……. 154
21. Order of priority for grant where deceased left a Will..... 154

22. Grant to attesting witnesses, etc……. 154
23. Value of property……... 154
24. Answers required before grant……... 155
25. Notice to prohibit grant…….. 155
26. Effect of notice…….. 155
27. Form of suits…….. 155
28. Testator may deposit Will……..... 155
29. Custody of wills of which probate is granted……..... 155
30. Will not given out without order of court…….. 155
31. Examination of Will as to its execution……. 156
32. Proof of execution where attestation clause is defective …….. 156
33. Where Will not executed according to law……..... 156
34. Evidence on failure of attesting witnesses……..…... 156
35. Will of blind or illiterate testator……..…. 156
36. Interlineations, erasures, obliterations……... 156
37. Documents referred to in a Will……..... 157
38. Executor dying without proving or not appearing……. 157
39. Marking of Will or copy sworn to Codicils……... 157
40. Vivo, vocc examination of persons making affidavits..... 157
41. Right of assignee to a grant :…… …….. 157
42. Joinder of administrator…… 158
43. Additional personal representatives……... 158
44. Grants where two or more persons entitled in same degree…….
158
45. Exceptions to rules as to priority……... 159
46. Grants where two or more persons entitled in same degree……... 159
47. Where the deceased died domiciled outside the State..... 159
48. Grants to attorneys…….. 159

50. Grants where infant is co-executor… … … … … … … … … … … …
160
51. Grants in case of mental or physical incapacity……. 161
52. Renunciation of probate and administration…….. 161
53. Notice to State of intended application for grant …….. 161
54. Guarantee …….. 162
Civil Form 51……..… 162
55. Resealing…… 163
Civil Form 52……. 163
56. Amendment and revocation of grant…….. 163
57. Caveats……... 163
Civil Form 53……. 164
Civil Form 54……. 164
Civil Form 55……..… 164
58. Citations……..… 165
Civil Form 55……..…… 165
59. Citation to accept or refuse to take a grant…….
166

60. Citation to propound a Will …… 167
61. Address for service…… 167

62. Application for order to bring in a Will or to attend for examination……
167
63. Limited grants……. 167
64. Grants of administration *ad colligenda bona*……. 167
65. Application for leave to swear to death……. 168
66. Grants in respect of codicils and copies of Wills…….
168
67. Grants *durante a*…… 168
68. Notice of election by surviving spouse to redeem life interest … … … … … …
168
Civil Form 56…… 168
69. Issues of copies of original Wills and other documents……
168
70. Taxation of costs…… 169
71. Power to require application to be made by summons or motion ……
169
72. Exercise of powers of a judge…… 169
73. Appeals from registrars……. 169
74. Service of notice of motion and summons…… 169
75. Notices, etc…… 169
76. Affidavits……... 170
77. Time……... 170
78. Application to pending proceedings……..…. 170
79. Contentious probate: form of suit ……..….. 170
80. Interpretation …… 170
81. Probate actions……..…... 171
82. Service of writ of summons…….. 171
83. Pleadings and further actions……. 171

49. Grants on behalf of infants……. 160

84. Where claimant disputes defendant's interest……... 171

85. Notice of opposition to Will………………………………….…….. 171
86. Inquiry as to outstanding personal estate ………….…… 171
87. Discretion to order costs…………………………………. 171
88. Originating summons relating to deceased person……………… 171
89. Order for administration of estate of deceased and of trust ………………….. 172
90. Persons to be served …………………………………... 172
91. Judge not bound to order administration……………………… 173
92. Order which may be made on application for administration or execution of trusts, where no account or insufficient accounts have been rendered ………. 173
93. Interference with discretion of trustee………………………... 173
94. Application by summons… … … … … … … … … … … 173

ORDER 60

APPEAL FROM MAGISTRATE'S COURT, ETC.

1. Notice of appeal……………………………………………………….. 174
2. Contents, etc, of notice of appeal……………………………………………... 174
Civil Form 57……………………………………………………
3. Copies of proceedings……………………………………………………… 174
4. Appeal to Judge of High Court……………………………………………….. 174
5. Respondent to be supplied with copy of proceedings………………………… 174
6. Proceedings time……………………………………………………… 175
7. Where time expires……………………………………………………. 175
8. Constitution of court hearing appeals……………………………………. 175
9. Time and place for hearing……………………………………………. 175
10. Where appellant fails to appear………………………………………….. 175
11. Where appellant appears…………………………………………… 175
12. Appeal limited to grounds given in notice……………………………………. 175
13. Request to confirm judgment on other grounds………………………………. 176
14. Counter appeal…………………………………………………. 176
15. Objections to form of grounds of appeal……………………………………. 176
16. Defects in proceedings under appeal……………………………… 176
18. Additional evidence……………………………………. 177
19. Mode of taking evidence……………………………………………. 177
20. Fees
2nd Schedule………………………………. 177
21. Allowance to witnesses
3rd Schedule……………………………………….. 177
22. Stay of execution…………………………………….. 177
23. Costs………………….. 178
24. Security for costs………………… 178
25. Orders of High Court to be certified to Magistrate's Court……………….. 179
26. Enforcing of judgment…………………. 179
27. Enforcing of orders………………….. 179
28. High court may enlarge time………………………… 179
29. Interpretation……………………………… 179

ORDER 61

APPEALS OF THE HIGH COURT FROM DECISION OF AUDITORS

1. Application…………………………………………… 180
2. Method of appeal ……………………………………. 180
3. Evidence ……………………………………………….. 180
4. Service ………………………………………………….. 180
5. Contents of notice, data of hearing …………………….. 180
6. Reasons for appeal to be filed …………………………... 180
7. Copy of affidavits to be served on the parties…………… 180
8. Service on auditors other than the auditor who gave the decision…… 181

ORDER 62

FEES AND ALLOWANCES

1. Fees … … … … … … … … … … … … … … … … … … … 182
2. Regulations … … … … … … … … … … … … … … … … 182

Fees and allowances
1. Fees Appendix 1 ………………………………….. 182
2. Regulations Appendix 3 ………………………….. 182

Miscellaneous Provisions
1. Order to be made …………………………………... 183
2. Other procedure rules ……………………………… 183
3. Recovery of penalties and cost… … … … … … … … . . . 183
4. Notice ………………………………………………. 183
5. Filing ……………………………………………….. 183
6. Fees: Appendix 4………………………………… 183
7. Where no rules exist………………………...........… 183

ORDER 63

POWERS OF THE CHIEF JUDGE TO AMEND RULES AND ISSUE PRACTICE DIRECTIONS

1. Power of Chief Judge over new rules …………….. 184
2. Publication of new rules ………………………….. 184
3. Chief Judge's powers to issue practice directions, etc… 184
4. Practice direction, etc., to be published ……………….. 184

APPENDIX

LIST OF FORMS

TITLE

FORM NO:

1. General form of Writ of summons, etc.
2. Writ for service out of Nigeria
3. General form of originating summons
4. Origination summons
5. Form of *ex-parte* originating summons
6. Certificate of pre-action counseling
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. Memorandum of the Acceptance
12. Memorandum of appearance
13. Notice of counter-claim
14. Concession of defense
15. Notice of payment into court
16. Acceptance of sum paid into court
17. Acceptance of sum paid into court by one of several defendants.
18. Acceptance of sum paid into Court
19. Interrogatories
20. Answer to Interrogatories
21. Affidavit as to documents
22. Form of Order for Accounts and Inquiries
23. Legal Practitioners Undertaking as to Expenses
24. Letter of Request to take Evidence Abroad
25. Order for Appointment of the Nigerian Diplomatic Agent as special Examiner
Special Examiner (in convention country)
26. Forms of Praecipe
27. *Subpoena ad Testificandum*
28. *Habeas Corpus Ad Testificandum*
29. *Subpoena Duces Tecum*
30. Form of Guarantee for the Default of a Receiver
31. Receiver's Security by undertaking
32. Receiver's Account
33. Affidavit verifying Receiver's Account
34. Certificate of the Chief Registrar
35. Writ of *Habeas Corpus ad Subjiciendum*
36. Notice to be served with Writ of *Habeas Corpus ad Sujiciendum*
37. Writ of Habeas Courpus ad Testification
38. Warrant to Arrest Absconding Defendant
39. Order for payment of Principal Money or interest secured by
Mortgage or charge

40. Order for Possession of Property forming a security for payment to the
Claimant of any Principal Money or Interest
41. Order for payment of Principal Money or interest secured by mortgage or charge
and for possession of property comprised therein
42. Originating summons for possession
43. Order for possession

44. Petition
45. Application to place matter on fast Track
46. General form of writ of summons (Fast Track)
47. Notice of acceptance to place case on fast Track Division
48. Non-Acceptance to place case on Fast Track Division
49. Daily Record of cases Heard and summary of orders
50. Application for copies of proceeding (Transcript)
51. Surety's Guarantee
52. Surety's Guarantee on application for resealing
53. Caveat
54. Warning of Caveator
55. Appearance to warning or Citation
56. Notice of Election to Redeem Life Interest
57. Notice of Appeal

EDO STATE
HIGH COURT
(CIVIL PROCEDURE) RULES, 2018
COMMENCEMENT

ORDER 1

APPLICATION AND INTERPRETATION

1. APPLICATION

(1) These Rules shall apply to all proceedings including all part-heard causes and matters in respect of steps to be further taken in such causes and matters. The court shall give such directions, as may be necessary or expedient to ensure conformity with the requirement of the Rules.

(2) Application of these Rules shall be directed towards the achievement of a just, efficient and speedy dispensation of justice. Parties and counsel shall assist the court to further the overriding objectives of these Rules.

(3) The Chief Judge may give practice directions generally or in respect of a particular case, for carrying out any of the provisions in these Rules.

2. INTERPRETATION OF TERMS

(1) These Rules shall be interpreted in accordance with the Interpretation Law, Cap. 76 Laws of Bendel State, 1976 applicable in Edo State or any re-enactment thereof.

(2) Where in these Rules depositions and affidavits are required to be made, if the deponent does not understand English Language, such deposition or affidavit may be made in a language she understands and shall be accompanied by interpretation thereof in English Language.

(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.

"ADR" means Alternative Dispute Resolution;

related matters;

"EMDC" means the Edo Multi-Door Court House;

"Attorney-General" means the Attorney-General of Edo State;

"Chief Judge" means the Chief Judge of Edo State;

"Claimant" is a person who institutes all actions in Court and shall include a claimant in a counter-claim.

"ADR Judge" means a Judge of the High Court designated by the Chief Judge to handle ADR

"Court" means the High Court of Edo State;

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

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

"Defendant" is a person against whom an action is instituted and shall include a defendant to a counter-claim;

"Guardian" means any person who is for the time being, in 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. 65, Laws of Bendel State, 1976, applicable in Edo State or any re-enactment thereof;

"Judge" means Judge of the High Court of Edo State;

"Legal Practitioner" means a Law Officer, a State Counsel or a Legal Practitioner entitled to practice before the Court;

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

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

"**Person(s) Under Legal Disability"** means person(s) who lack capacity to institute or defend any proceedings by reason of age, insanity, unsoundness of mind or otherwise;

"**Probate Action"** means an action for the grant of probate of a Will, or Letter 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;

"Process Server" means any person or electronic means authorized to serve a court process under any enactment, regulation or rule of court;

"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 Edo State in the appropriate judicial division;

"Return Date" means the day endorsed on a court process for the appearance of the parties before the Court or any other day the Court may appoint or direct;

"State" means Edo State;

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

"Walk-in Cases" means dispute filed directly at EMDC with the objective of resolving same through any of the court house Multi-Doors to the exclusion of Arbitration;

ORDER 2

PLACE OF INSTITUTING AND TRIAL OF SUITS

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

1. Suits relating to land and personal property distrained or seized

All suits relating to land or any mortgage or charge on or any interest in land, or any inquiry or damage to land and actions relating to personal property distrained or seized for any cause or matters of inheritance shall first be taken before the ESMDC resolution failing which shall be commenced and determined in the Judicial Division in which the land is situate or where the seizure took place or where the inheritance matter arose.

2. Suits for recovery of penalties, forfeitures and against public officers

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

3. Suits upon contract

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

4. Other suits

(1) All other suits may be commenced and determined in the Judicial Division in which the defendant resides or carries on business or where the cause of action arose.

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

5. Suit commenced in wrong divisions

In case any suit shall be commenced in any other Judicial Division than that in which it ought to have been commenced, the same may, notwithstanding, be tried in the Judicial Division in which it shall

have been so commenced, unless the Court shall otherwise direct, or the defendant shall plead specially in objection to the jurisdiction before or at the time when he is required to state his answer or to plead in such cause.

6. Transfer of proceedings

No proceedings which may have been taken previously to such plea in objection shall in any way be affected thereby; but the Judge shall order that the cause be transferred to the Judicial Division to which it may be proved to his satisfaction to belong, or failing such proof, that it be retained and proceeded within the Court in which it has been commenced, and such order shall not be subject to appeal.

7. Transfer of suits to Magistrate Court

The Chief Judge or Judge may in any cause or matter, transfer or cause to be transferred to the Magistrate Court for hearing and determination, any cause or matter within the civil jurisdiction of the Magistrates' Court.

8. Power to transfer suits where court has no jurisdiction

Where a court has no jurisdiction in a cause or matter, the Judge may by order transfer the cause or matter to a court with competent jurisdiction.

9. Electronic service

Suits and interlocutory applications may be filed and served by counsel via electronic means. The Chief Judge shall issue practice directions for the modalities and operation of electronically filed processes.

ORDER 3

FORM AND COMMENCEMENT OF ACTION

1. Form and Commencement of Action

Subject to the provisions of any enactment, civil proceedings may be commenced by writ, originating summons, originating motion or petition or by any other method required by these Rules of Court governing a particular subject matter.

2. Proceedings which must be commenced by writ

Subject to the provisions of these Rules or any applicable law requiring any proceedings to be commenced 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 property.

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

(c) Where an interested person claims a declaration.

3. Mode of beginning civil proceedings

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, except witnesses on subpoena;
(d) List and copies of every document to be relied upon at the trial;
(e) Certificate of pre-action counseling as in Form 6.

4. The claimant shall provide as many copies of the processes listed in (a)-(e) above for the use of the Court and as there are defendants to be served.

5. Where a claimant fails to comply with Rules (2) and (3) above, his originating process shall not

be accepted for filing by the Registrar.

6. If pleadings are amended

It shall not be necessary to file fresh sets of the processes mentioned in Rule 3 of this Order if pleadings are amended.

7. Form of writ: Civil Form 1

Except in cases in which different Forms are provided in these Rules, the writ of summons shall be as in Form 1 with such modifications or variations as circumstances may require as in Form 45 (Fast Track).

8. Form of writ for service outside Nigeria

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

9. Proceedings which may commenced by originating summons

Any person claiming to be interested under a Deed, Will, Enactment or other written law 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.

10. Any person claiming legal or equitable rights which depend upon questions of construction of an enactment

Any person claiming any legal or equitable rights in a cause or matter where the determination of the question whether he is entitled to the rights 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.

11. Discretion of the Judge

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

12. Forms of Originating Summons: Civil Forms 3, 4, 5

(1) An originating summons shall be as in Forms 3, 4 0r 5 to these Rules with such variation as circumstances may require. It shall be prepared by the claimant 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; and

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

(d) certificate of pre-action counseling; as in Form 6.

(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) Where the claimant fails to comply with sub-rules (2) and (3) above, his originating process shall not be accepted for filing by the Registrar.

13. Service outside Edo; Edo State 1990 L.F.N.

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 Edo 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 Edo State of Nigeria and in the.....State."

14. Originating process to be tested by its date

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

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

15. Consolidation of causes

Causes or matters pending in the same Court may by order of the Court be consolidated and the court shall give directions as may be necessary with respect to the hearing of the causes or matters so consolidated.

16. Screening for ADR

All originating processes shall upon acceptance for filing by the Registry be screened for suitability for ADR and referred to the Edo State Multi-Door Court House or other appropriate ADR institutions or Practitioners in accordance with the Practice Directions that shall from time to time be issued by the Chief Judge of Edo State.

17. Certificate of pre-action counseling

A certificate of pre-action counseling signed by counsel and the litigant shall be filed along with

the originating processes where proceedings are initiated by counsel, showing that the parties have been appropriately advised as to the relative strength or weakness of their respective cases, and the counsel shall be personally liable to pay the costs of the proceedings where it turns out to be frivolous, as in Form 6.

18. Affixing of NBA seal by counsel on court processes

All processes filed at the Registry, shall bear the seal of the counsel filing the suit as provided by the Nigerian Bar Association, showing that the counsel is fully enrolled as a legal practitioner and qualified to practice in Nigeria.

ORDER 4
ENDORSEMENT OF CLAIM AND ADDRESS

1. Endorsement

Every originating process shall contain the claim, the relief or remedy sought and the full name and address of the claimant and the defendant(s).

2. Endorsement to show representative capacity

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

3. Probate actions

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

4. Endorsement where the claim is liquidated

(1) Where the claim is for debt or liquidated money 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 or his legal practitioner within the time allowed for appearance and that upon such payment the proceedings shall terminate.

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

5. Ordinary account

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

6. Endorsement of address by claimant or his legal practitioner

(1) A claimant suing in person shall state on the originating process his residential or business address as his address for service and shall include his telephone numbers and e-mail address. If he lives and carries on business outside the jurisdiction, he shall state an address within the jurisdiction as his address for service; and shall also include his telephone numbers and e-mail address.

(2) *Endorsement of address*

Where a claimant sues through a legal practitioner, the legal practitioner shall state on the originating process, his chambers' address, as the address for service and shall include his telephone

numbers and e-mail address. If the legal practitioner is based outside the jurisdiction, he shall state a chambers' address within the jurisdiction as his address for service and shall include his telephone numbers and e-mail address.

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

8. Every originating process shall contain an endorsement by the Registrar that parties maintain status quo until otherwise ordered by the Court.

9. Originating process without an address or with fictitious address

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

ORDER 5
EFFECT OF NON-COMPLIANCE

1. Non-compliance with Rules

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

2. Judge to give direction to regularize such steps

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

3. Application to set aside for irregularity

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

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

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

ORDER 6
ISSUANCE OF ORIGINATING PROCESS

1. Preparing originating process

Originating process shall be prepared by a claimant or his legal practitioner, and shall be clearly printed on Opaque A4 paper of good quality.

2. Signing and sealing of originating process

(1) The Registrar shall sign and 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 signing and 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.

(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. What is to be done after signing and sealing

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

4. Copies to be served

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

5. Probate actions: affidavit with originating process

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

6. Renewal of originating process: (Civil Form 7)

(1) The lifespan of every originating process shall be six (6) months.

(2) If a Judge is satisfied that it has proved impossible to serve an originating process on any defendant within its lifespan and a claimant applies before its expiration for renewal of the

process, the Judge may renew the original or concurrent process for three (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.

7. Endorsement renewal

A Judge may order two renewals in each case strictly for good cause shown and upon prompt application, provided that no originating process shall be in force for longer than a total of 12 months. The Registrar shall state the fact, date, and duration of renewal on every renewed originating process.

8. Loss of originating process

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

9. Concurrent originating process

A claimant may at the issuance of an originating process or at any time during its lifespan, 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.

10. Concurrent originating process for service within and out of jurisdiction

An originating process for service within jurisdiction may be issued and marked as a concurrent originating process with one for service out of jurisdiction, and an originating process for service out of jurisdiction may be issued and marked as a concurrent originating process with one for service within jurisdiction.

ORDER 7
SERVICE OF PROCESS

1. Persons to serve originating process

(1) Service of originating process shall be made by a Sheriff, Deputy Sheriff, Bailiff, Special Marshal or other officer of the court. The Chief Judge may also appoint and register any law chambers, courier companies or any other person or by electronic means mutually agreed to serve court processes.

(2) Any person or corporate body serving a process pursuant to sub rule 1 above shall have the privileges and liabilities of an officer of the Court. The expenses of such special service shall be defrayed by the party on whose application he is appointed unless the Court in any case sees reason to vary this rule.

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

2. How to effect service

An officer of court or process server shall serve an originating process by delivering to the party to be served a copy of the process duly certified as provided by Order 6 Rule 2(3).

3. Service on legal practitioner

No personal service of an originating process shall be required where the defendant has authorized his legal practitioner in writing to accept service and such legal practitioner enters appearance.

4. Mode of service when not personal

All processes for which personal service is not expressly required by these rules or any applicable law either on an individual, company or business shall be sufficiently served if left with an adult person resident or employed at the address for service given under Order 4 Rule 6 or if served by any other means as the court may order.

5. Person under legal disability

(1) Where a person under legal disability is a defendant, service on his guardian shall be deemed good and sufficient personal service, unless the court 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 court may order that personal service on a person under legal disability shall be

deemed good and sufficient.

6. Prisoner or detainee

Where a detainee or prisoner is a defendant, service on the head or other officer in charge of the station, facility or prison where the defendant is, or 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.

7. Partners

(1) Where persons are sued as partners in the name of their firm, the originating process shall be served upon any one or more of the partners at the place of business within the jurisdiction or upon any person having control or management of the firm.

(2) The service of the originating process shall be deemed good service upon the firm whether any of the members are out of the jurisdiction or not and no leave to serve an originating process against them shall be necessary:

(3) Where a firm has been dissolved to the knowledge of the claimant before the commencement of the action, the originating process shall be served upon every person within the jurisdiction sought to be made liable.

8. Corporation or company

Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process requiring personal service may be served on a registered company, corporation or body corporate, by delivery at the head office or any other place or business of the organization within the jurisdiction of the Court.

9. Foreign corporation or company

(1) Where the suit is against a foreign corporation or company within the meaning of section 54 of the Companies and Allied Matter Act having an office and carrying on business within the jurisdiction, and such suit is limited to a cause of action which arose within the jurisdiction, the originating process or other documents requiring personal service may be served on the principal officer or representative; or by leaving it at the place of business of such foreign corporation or company within the jurisdiction:

(2) Where a foreign corporation or company has complied with the provisions of Chapter 3 of the Companies and Allied Matters Act, personal service shall be effected on one of the persons authorized to accept service on behalf of the said company.

10. Legal agent of principal who is out of jurisdiction

Where a contract has been entered into within the jurisdiction by or through an agent residing or

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

11. Substituted service

(1) Where service of an originating process is required by this Rules or any other enactment and the court is satisfied that prompt service cannot be effected, the court may upon application by the claimant make such order for substituted service as may seem just.

(2) Every application to the court for substituted or other 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.

Where it appears to the court (either after or without an attempt at service) that for any reason prompt service cannot be conveniently effected, the court may order that service be effected either by:

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

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

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

(d) notice put up at the principal court house, or some other place or public resort in the judicial division where the proceeding in respect of which the service is made is instituted, or at the usual or last known place of abode, or of business, of the person to be served.

(e) **Substituted service by e-mail**

(i) E-mail or any other scientific device now known or later developed and courier service or any other means convenient to the Court.

(ii) Provided service by e-mail is contemplated by parties in a written agreement or subsequently agreed by Counsel in the course of proceedings.

12. Where violence is threatened

Where a person to be served, alone or in concert with others, resists service or applies or threatens

violence to the process server, the process server may leave the process within the reach of person to be served, and this shall be deemed good and sufficient service.

13. Proof of service generally

(1) The process server shall after serving any process promptly depose to and file an affidavit setting out the fact, date, time, place and mode of service, describing the process served and shall exhibit the acknowledgment of service

(2) Proof of service by email shall be evidenced by an affidavit with a printout of an email notifier attached thereto.

(3) The affidavit shall be prima facie proof of service.

14. Expenses of service

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

(2) The costs and expenses for service shall be as directed by the Chief Judge in Practice Directions from time to time.

15. Time of service on certain days

(1) Service of originating and other processes, shall be effected between the hours of 6am and 6pm provided that where service is effected after 6pm, such service will be deemed to have been effected on the next service day.

(2) Service shall not be effected on a Sunday or on a public holiday save in exceptional circumstances as may be authorized by the Court.

16. Service of advance copies via email

Where parties are represented by counsel, advance copies of processes other than originating process may be served by email.

17. Service of hearing notices via email

The court may serve hearing notices via email and/or SMS except as otherwise directed by the Judge.

18. Recording of service

(1) The Registrar shall keep a register in such form as the Chief Judge may direct for recording service of processes by any process server. The Registrar shall record the names of the claimant and defendant, the method of service, and the manner used to ascertain that the right person was served.

(2) Where any process was not served, the cause of failure shall be recorded in the register.

Every entry in the register or certified copy shall be prima facie evidence of such matters.

(3) Such service shall be supported by a written (notify) report, a copy of which shall be kept in the court register referred to rule 18(1).

ORDER 8

SERVICE OUT OF NIGERIA AND SERVICE OF FOREIGN PROCESS

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

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

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

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

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

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

(e) the claim is brought against the defendant to enforce, rescind, dissolve, annul or otherwise affect a contract or to recover damages or other relief for or in respect of a contract:

(i) made within jurisdiction, or

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

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

(f) The claim is founded on a tort committed within jurisdiction, or

(g) An injunction is sought as to anything to be done within jurisdiction, or any nuisance within jurisdiction is sought to be prevented or removed, or

(h) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within jurisdiction, or

(i) The claim is by a mortgagee or mortgagor in relation to a mortgage of property situate within jurisdiction and seeks relief of the nature or kind following, that is sale, foreclosure, delivery of possession by the mortgagor; redemption, reconveyance, delivery of possession by the mortgagee; but does not seek (unless and except so far as permissible under paragraph (e) of this Rule) any judgment or order for payment of any monies due under the mortgage, or

(j) The proceedings relate to a person under legal disability, or

(k) The proceedings relate to probate matters, or

(l) Where any proceedings under any law or rule of court has been instituted by any originating process.

2. Agreement as to service

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.

3. Service abroad by letter of request

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

(a) Civil Form 8

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.

(b) Civil Form 9

a party wishing to serve a process under this rule shall file a praecipe in Form 9 with such modifications of variations as circumstances may require.

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

(d) Civil Form 10

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 notwithstanding the foregoing provision, a claimant may with leave of a Judge serve any originating process by courier.

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

4. Where leave is granted or not required

(1) Where leave is granted or is not required in a civil suit and it is desired to serve any process in a foreign country with which a Convention in that behalf has been made, the following procedures 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 a Nigerian diplomatic agent to the Court establishing the fact and the date of the service of the document shall be deemed to be sufficient proof of service within the requirements of these Rules.

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

5. Service of foreign processes

Where in any Civil or Commercial matter pending before a Court or Tribunal of a foreign country, a letter of request from such Court or Tribunal for service of any person or citation in such matter is transmitted to the Court by the Edo State Attorney-General with intimation that it is desirable that effect be given to the same, the following procedures 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 Judge 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.

6. Inapplicability of Rule 4

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

7. Service on behalf of foreign tribunals

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 or 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 procedures shall, subject to any special provisions in the convention, be adopted:

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

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

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

8. Substituted service of foreign process

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

ORDER 9
APPEARANCE

1. Mode of entry of appearance: Civil Form 12

(1) A defendant served with an originating process shall, within the period prescribed in the process for appearance, file in the registry the original and copy of a duly completed and signed memorandum of appearance as in Form 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 showing the date he received it and return the copy to the person making the appearance.

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

2. Defendants appearing in person or represented

(1) A defendant appearing in person shall state in the memorandum of appearance an address for service which shall be within Edo 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 Edo State, and where any such legal practitioner - is only the agent of another legal practitioner, he shall also insert the name and place of business of the principal legal practitioner.

3. Fictitious address

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

4. Defendants appearing through same legal practitioner

Where two or more defendants in the same action appear through the same legal practitioner, the memorandum of appearance shall include the names of all defendants so appearing.

5. Late appearance

(i) Where a defendant is out of time in filing a memorandum of appearance, no leave of court is required. Where a defendant files a memorandum of appearance after the time prescribed in the originating process, he shall pay to the court at the time of filing an additional fee of N100.00 (One Hundred Naira) for each day of default. If the defendant files a memorandum of appearance out of time but within the time prescribed for filing his defence, he shall file his defence within that time.

(ii) Where service is to be effected by persons under Order 7 Rule 1(i) and Order 7 Rule 1(3), failure to serve the memorandum of appearance within the time prescribed in Rule 1(3) of this Order shall attract a penalty of N100.00 (One Hundred Naira) for each day of default.

6. Intervener in probate matters

In probate matters, any person not named in the originating process may intervene and appear in the matter on filing a motion supported by an affidavit showing his interest(s) in the estate of the deceased.

7. Recovery of land

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 a motion showing that he is in possession of the land either by himself or through his tenant.

8. Landlord appearing

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

9. Person under legal disability appearing

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

10. Tenant

In this Order, the word “Tenant” includes a sub-tenant or any person occupying any premises whether on payment of rent or otherwise.

ORDER 10
DEFAULT OF APPEARANCE

1. Default of appearance by person under legal disability

Where an appearance has not been entered for a person under legal disability, a claimant shall apply to the court for an order that a 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 and notice of the application shall be served on the person intended to be appointed the guardian of the defendant.

2. Default of appearance

Where any defendant fails to appear, a claimant may proceed upon proof of service of the originating process under the appropriate provisions of these Rules.

3. Liquidated demand

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

4. Liquidated demand several defendants

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

5. Judgment in default of appearance

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 any of the defendants fail to appear, a claimant may apply to the court 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 the court may direct before judgment for that part of the claim.

6. Several defendants

Where the claim in the originating process is as provided in Rule 5 of this Order and there are several defendants, judgment may be entered against the defendant in default of appearance. The value of the goods and the damages only as the case may be shall be ascertained in such manner and subject to filing such particulars as the court may direct before judgment for that part of the claim.

7. Detention of goods damages and liquidated demand

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

8. Recovery of land

If an appearance is not entered within the time prescribed in the originating process in a claim for recovery or if appearance is entered but the defence is limited to part only, a claimant may apply to the court for judgment stating that the person whose title is asserted in the originating process shall recover possession of the land, or of that part of it to which the defence does not apply.

9. Mesne profit

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

10. Judgment for costs upon payments

In any case to which Rules 3-8 of this Order do not apply and the defendant or any of the defendants fails 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 the court for judgment for costs; but such application shall be filed and served in the manner in which service of the originating process was effected or in such manner as the court shall direct.

11. Setting aside judgment

Where judgment is entered under any of the preceding Rules of this Order, the court may on an application by the defendant set aside or vary such judgment on terms. The application shall be made within a reasonable time, showing evidence of payment of penalty, a good defence to the claim and a reasonable cause for the default.

12. Default of appearance in actions not specifically provided for

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

13. Compulsory service

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

ORDER 11
SUMMARY JUDGMENT

1. Where claimant believes there is no defence

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

2. Delivery of extra copies

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

3. Service

Service of all the processes and documents referred to in Rule 1 of this Order shall be effected in the manner provided under Order 7.

4. Where defendant intends to defend

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

(a) statement of defence;

(b) depositions of his witnesses;

(c) exhibits to be used in his defence; and

(d) written brief in reply to the application for summary judgment.

5. Where defendant has good defence, or has no good defence or has good defence to part of the claim

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

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

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

6. Where there are several defendants

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

7. Oral submission on written brief

Where provision is made for written briefs under these Rules, each party shall be at liberty to advance before a Judge oral submission to expatiate his written brief.

ORDER 12
APPLICATION FOR ACCOUNT

1. Order for account

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

2. Application how made

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.

3. Account may be taken by a Judge or Referee

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

4. Account to be made verified, etc.

(1) Where an account has been ordered to be taken, the accounting party shall make out his account and unless the Court otherwise directs, verify it by an affidavit to which the account shall be exhibited.

(2) The items on each side of the account shall be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs, the accounting party shall lodge the account with the court and shall at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

5. Erroneous account

Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any item in his account is erroneous in respect of amount or any other respect shall give him notice

thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or to back as the case may be, the grounds for alleging that the item is erroneous.

6. Allowances

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

7. Delay in prosecution of account, etc.

(1) If it appears to the court that there is undue delay in the prosecution of any account or inquiry, or in any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or expediting them or for the conduct thereof and for costs as the circumstances require.

(2) The Court may direct any person or legal practitioner to take over the conduct of proceeding in question and to carry-out any directive made by an order under this rule and may make such orders as it thinks fit as to the payment of legal practitioner's costs.

8. Distribution of fund before all entitled persons are ascertained

Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons ascertained without reserving any part of the shares to meet the subsequent costs of ascertaining those other persons.

ORDER 13
PARTIES GENERALLY

1. Persons claiming jointly or severally

All persons may be joined in one action as claimant in whom any right to relief is alleged to exist whether jointly or severally, and judgment may be given for such claimant as may be found to be entitled to relief and for such relief as he or they may be entitled to, without any amendment.

2. Action in the name of wrong claimant

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

3. Misjoinder and counter-claim

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

4. Any person may be joined as defendant

Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, judgment may be given against one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

5. Action in the name of wrong defendant

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

6. Defendants need not be interested in all the reliefs sought

(1) It shall not be necessary that every defendant shall be interested in all the reliefs prayed in any proceeding against him.

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

7. Joinder of persons severally liable

A claimant may at his option join as parties to the same action all or any of the persons severally or jointly and severally liable on any contract, including parties to bills of exchange and promissory notes.

8. Person against whom redress is to be sought

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

9. Persons unknown

Where in land matters a claimant is unable to identify the person against who he claims, he may subject to the Rules of this court describe such a person as a "person unknown".

10. Substitution of name

Such a defendant under this Rule may by leave of court apply for the substitution of his name as a defendant in lieu of the reference to him as a "person unknown".

11. Persons under legal disability

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

12. Guardian

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.

13. Trustees, Executors sued as representing the estate

Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons, but 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 proceedings to enforce a security by foreclosure or otherwise.

14. Numerous persons

(1) Where there are numerous persons 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 of or for the benefit of all persons so interested.

15. Representation of persons or classes of persons in certain proceedings

(1) Where in any proceedings concerning:

(a) the administration of an estate; or

(b) property subject to a trust; or

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

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

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

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

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

It is expedient for the purpose of efficient procedure that one or more persons be appointed to represent that person or class or member of the class, the Judge may make the appointment. The decision of the Judge in the proceedings shall be binding on the person or class or 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 proceedings mentioned in sub-rule 1 of this Rule, several persons having the same interest in relation to the matter to be determined attend the hearing by separate legal practitioners, then unless the Judge considers that the circumstances justify separate representation, not more than one set of costs of the hearing shall be allowed to these persons, and the judgment or order shall be framed accordingly.

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

16. Power to prove compromise

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

(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.

17. Where there is no Personal Representative

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

(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 the application of either the deceased's Legal Practitioner or the opposing party order any person to take the place of the said deceased and proceed with the suit.

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

18. Proceedings not defeated by misjoinder or non-joinder

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

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

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

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

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

19. Application to add or strike out

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

(2) Where the application to add a claimant or a defendant is by a person not already a party, 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.

20. Where defendant is added

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.

21. Third parties may be joined by any of the parties

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

(2) The Order and existing processes shall be served on the third party within the time prescribed for delivering of the defence.

22. Appearance by third party

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

23. Default by third party

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

24. Subsequent third party

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

25. Claim against co-defendant

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

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

26. Actions by and against Firms

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.

27. Disclosure of Partner's names

(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 persons 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 proceedings 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 proceedings may continue in the name of the Firm.

28. Appearance of partners

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

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

29. Application of Rules to actions between Co-partners

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

30. Persons trading as firm

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

Change of parties by Death or Otherwise, etc.

31. Action not abated where cause of action survives

No proceedings shall abate by reason of death or bankruptcy of any of the parties, if the cause of action survives and shall not become defective by the assignment, creation or devolution of any estate or title pendente lite, and, whether the cause 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.

32. Order to carry on proceedings

(1) Where by reason of death or bankruptcy, or any other event occurring after the commencement of a proceeding and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the proceeding, it becomes

necessary or desirable that any person not already a party should be made a party or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party or parties may be obtained ex-parte upon an allegation of such change, or transmission of interest or liability or of any such person interested having come into existence.

(2) An Order obtained under this Rule shall be served upon the continuing party or parties, or their legal practitioner(s) and also upon such new party unless the person making the application is the new party.

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

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

33. In case of assignment, creation or devolution of estate or title

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.

34. Application to discharge Order by person under disability having a guardian

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

35. By persons under disability having no guardian

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

ORDER 14
JOINDER OF CAUSE OF ACTION

1. All causes of action may be joined

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

2. Recovery of land

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

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

3. Executor and Administrator

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

4. Claims by Joint-claimants

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

ORDER 15
PLEADINGS

1. Filing of Pleadings

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

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

A defendant shall file along with his statement of defence., set-off or counter-claim a list of the claimant's documents indicating:

(a) those to which he has no objection; and
(b) those to which he has objection.

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

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

(i) A claimant shall within fourteen (14) days of service of the statement of defence and counter-claim, if any, file a list of the defendant's documents indicating:
  (a) those to which he has no objection; and
  (b) those to which he has objections.

2. Pleading to state material facts and not evidence

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

3. Particulars to be given where necessary

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

(2) In an action for libel or slander, if the claimant alleges that the words or matters complained 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.

4. Further and better statement or particulars

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 pleadings requiring particulars shall be made to a Judge at the trial. The Judge may grant such application upon such terms as may be just.

5. Denial

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

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

6. Conditions precedent

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

7. Defence, certain facts, surprise to be specifically pleaded

(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 proceedings to the pleadings, shall be specifically pleaded.

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

8. Pleadings to be consistent

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

9. Joinder of Issues

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

10. Effect of documents to be stated

Wherever the contents of any documents are material, it shall be sufficient in any pleadings 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.

11. Notice

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

12. Implied contract or relationship

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

13. Presumption of Law

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

14. Stated or settled account

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

15. Technical objection

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

16. Striking out of pleadings

A Judge may, at the trial in any proceedings, order to be struck out or amended, any matter in any

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

17. Defamation

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

18. Where pleadings disclose no reasonable cause of action

(1) the Judge, may at any stage of the proceedings, order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, 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 paragraph (1) (a).

(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 pleadings.

19. Close of pleadings

(1) Where pleadings subsequent to reply is not ordered, then, at the expiration of 7 days from

the service of the defence or reply (if a reply has been file) pleadings shall be deemed closed.

(2) Where pleadings subsequent to reply is ordered, and the party who has been ordered or given leave to file 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 counter-claim and unless the claimant files a defence to counter-claim, the statements of fact contained in such counter-claim 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 counter-claim.

ORDER 16
STATEMENT OF CLAIM

1. Statement of claim

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

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

2. Claim beyond endorsement

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

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

ORDER 17
STATEMENT OF DEFENCE AND COUNTER-CLAIM

1. Statement of defence

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

2. Evasive denial

When a party in any pleadings denies an allegation of fact in the previous pleadings of the opposite party, he shall not do so evasively, but answer the point of substance. If an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

3. Denial generally

(1) In an action for debt or liquidated money demand, 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.

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

4. Persons in representative capacity

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.

5. Pleading to damages

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

6. Set-off and counter-claim

Where any defendant seeks to rely upon any ground as supporting a right of set-off or counter claim, he shall in his defence state specifically that he does so by way of supporting a right of set off or counter claim.

7. Title of counter claim

Where a defendant by his defence sets up any counter claim 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 counter claim were to be enforced by cross action, would be defendants to

such cross action, and shall deliver his defence to such number of them as are parties to the action within the period which he is required to deliver it to the claimant.

8. Claim against persons not Party (Civil Form 13)

Where any such person as in rule 7 of this Order is not a party to the action, he shall be summoned to appear by being served with a copy of the defence and counter claim, and such service shall be regulated by the same rules as those governing the service of the originating process and every defence and counter claim so served shall be endorsed in Form 13 with such modifications or variations as circumstances may require.

9. Appearance

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

10. Reply to counter claim

Any person not already a party to the action, who is named in a defence as a party to a counter claim 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.

11. Discontinuance: the claimant's claim

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

12. Judgment balance

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

13. Ground of defence after action brought

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

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

14. Further defence or reply

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

15. Concession to defendant (Civil Form 14)

Whenever any defendant in his defence or in any further defence pursuant to rule 14 of

this Order alleges any ground of defence which has arisen after the commencement of the action, the claimant may concede to such defence (which concession may be in Form 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.

16. Defence to originating summons

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

ORDER 18

REPLY

1. Filing of reply

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

2. Reply to counter-claim

Where there is a counter-claim, a reply thereto is called a defence to counter-claim and shall be subject to the rules applicable to defences.

ORDER 19

ADMISSIONS

1. Notice of admission of facts

Any party to a proceedings may give notice by his pleadings or otherwise in writing, that he admits the truth of the whole facts or any part of the case of the other party.

2. Notice to admit document

(1) Either party may not later than 7 days before trial by notice in writing filed and served, require any other party to admit any document and the party so served shall not later than 4 days after service give notice of admission or non-admission of the document, failing which he shall be deemed to have admitted it unless a Judge otherwise orders.

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

(3) Where a party gives notice of non-admission and the document is proved at the trial, the cost of proving the document, which shall not be less than a sum of five thousand naira (N5,000.00) shall be paid by the party who has challenged it, unless at the trial or hearing, the Judge shall certify that there were reasonable grounds for not admitting the authenticity of the document.

3. Notice to admit facts

(1) Either party may not later than 7 days before trial, by notice in writing filed and served, require any other party to admit any specific fact or facts mentioned in the notice, and the party so served shall not later than 4 days after service give notice of admission or non-admission of the fact or facts failing which he shall be deemed to have admitted it unless a Judge otherwise orders.

(2) Where there is a refusal or neglect to admit the same within 4 days after service of such notice or within such further time as may be allowed by the Judge, the cost of proving such fact or facts which shall not be less than a sum of five thousand naira (N5,000.00), shall be paid by the party so refusing or neglecting whatever the result of the proceedings, unless the Judge certifies that the refusal to admit was reasonable or unless the Judge at any time otherwise orders or direct.

(3) Where there is a refusal or neglect to admit the same within four (4) days after the service of such notice or within such further time as may be allowed by the Judge, the cost of proving such fact or facts which shall not be less than a sum of five thousand naira (5,000.00) shall be paid by the party so refusing or neglecting whatever the result of the proceedings, unless the Judge certifies that the refusal to admit was reasonable or unless the Judge at any time otherwise orders or directs.

4. Judgment or Order upon admission of facts

The Judge may, on application, at trial or at any other stage of the proceedings where admissions of facts have been made, either on the pleadings or otherwise, make such orders or

give such judgment as upon such admissions a party may be entitled to, without waiting for the determination of any other question between the parties.

5. Cost of notice where documents are unnecessary

Where a notice to admit or produce comprises documents that are not necessary, the costs occasioned thereby which shall not be less than five thousand naira (N5,000.00) shall be borne by the party giving such notice.

ORDER 20

DEFAULT OF PLEADINGS

1. Claim for debt or liquidated demand

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

2. Several defendants: default of one

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

3. Damages and detention of goods

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 all the defendants, if more than one, make default as mentioned in rule 1 of this Order, the claimant may apply to a Judge for interlocutory judgment against the defendant or defendants and the value of the goods and the damages, or the damages only as the case may be, shall be ascertained in any way which the Judge may order.

4. Default of one or more defendants

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

5. Debt or damages and detention of goods

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

6. Recovery of land

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

7. Claim for *mesne*-profits, arrears or damages

Where the claimant has endorsed a claim for *mesne* profits or arrears of rent in respect of the premises claimed, or any part of profits or damages for breach of contract or wrong or injury to the premises claimed upon a writ for the recovery of land, if the defendant makes default as mentioned in rule 1, or if there be more than one defendant, some or one of the defendants 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.

8. Defence to part of claim only

If the Claimant's claim is for a debt or liquidated demand or for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, or for any such matters, or for the recovery of land, and the matters, or for the recovery of land, and the Defendant files a defence which purports to offer an answer to part only of the Claimant's alleged cause of action, the claimant may apply for judgment, final or interlocutory, as the case may be, for the part unanswered:

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 counter claim, execution on any such judgment as above mentioned in respect of the claimant's claim shall not issue without leave of the Judge.

9. Defendant in default

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

(2) Where there is no defence and the matter before the Court cannot be adjudged without the claimant adducing evidence to prove the case before the Court, the claimant shall make an application to set the matter down for trial before the Judge who shall upon consideration and grant of the application proceed to hear the matter.

10. One of several defendants in default

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

11. Default of third party

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

12. Default of defence to counter claim

A defendant who counter-claims against a claimant shall be treated for the purposes of rules 2 to 10, as if he were a claimant who had made a claim against a defendant and accordingly, where the claimant or any other person against whom the counter claim is made, fails to serve a defence to the counter claim, rules 2 to 10 shall apply as if:

(a) the counter claim were a statement of claim;
(b) the defence to the counter claim a defence;
(c) the parties making the counter claim and against whom it is made were claimants and defendants respectively; and
(d) references to the period fixed under these rules for service of the defence were references to the period so fixed for service of the defence to the counter claim.

13. Setting aside judgment by default

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

ORDER 21

PAYMENT INTO AND OUT OF COURT

1. Payment into and out of Court

(1) Where after service in any proceedings for debt or damages, a defendant evinces an intention to pay money into Court in respect of the proceedings, he shall notify the Chief Registrar, who will thereupon direct him to pay the money into an interest yielding account opened by the Chief Registrar 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 Registrar of an intention to increase the amount of any sum paid into Court.

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

(6) **Civil Form 15**
The notice shall be in Form 15 with such modifications or variations as circumstances may require. The receipt of the notice shall be acknowledged in writing by the claimant within 3 days. The notice may be modified or withdrawn or delivered in an amended form by leave of a Judge upon such terms as may be just.

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

2. Claimant may take out money: (Civil Form 16)

(1) Where money is paid into Court under rule 1, the claimant may within 14 days of the receipt of the notice of payment into Court, or where more than one payment into Court has been made, within 14 days of the receipt of the notice of the last payment into Court, accept the whole sum or any one or more of the specific sum in satisfaction of the cause or causes of action to which the specified sum or sums relate, by giving notice to the defendant in Form 16 with such modifications or variations as circumstances may require and thereupon shall be entitled to receive payment of the accepted sum or sums in satisfaction as aforesaid.

(2) Payment shall be made to the claimant or on his written authority to his legal practitioner and thereupon proceedings in the action or in respect of the specified cause or causes of

action (as the case may be) shall abate.

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

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

3. Money remaining in Court

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

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

(2) **Form 17**
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 17 with such modifications or variations as circumstances may require to each defendant and thereupon all further proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall abate.

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

(4) **Civil Form 16**
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 16 with such modifications or variations as circumstances may require. The claimant may tax his costs against the defendant who has made such payment in accordance with Rule 2(3) of this Order and the action shall abate against the 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. Counter claims

A person made a defendant to a counter claim may pay money into Court in accordance with the foregoing rules, with necessary modification.

6. Persons under legal disability

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

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

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

7. Payment into and withdrawal of money from Court

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

ORDER 22

PROCEEDINGS IN LIEU OF DEMURRER

1. Demurrer abolished

No demurrer shall be allowed.

2. Points of law may be raised by pleadings

Any party shall be entitled to raise by his pleadings any point of law and any points so raised shall be disposed of by the Judge who tries the cause at or after the trial:

Provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, it may be set down for hearing and disposed of at any time before the trial.

3. Dismissal of action

(1) If, in the opinion of the Court or a Judge; the decision of the point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter claim, or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.

(2) This provision shall be without prejudice to the Arbitration Act or any other Law under which a Defendant must apply for stay of proceedings before filing a Statement of Defence or other Statement of Case on the merits.

4. Striking out pleadings where no reasonable cause of action is disclosed

(1) The Judge may at any stage of the proceedings 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 an application under Rule 18(1)(a).

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

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

5. Declaration judgment

No action or proceedings shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not.

ORDER 23

NOTICE OF DISCONTINUANCE

1. Claimant may discontinue before defence

(1) The claimant may at any time before receipt of the defence or after the receipt thereof, before taking any other proceedings 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 and served the claimant may with the leave of a Judge discontinue the proceedings or any part thereof on such terms and conditions as the Judge may order.

(4) Where proceedings have been stayed or struck out upon a claimant's withdrawal or discontinuance under this Order, no subsequent claim shall be heard 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 counter claim to be withdrawn or struck out.

2. Withdrawal by consent

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

ORDER 24

AMENDMENT

1. Amendment of originating process and pleadings

A party may amend his originating process and pleadings at any time before the settlement of issue and not more than twice during the trial but before the close of the case, provided the Court may grant more than two amendments in exceptional circumstances.

2. Application

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

3. Amendment of originating process

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

4. Failure to amend after order

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 N500.00 (Five Hundred Naira) only for each day of default, without the need for another application for extension of time provided he files within fourteen days thereafter.

5. Filing and service of amended process

Whenever any originating process or pleadings 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.

6. Date of order and amendment to be displayed

Whenever any endorsement or pleadings is amended, it shall be marked in the following manner;

"Amended _____day of _____
Pursuant to Order of (name of Judge) dated the _____day
Of _____."

7. Clerical mistakes and accidental omissions

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

8. General power to amend

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

ORDER 25

TRIAL CONFERENCES AND SCHEDULING

1. Period for settlement

(1) When a matter comes before the Court for the first time, the Judge shall in circumstances where it is appropriate, grant to the parties, time, not more than thirty days within which parties may explore possibilities for settlement of the dispute.

(2) Where parties fail to settle within thirty days or such other period as the court may grant, the case shall without more proceed to trial.

2. Formulation of issues for determination

(1) Where a matter is to proceed to trial, the parties shall within seven (7) days after close of pleadings file respectively, issues for determination at the trial. The issue may state questions of law or admitted facts or questions of disputed facts or questions partly of law, on the one part and partly of facts, on the other.

(2) Where a party fails to comply with Rule 1, the court may proceed to set down the matter for hearing upon the issues submitted by the other party.

(3) Where the parties have filed their respective issues for determination and the parties have not agreed on the issues for determination, or the Judge is of the opinion that the issues formulated by the parties do not adequately address the controversy between the parties, the judge may, inspite of the issues formulated by the parties, formulate appropriate issues for determination and such shall be the issues for determination at the trial of a matter.

3. Party may apply for issue to be tried

Notwithstanding the provisions of rule 2 of this Order, where a party believes that the issues for determination shall be determined by a hearing in open court, such party may do so by application on notice stating the question(s) or issue(s) sought to be tried.

4. Court may amend or frame additional issues

At any time before judgment, and where it appears necessary to the Court, for the purpose of determining the real question or controversy between the parties, the court may amend the issues or frame additional issues on such terms as it deems fit.

5. Formulation of issues by Court

Where the Court intends to formulate or amend issues for determination, it shall be done in open court and on notice to the parties to attend the hearing for the formulation of issues for determination.

ORDER 26

ALTERNATIVE DISPUTE RESOLUTION

A – Reference to ADR

1. Judge to encourage ADR

It shall be the duty of a court or a Judge to encourage settlement of matters either by:

(a) Arbitration
(b) Conciliation
(c) Mediation
(d) Or any other method of dispute resolution.

2. Consent Cases to be referred to ESMDC Civil Form 18 time within which to report settlement

(1) Where parties consent to settlement of disputes, the Court or Judge shall by an enrolment order as in Form 18, refer the case to the ESMDC for resolution within 30 days except otherwise ordered by the Court.

(2) Where a court makes a referral, the court or judge shall by an enrollment order as in form 18 refer the case to the ESMDC for resolution within 30 days except otherwise ordered by the court.

3. ADR Directives & Sanctions

(1) Where a case is deemed suitable for ADR under Order 3 Rule 16 or has by directives been referred to ADR under Rule (2)(2) above, the judge may consider and give appropriate directives to parties on the filing of statement of claim and other necessary issues.

(a) The claimant shall file his statement of claim within Seven (7) days of the Order of the judge.

(b) The defendant shall file his response within Seven (7) days of service of the claimant's statement of claim.

(2) The parties shall file a notice of compliance with Rule 3(1) above to the judge within fourteen (14) days of giving the Order.

(3) Failure to comply with filing the notice of compliance within time shall attract a sum of two hundred (N200) naira fine per day.

(4) A party applying for an extension of time to comply with Rule 3(1) above, shall upon filing such application attach thereto evidence of payment.

(5) Where a party fails to comply with the directives and/or orders of the ADR Judge or fails to participate in ADR proceedings, the Judge shall

(a) in the case of the claimant, dismiss the claim.

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

(6) Any judgment given under Rule 5 above may be set aside upon an application made within (7) days of the judgment or such other period as the Judge or ADR Judge may allow for good cause shown.

The application shall be accompanied by an under taking to participate effectively in the ADR proceedings.

4. Cost

The Court in making any order as to cost during or after a trial shall consider any directive made under this Order and the disposition of the parties thereto.

5. Extension of time to report settlement

Where parties are unable to complete the settlement process within the time specified in the order, the referring judge may extend the order whenever he considers it expedient having regard to the facts and circumstances of the case.

6. Where settlement has broken down

(1) The referring judge shall proceed to entertain a case where parties report that the settlement has broken down or it cannot be resolved through the ADR mechanism.
(2) Where a party refused to submit to ADR and loses the case in court, he shall pay a penalty as may be determined by the court.

7. Consent Judgment walk in application for consent judgment

(1) The court or judge shall, on the application of parties enroll the terms of settlement reached at the ESMDC as consent judgment, such terms shall thereupon have the same force and effect as judgment.

(2) Parties in a "walk in" ADR process may apply to an ADR judge by a Motion on Notice for an order to enroll the decision or terms of settlement at the ESMDC as a consent judgment.

8. Chief Judge to designate ADR Judges

The Chief Judge may by order under his hand and seal appoint and designate judges as ADR judges who shall have jurisdiction to handle ADR related matters.

9. Settlement Week

The Chief Judge may designate a week(s) during the course of the legal year for the resolution of disputes at the Multi-Door Courthouse. This week(s) shall be known as Settlement Week and the proceedings of the week shall be as directed by the Chief Judge in a Practice Direction.

10. Sifter Committee

The Chief Judge may set up a Sifter Committee to identify cases that may be effectively resolved during the settlement week or any time he deems fit.

B – Arbitration

11. Arbitration

(a) In any case in which a matter is referred to one or more arbitrators under these Rules, the Court shall by an order under its seal refer to the arbitrators the matters in dispute in the

suit which they may be required to determine and fix a time for the delivery of the award and the time so fixed shall be stated in the order.

(b) When the arbitrators are not able to complete the award within the period specified in the order for want of the necessary evidence or information or other good and sufficient cause, the Court may, from time to time, enlarge the period for delivering of the award, if it thinks fit.

(c) An award shall not be liable to be set aside only by the reason of its not having been completed within the period allowed by the Court, unless on proof that the delay in completing the award arose from misconduct of the arbitrators.

(d) Where in any case of reference to arbitration by an order of court, the arbitrator dies or refuse to act, the court shall appoint a new arbitrator in the place of the person dying, refusing or becoming incapable to act.

(e) The award shall contain a conclusive finding on all issues in the matter referred to arbitration.

(f) In any of the following cases, the court may remit the award or any of the matters referred to arbitration, for reconsideration by the arbitrator(s) upon such terms as it thinks proper:
(i) Where the award has left undermined some of the matters referred to arbitration;
(ii) where the award has determined matters not referred to the arbitration;
(iii) where the award is so indefinite as to be incapable of execution;
(iv) where an objection to the legality of the award is apparent on the face of the award.

(g) No award shall be liable to be set aside except on the misconduct of the arbitrator and provided that the application for setting aside the award is made within 15 days after the publication thereof.

(h) if no application is made to set aside the award or to remit it for reconsideration or where the court has refused any such application, either party may file the award in court and the award shall thereupon have the same force and effect for all purposes as a judgment.

(i) the Chief Judge may designate a judge as the arbitration judge whose court shall primarily be responsible for remitting and enforcement of award.

C – Arbitration Proceedings

12. Arbitration proceedings

Except to subpoena a witness to attend under Section 23 of the Arbitration and Conciliation Act which shall be by motion ex-parte, every application in this rule to the court under the Act:-

(a) to set aside an arbitration agreement under section 2 thereof:
(b) to appoint an arbitrator under section 7(3) thereof;
(c) to stay proceedings under section 5 thereof;
(d) to remove an arbitrator or umpire under section 30 thereof;
(e) to direct an arbitrator or umpire to state the reasons for an award under section 26 thereof;

(f) to apply that a case on trial which is the subject of an arbitration agreement be

referred to an arbitration under section 4 thereof;

(g) to set aside an award under section 29 thereof;

(h) for declaration that an award is not binding on a party to the award on the ground that it was made without jurisdiction or because the arbitrator misconducted himself or that the proceeding was arbitrary or that the award has been improperly procured under section 30 thereof;

(i) generally to determine any question of law arising in the course of or concerning any arbitration agreement or proceedings referred to the court;
Shall be made by motion.

D – Enforcement of Arbitration Awards

13. Enforcement of Arbitral Awards

(1) An application to enforce an award on an arbitration agreement in the same manner as a judgment or order may be made *ex-parte*, but the court hearing the application may order it to be made on notice.

(2) The supporting affidavit shall –
(a) exhibit the arbitration agreement and the original award or in either case certified copies of each;

(b) state the name, as usual or last known place of abode or business of the applicant and the person against whom it is sought to enforce the award;

(c) state as the case may require either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

E – Registration of Foreign Arbitration Award

14. Registration of Foreign arbitration award

When an award is made in proceedings on an arbitration in a foreign territory to which the Foreign Judgment (Reciprocal Enforcement) Act extends, if the award was in pursuance of the law in force in the place where it was made, it shall become enforceable in the same manner as a judgment given by a court in that place and the proceeding of the Foreign Judgments (Reciprocal Enforcement) Act shall apply in relation to the award as it applies in relation to a judgment given by that court.

ORDER 27

DISCOVERY AND INSPECTION

1. Discovery by Interrogatories

In any cause or matter, the claimant or defendant may deliver interrogatories in writing for the examination of the opposite 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 proceedings of settlement of issues.

2. Civil Form 19

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

3. Corporation or Companies

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

4. Objection to interrogatories by answer

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 by way of motion.

5. Affidavit in answer: filing of

Interrogatories shall be answered by affidavit to be filed within 7 days, or within such other time as the Judge may allow. Two copies of the affidavit in answer shall be supplied to the Registrar and a copy thereof served on the party that delivered the interrogatories.

6. Form of affidavit in answer or answer: Civil Form 20

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

7. Order to answer or answer further

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

8. Application for discovery of documents

(1) Any party may in writing, request any 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 or within such period as the Court or Judge may direct and shall form part of the proceedings. The party on whom such a request is served shall answer on oath completely and truthfully within 7 days of the request or within such other time as the Judge may allow.

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

(3) **Civil Form 21**

The affidavit to be made by any 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 21 with such modifications or variations as circumstances may require.

(4) On the hearing of the application, the Court or Judge in chambers may either refuse or adjourn the hearing, if satisfied that the discovery is not necessary or make such order, either generally or limited to certain classes of documents, as may, in its or his discretion, be thought fit.

(5) Discovery shall not be ordered when and so far as the Court or Judge in chambers is of the opinion that it is not necessary either for disposing fairly of the action or for saving costs.

9. Verification of business books

(1) Where any document required to be attached to any process or produced under this or any other rule is a business book, a Judge may upon application, order a copy of any entry therein to be furnished and verified in any 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.

10. Committal of party after service on him

An order for interrogatories or discovery or inspection made against any party if served on the party, shall be sufficient to found an application for committal of a party for disobedience to the order.

11. Liability of legal practitioner

If the interrogatories or discovery or inspection is served on the legal practitioner for the party but neglects without reasonable excuse to give notice to his client, he shall be liable to pay the cost occasioned thereby.

12. Using answer to interrogatories at trial

Any party may, at the trial of a cause, matter or issues, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer.

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

13. Discovery against sheriff

In any action against or by a sheriff in respect of any mater 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 be made by the officer concerned.

14. Order to apply to person under legal disability

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

ORDER 28

ISSUES, INQUIRIES, ACCOUNTS AND REFERENCE TO REFEREES

1. Issues of facts

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

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

2. Reference to referee

In any legal proceedings, 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 sought or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

3. Instructions to referee

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

4. General powers of referee

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

5. Evidence

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

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

(3) Nothing in these rules shall authorize 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 commitment as he may consider necessary.

6. Report made in pursuance of reference under order

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

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

(3) On the receipt of a referee's report, the Judge may:
- (a) adopt the report in whole or in part;
- (b) vary the report;
- (c) require an explanation from him;
- (d) remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other referee.
- (e) decide the question or issue originally referred to him on the evidence taken before him, either with or without additional evidence.

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

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

7. Special directions as to mode of taking account

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

8. Accounts to be verified by affidavit, numbered and left in the registry

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.

9. Mode of vouching accounts

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

10. Surcharge

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

11. Accounts and inquiries to be numbered: Civil Form 22

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

12. Just allowance

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

13. Expediting proceedings in case of undue delay

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

ORDER 29

SPECIAL CASE

1. Special case by consent

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

2. Special case by order before trial

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

3. Special case to be signed

Every special case agreed pursuant to rule 1 shall be signed by the several parties or their legal practitioners and shall be filed by the claimant or other party having conduct of the proceedings.

4. Application to set down where a person under disability is a party

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

5. Agreement to payment of money and cost

(1) The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that on the judgment of the Court being given in the affirmative or negative on the questions of law raised by the special case, a sum of money fixed by the parties or to be ascertained by the Court or in such manner as the Court may direct, shall be paid by one of the parties to the other, 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.

6. Direction

A Judge may give direction as he may deem fit on any issue arising from the trial or special case upon the application of the parties or *suo motu*.

7. Application of order

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

ORDER 30

PROCEEDINGS AT TRIAL

1. Attendance by proxy

(1) In every cause or matter pending before the Court, in case it appears to the satisfaction of the Court that any party who may not be represented by a legal practitioner is prevented by some good or sufficient cause from attending the Court in person, the Court may in its discretion permit any master, servant clerk or member of the family of such claimant or defendant, or officer of the claimant or defendant company, who shall satisfy the Court that he has authority in that behalf, to appear in Court for such party.

2. Non-appearance: both parties

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.

3. Default of appearance by defendant at trial

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

4. Default of appearance by claimant

When a cause is called for hearing, if the defendant appears and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such counter-claim, so far as the burden of proof lies upon him. Provided that if the defendant shall admit the cause of action to the full amount claimed, the Court may if it thinks fit, give judgment as if the claimant had appeared.

5. Judgment by default may be set aside on terms

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

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

(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 longer period as the Judge may allow for good cause shown.

6. Adjournment of trial

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.

7. Times of commencement and termination of trial

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

8. When a cause is called up for hearing, further hearing, defence or continuation of defence and either party files a motion or an application which by these Rules is not ripe for hearing, the party filing the motion or application shall at the time of filing, pay to the Court a fee of N20,000.00

(Twenty Thousand Naira) only.

9. Burden of proof by party to begin

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

10. Documentary evidence

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

11. Additional witness

(1) A party who desires to call any witness not being witness whose deposition on oath accompanied his pleading shall apply to the Judge for leave to call such witness.

(2) An application for leave in sub-rule 1 above shall be accompanied by the deposition on oath of such witness.

12. Close of case of parties

(1) A party shall close his case when he has concluded his evidence. Either the claimant or defendant may make oral application to have the case closed.

(2) Notwithstanding the provisions of sub-rule 1 above, the Judge may *suo motu* where he considers that either party fails to conclude his case after two consecutive adjournments or within a reasonable time, close the case for the party.

(3) Application to re-open a case foreclosed by the Court shall attract a fee of N20,000 and shall be filed within six (6) days of the Order of foreclosure. The application shall be accompanied by an under taking to conclude his case upon the re-opening of the case.

13. Exhibits during trial

(1) The Registrar shall take charge of every document or object put in as an exhibit during the trial of an action, and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in (or where more convenient, the witness by whom the exhibit is proved) and with a number, so that all exhibits put in by a party (or proved by a witness) are numbered in one consecutive series.
(2) The Registrar shall cause a list of all the exhibits in the action to be made.
(3) The list of exhibits when completed shall form part of the record of the action.
(4) For the purpose of this rule, a bundle of documents may be treated and counted as one exhibit.
(5) In this rule, a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

14. Written address by party beginning

When the party beginning has concluded his evidence, the Judge shall ask the other party if he intends to call evidence. If the other party does not intend to call evidence, the party beginning shall within 21 days after close of evidence file a written address. Upon being served with the written address, the other party shall within 21 days file his own written address.

15. Written address by the other party

Where the other party calls evidence, he shall within 21 days after the close of evidence file a written address.

16. Written address of party beginning

Upon being served with other party's written address, the party beginning shall within 21 days file his own written address.

17. Right of reply

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

18. Custody of exhibit after trial

(1) An exhibit shall not be released after the trial to the party who has tendered it unless the period during which notice of appeal may be given has elapsed without such notice having been given, and then only if the trial Judge (or in his absence, another Judge) grants leave to release such exhibit on being satisfied:

(a) that the exhibit will be kept duly marked and labelled 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.

19. Office copy of list of exhibits

(1) Any party may apply for and on payment of the prescribed fee, obtain an office copy of the list and certified true copies 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.

20. Indolent prosecution

A Judge may, *suo motu* or on application strike out any proceedings not being prosecuted diligently. Any matter struck out by the Judge shall only be relisted upon payment of N10,000 fee.

ORDER 31

FILING OF WRITTEN ADDRESS

1. Application and final address

This Order shall apply to all applications and final addresses.

2. Application

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

Content of written address

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

3. Summation of address

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

4. Oral argument

(1) Oral argument of not more than twenty minutes may be allowed for each party to adopt and emphasise and clarify the written address already filed and on matters not contained in their written addresses provided such matter came to the knowledge of the party after he had filed his written address.

(2) Where the parties have filed their written addresses and come up for adoption and either of the parties is absent, the court shall either on its own motion or upon oral application by the counsel for the party present, order that the addresses be deemed adopted if the court is satisfied that all the parties had notice of the date for adoption.

ORDER 32

EVIDENCE GENERALLY

1. Recording of evidence

Subject to the provisions of the Evidence Act, evidence in any proceedings may be recorded in writing or by mechanical, electronic, or any other scientific means.

2. Facts how proved

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

(2) All agreed documents or other exhibits may be tendered from the bar or by the party where he is not represented by a legal practitioner.

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

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

3. Particular facts

(1) A Judge may, at or before the trial of an action, order or direct that evidence of any particular fact be given at the trial in such manner as may be specified by the order or direction. Provided that a Judge may allow a witness on subpoena to lead oral evidence in examination-in-chief without having sworn a written statement in appropriate cases.

(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.

4. Limitation of medical and expert evidence

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.

5. Limitation on use of documentary evidence

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 which has not been filed along with the pleadings of the parties under these Rules.

6. Revocation variation

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

7. Office copies admissible in evidence

Office or certified true 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.

8. Examination of witnesses abroad

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 procedures shall be adopted:

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

(b) Such undertaking shall be accompanied by;

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

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

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

9. Form of order for examination of witnesses abroad: Civil Form 25

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

10. Order for attendance of person to produce document

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

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

11. Disobedience to order for attendance

Any person willfully 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.

12. Expenses of persons ordered to attend

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 is attendance.

13. Contempt of witnesses abroad

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

14. Examination of witnesses

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.

15. Depositions not to be given in evidence without consent or by leave of a Judge

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.

16. Oaths

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

17. Attendance of witness under a *subpoena*

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

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

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

19. Special directions to taking evidence

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.

20. Evidence in proceedings subsequent to trial

Subject to the provisions of section 34 of the Evidence Act, all evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.

21. Form of praecipe of a subpoena: Civil Form 26

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

22. Form of subpoena: Civil Forms 27, 28, 29

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

23. Subpoena attendance of witness in chambers

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

24. Correction of errors in subpoena

In the interval between the issue and service of any subpoena, the legal practitioner issuing it may make any correction and may have the writ resealed upon leaving a corrected copy of the subpoena marked with the words "altered and resealed", with the signature, name and address of the legal practitioner.

25. Personal service of subpoena

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

.

26. Duration of subpoena

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

27. Action to perpetuate testimony

Any person who would under the circumstances alleged by him to exist, become entitled, upon the happening of any future event to any honour, title, dignity or office, or to any estate or interest in any property, real or persona, the right 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.

28. Examination of witnesses to perpetuate testimony

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

29. Such action not to be set down for trial

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

30. Recall of witness

Upon application of either party to a suit, the Court may recall any witness where it deems fit in the interest of justice.

31. Evidence of protected witness

Subject to the provision of the Evidence Act, a Judge sitting at trial may admit evidence of a witness through video conference or any other electronic device capable of recording live (as if he is personally in attendance in court) wherever the Judge considers it expedient to do so particularly a protected witness.

ORDER 33

AFFIDAVITS

1. Evidence on motions, etc

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

2. Title of affidavit

Every affidavit shall bear the title in the cause or matter 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.

3. Use of defective affidavit

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

4. Special time for filing affidavits

Where time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of Court or Judges in chambers.

5. Affidavit in support of *ex-parte* application

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

6. Notice of intention to use affidavit

Save for *ex-parte* application, a party intending to use any affidavit in support of any application made by him shall give notice to the other parties concerned.

7. Alterations in accounts to be initialed

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

8. Exhibits

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

9. Certificate of exhibit

Every certificate on an exhibit referred to in an affidavit signed by the Commissioner before whom the affidavit is sworn, shall be marked with the short title of the cause or matter.

10. Application of Evidence Act L.F.N. Cap. E14

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

11. Affidavit taken in commonwealth country admissible without proof of seal, etc.

A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a Court, Judge, Notary Public or person having authority to administer oath in any part of the commonwealth outside Nigeria in testimony of an affidavit being taken before it or him in that part shall be admitted in evidence without proof of the seal or signature of that Court, Judge, Notary Public or person.

ORDER 34

JUDGMENT, ENTRY OF JUDGMENT

1. Delivery of judgment at or after trial

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

2. Date of judgment pronounced in Court

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.

3. Date of judgment directed to be entered

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.

4. Judge may direct time for payment, performance and interest

The Judge at the time of making any judgment or order or at any time afterwards, may direct the time within which the payment is to be made or other act is to be done, reckoned from the date of the judgment or order, or from some other point of time, as the Judge deems fit and may order interest at a rate not more than 20% per annum to be paid upon any judgment.

5. Time to be stated for doing any act

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

Memorandum to be endorsed

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

6. Judgment by consent where defendant appears by a legal practitioner

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

7. Judgment by consent where defendant has no legal practitioner

Where the defendant has no legal practitioner, such order shall not be made unless the defendant gives his consent in person in open court.

8. Payment by installments

(1) When any judgment or order directs the payment of money, the Court may, for any sufficient reason, order that the amount shall be paid by installments, with or without interest.

(2) Such order may be made at the time of giving judgment or at any time afterwards, and may be rescinded upon sufficient cause and at any time.

ORDER 35

COMMITAL FOR CONTEMPT OF COURT

Committal for contempt of Court

1. (1) The power of a Court to punish for contempt may be exercised by an Order of committal.

(2) An Order of committal may be made –

(a) in connection with –

(i) any proceedings before the Court;

(ii) criminal proceedings;

(iii) proceedings in an inferior court; or

(b) in the face of the Court or consists of disobedience to an Order of the Court or a breach of an undertaking to the Court.

2. Application to Court

(1) An application for an Order of committal shall be made to the Court by motion on notice supported by an affidavit and shall state the grounds of the application.

(2) The notice of motion, affidavit and grounds shall be served personally on the person sought to be committed but the Court may dispense with personal service where the justice of the case so demands.

3. Saving for power to commit without application for the purpose.

Nothing in Rules 1 and 2 shall be taken as affecting the power of the Court to make an Order of committal of its own motion against a person guilty of contempt of Court.

4. Provision as to hearing

(1) Subject to sub rule (2), a Court hearing an application for an Order of committal may sit in private in the following cases, that is to say where –

(a) the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody maintenance or upbringing of an infant or right of access to an infant;

(b) the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder;

(c) the application arises out of proceedings in which a secret process, discovery or invention was in issue;

(d) it appears to the Court that in the interest of the administration of justice or for reasons of national security the application should be heard in private, but in all other cases the application shall be heard in open court.

(2) Where a Court hearing an application in private by virtue of sub rule (1) decides to make an Order of committal against a person sought to be committed, it shall in open court state –

(a) the name of that person;

(b) in general terms the nature of the contempt or court in respect of which the order of committal is being made; and

(c) if he is being committed for a fixed period, the length of that period.

(3) Except with the leave of a Court hearing an application for an Order of committal, no grounds shall be relied on at the hearing except the grounds set out in the statement under Rule 2.

(4) Where at the hearing of an application, the person sought to be committed expresses a wish to give oral evidence on his own behalf he shall be entitled to do so.

5. Contempt in face of Court: saving for

The preceding provisions are without limitation to the powers of the Court to commit for contempt committed in the face of the Court.

6. Power to suspend execution of committal Order

(1) Where a Court makes an Order of committal, it may direct that the execution of the Order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(2) Where the execution of an Order of committal is suspended by an Order under sub rule (1), the applicant for the Order of committal shall, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the Order under that paragraph.

7. Discharge of person committed

(1) A Court may, on the application of any person committed to prison for any contempt of court, discharge him.

(2) Where a person has been committed for falling to comply with a judgment or order requiring him to deliver anything to some other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or Order, then, if the thing is in the custody or power of the person committed, the sheriff may take possession of it as if it were the property of that person and, without limitation to the generality of sub rule (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the Sheriff as it thinks fit.

8. Saving for other powers

Nothing in the preceding provisions of this Order shall be taken as affecting the power of a Court to make an Order requiring a person guilty of contempt of court, or a person punishable by virtue of an enactment, as if he had been guilty of contempt of court to pay a fine or to give security for his good behavior, and those provisions, where applicable, and with necessary modifications, shall apply in relation to an application for such an Order as they apply in relation to an application for an Order of committal.

9. Return

Every writ of attachment issued in a case to which this Order applies shall be made returnable before the Court; and if a return of *non est inventus* is made, one or more writs may be issued on the return of the previous writ.

ORDER 36

GARNISHEE PROCEEDINGS

1. Application

(1) Where a person (in this Order referred to as "The Judgment Creditor") has obtained a judgment or order for the payment by some other person (in this Order referred to as "The Judgment Debtor") of the sum of money and any other person within the jurisdiction (in this Order referred to as "The Garnishee") is indebted to the judgment debtor, the court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment debtor from the garnishee or as much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

(2) An Order under this Rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and the mean time attaching such debt as is mentioned in sub rule (1) or so much thereof as may be specified in the Order and the costs of the garnishee proceedings

.

(3) An order under this rule, shall not require a payment which would reduce below N1,000.00 the amount standing in the name of the judgment debtor in an account with a bank.

2. How application is made

An application for an order under rule (1), shall be made *ex-parte* supported by an affidavit;

(a) stating the name and last known address of the judgment debtor;

(b) identifying the judgment or order to be enforced and stating the amount of the judgment or the amount unpaid under it at the time of the application;

(c) stating that to the best of the information or belief of the deponent, the garnishee is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information or grounds for his belief; and

(d) stating, where the garnishee is a bank having more than one place of business, the name and address of the branch at which the judgment debtor's account is believed to be held and the number of that account or if it be the case, that all or part of this information is not known to the deponent.

3. Service of garnishee order

Unless the court otherwise directs, an Order under rule (1) to show cause shall be served;

(a) on the garnishee personally, at least 15 days before the appointed day before the consideration of the matter;

(b) on the judgment debtor, at least 7 days after the order has been served on the garnishee and at least 7 days before the day appointed for the further consideration of the matter.

4. Garnishee absolute

(1) Where on the further consideration of the matter, the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the court may make an order absolute under rule (1), against the garnishee.

(2) An order absolute under rule (1) against the garnishee may be enforced in the same manner as any other order for the payment of money.

5. Determination of issue by the Court

Where on the further consideration of the matter, the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the court may summarily determine the question in issue or order that any question necessary for determining the liability of the garnishee be tried, without the need for any consent by the parties.

6. Where a third person makes claim

Where in garnishee proceedings, it is brought to the notice of the court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has claims to have a charge upon it, the court may order that person to attend before the court and state the nature of his claim with particulars thereof.

7. Compliance as discharge of liability

Any payment made by a garnishee in compliance with an order absolute under this Order and any execution levied against him in pursuant of such order shall be a valid discharge of liability to the judgment debtor to the extent of the amount paid or levied not withstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which the arose is reserved.

ORDER 37

DRAWING UP OF ORDERS

1. Date of order when drawn

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

2. What orders need not be drawn up

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

(a) the issue of any writ other than a writ of attachment;
(b) the amendment of any writ or pleadings;
(c) the filing of any document; or
(d) any act to be done by any officer of the Court other than a legal practitioner, it shall not be necessary to draw up such order unless the Judge otherwise directs; but the production of a note or memorandum of such order signed by a Judge shall be sufficient authority for such enlargement of time, issue, amendment, filing or other act.

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

3. Form of order

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

ORDER 38

TANSFER AND CONSOLIDATION

1. Order transferring proceedings to High Court, Cap. 97

Where a Judge has in exercise of any powers conferred on him by any relevant law, ordered the transfer of any action or matter from a lower Court to the 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 law and other necessary documents and processes.

2. Payment of filing fees

(1) 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 shall attend 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.

3. Duties of Registrar

(1) The Registrar shall on payment of the prescribed fees, in any case not later than 7 days;
- (a) file the documents received from the lower Court;
- (b) make an entry of the filing in the Cause Book; and
- (c) transmit the documents to the Chief Judge or such other Judge appointed by the Chief Judge.

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

4. Directions

(1) The 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 practitioner;
- (b) take cognizance of the documents 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.

5. Party failing to attend

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

(2) If the defendant fails or all of several defendants fail to attend in compliance with a notice given under sub-rule 2 of rule 3, the claimant may obtain judgment with costs or obtain the order prayed for in the transferred proceedings by an application in the open Court.

6. Construction

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

7. Transfer of cause or matter

A cause or matter may, before evidence is taken, and at the request of either party to the suit, be transferred by a Judge before whom the cause or matter is pending, to another Court of the same division.

8. Re-assignment of cause or matter

A cause or matter may at any stage of the proceedings upon application by either party, be re-assigned to another Judge of the same division or of any other division by the Chief Judge whether or not the cause or matter is being heard before him.

9. Action by the Chief Judge on transfer

If for any reason, a Judge hearing a cause or matter, and who has taken any step in the proceedings, considers it necessary, either in his own opinion or upon application of any party to the proceedings, to have the cause or matter transferred to another Judicial Division, the Judge shall refer the cause or matter to the Chief Judge who may direct that the matter be transferred to the appropriate Judicial Division, in accordance with these Rules.

10. Consolidation

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

(2) 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, different defendants or between different claimants and the same defendant or between different claimants and different defendants.

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

(3) 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.

(4) 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.

ORDER 39

INTERLOCUTORY AND OTHER ORDERS

1. Preservation or Interim custody of subject matter of disputed contract

(1) Whereby in 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, the court may make an order for the preservation or interim custody of the subject matter of the litigation or 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 appears from the pleadings.

2. Early trial of cause

When an application is made before trial for an injunction or other order and at any time before or during the hearing, it appears to the court 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 merits on affidavit or other evidence for the purpose of the application, it shall make an order for such trial and such other order as the justice of the case may require.

3. Order for sale of perishable goods

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

4. Detention, preservation or inspection of property

(1) The court may upon the application of any party to an action or matter and upon terms as may be just, 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 purpose authorize any person 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 authorize any samples to be taken or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

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

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

5. Sale of property in possession of court

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

(2) 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.

6. Recovery of property other than land subject to lien

Where an action or counterclaim is filed to recover specific property and the party from whom such recovery is sought does not dispute title but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the court 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 on which the lien or security is claimed and such further sum, if any, for interest and costs as the court may direct and that upon such payment into court being made, the property claimed be given up to the party claiming it.

7. Allowance of income of property pendent lite

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

8. Injunction against repetition of wrongful act for breach of contract

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

9. Appointment of a receiver by way of equitable execution

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

10. Receiver's Security and Remuneration

Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be approved by the court, duly to account for what he shall receive as such receiver, and to pay it as the court shall direct; and the person to be appointed shall, unless otherwise ordered to be allowed a proper salary or allowance. The security to be given shall be by guarantee or by undertaking as in Forms 30 and 31 with such variation 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.

11. Where receiver appointed in court: adjournment to give security

Where any judgment or order is pronounced or made in court appointing a named person to be a

receiver, the court may adjourn the proceedings then pending, so that the named person may give security as in the last preceding rule, and may direct such judgment or order to be drawn up.

12. Fixing days for receivers to leave and pass their accounts and pay in balances and neglect of payment

When a receiver is appointed with a direction that he shall pass accounts, the court 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. Any such receiver who neglects to leave and pass his accounts and pay the balances at the time fixed for the purpose, the court 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 25% per annum upon the balances so neglected to be paid by him during the time it appears to have remained in his custody.

13. Form of Receivers accounts. Civil Form 32

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

14. Leaving account at the Registry. Civil Form 33

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

15. Consequences of default by receiver

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

16. Passing of guardian's accounts

The accounts of guardians shall be passed and verified in the same manner as provided in this Order for receiver's accounts.

ORDER 40

INTERLOCUTORY APPLICATIONS

Motions Generally

1. Time to apply

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

2. Application by motion

(1) Where by these Rules, any application is authorized to be made to the Court or a Judge in chambers or a Registrar, such application may be made by motion which may be supported by affidavit and shall state under what Rule of Court or Law the application is brought.

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

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

(4) Every application shall be served within five days of filing. Failure to serve the application by persons under order 7 Rule 1 (3) within the stipulated period shall attract a penalty of N500.00 for each day of default.

3. Affidavit to be served with motion

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

4. Adjournment

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

Ex-parte Motion

5. When Notice of Motion should be given

(1) Except where an application *ex-parte* is required or permitted under any Law or Rules, every motion shall be on notice to the other party.

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

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

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

6. Affidavit in support of *ex-parte* motion

(1) A motion *ex-parte* shall be supported by affidavit, which shall state sufficient grounds why delay in granting the order sought would entail irreparable damage or serious mischief to the party moving.

(2) The Court, if satisfied that to delay the motion till after notice is given to the parties affected would entail irreparable damage or serious mischief to the party moving or it is impossible to serve the parties affected within seven days, may hear an application *ex-parte* and make an order accordingly upon such terms as to cost or otherwise and subject to such reasonable undertaking, as the justice of the case demands.

7. Arguments on motion

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

8. Orders on *ex-parte* motions

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

9. Court may vary or discharge order

(1) Where an order is made on a motion *ex-parte*, any party affected by it may within seven days after service of it, or within such further time as the Court shall allow, apply to the Court by motion to vary or discharge it, and the Court, on notice to the party obtaining the order, either may refuse to vary or discharge with or without imposing terms as to costs or security, or otherwise, as seems just.

(2) The hearing and determination of either the motion to vary or discharge or the motion on notice, must be within a maximum period of sixty days.

(3) Unless the Court gives special leave to the contrary, there shall be at least two clear days between the service of any affidavit including counter affidavit or a notice of a motion and the day fixed for hearing of the motion.

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

10. Motion on arbitral award

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

(2) The party relying on an award, on applying for its enforcement shall supply:
(a) the duly authenticated original award or a duly certified copy thereof;
(b) the original arbitration agreement or a duly certified copy thereof.

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

(4) An application to set aside or remit any award may be made at any time within six (6) weeks after such award has been made, and published to the parties:
Provided that a Judge may by order extend the said time either before or after the same has elapsed.

11. Service of motion with originating process

A Claimant may file any application along with an Originating Process and may serve both on any Defendant simultaneously.

12. Account by Legal Practitioner

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 of security thereof or the protection of the Respondent's lien (if any) as he may deem fit.

13. Interim Certificate

If during the taxation of any bill of costs or 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.

3 – Orders to show cause

14. Return – day to be specified

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

15. Counter-evidence

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

16. Further service in certain cases

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

17. Appearance or proof of service

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

18. General powers as to orders

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

19. Service of notice

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

20. Serving of motion

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

21. Service on solicitor

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

22. Copy of affidavit to be served with notice

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

23. Order for service

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

24. Service with writ of summons

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

5 – Evidence in Interlocutory Proceedings

25. Oral Evidence

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

26. Evidence in addition to or in lieu of affidavits

In addition to or in lieu of affidavits, the Court may if it thinks it expedient, examine any witness *viva voce*, or receive documents in evidence, and may summon any person to attend to produce documents before it, or to be examined or cross-examined before it in like manner as at the hearing of a suit.

27. Notice to parties and interested persons

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

28. Evidence: how taken

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

29. Affidavit not filed with motion paper

Upon the hearing of any motion, the Court may, on such terms as to cost and adjournment as it may think fit, allow any additional affidavit to be used, after such affidavit has been duly filed and served on the opposite side.

30. Registrar to have powers of a Judge

A registrar hearing any application by virtue of the provisions of these Rules, shall have and exercise all the powers conferred by these Rules on the Court or a Judge when dealing with such applications.

31. Only legally qualified Registrar to hear application

No Registrar other than one who is also a qualified legal practitioner shall have the power to hear and determine any application which by these rules is conferred upon a Registrar.

32. Application

In any Judicial Division where there is no legally qualified Registrar, any application which by these rules is authorized to be determined by a Registrar, shall be made to a Judge who in his absolute discretion may take such application in Court or in chambers.

33. Persons dissatisfied with ruling of Registrar may apply to the Court or a Judge in chambers

(1) Upon the determination of any application by a Registrar, any party dissatisfied with the ruling or decision of the Registrar in the matter, may within fourteen (14) days of the decision or ruling, apply to the Court or to a Judge in chambers for a redress in the following manner and circumstances:

(a) Where the aggrieved party is the mover of the application before the Registrar, he shall renew his application before the Court or a Judge:

(b) Where the aggrieved party is the respondent to the application before the Registrar, he shall apply to the Court or a Judge for an order setting aside the order of the Registrar, about which he is dissatisfied.

(2) (a) Any application under paragraph (a) or (b) of sub-rule (1) of this rule shall be supported by affidavit showing the grounds upon which redress is sought.

(b) There shall be attached to the application, a copy of the ruling or decision of the Registrar with which the party is dissatisfied and copies of all affidavits and documents used in support of the application before the Registrar.

ORDER 41

APPLICATION FOR JUDICIAL REVIEW

1. Cases Appropriate for Application for Judicial Review

(1) An Application for:

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

(b) an injunction restraining a person from acting in any office in which he is not entitled to act; shall be made by way of an application for Judicial Review in accordance with the provisions of this Order.

(2) An application for a declaration or an injunction (not being an injunction mentioned in paragraph (b) of sub-rule (1) may be made by way of an application for Judicial Review and on such an application, the Court may grant the declaration or injunction claimed if it considers that having regard to:

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

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

(c) all the circumstances of the case.

It would be just and convenient for the declaration or injunction to be granted on an application for Judicial Review.

2. Joinder of claims for relief

On an application for Judicial Review, any relief mentioned, in rule (1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned, if it arises out of or relates to or is connected with the same matter.

3. Grant of leave to apply for judicial review

(1) No application for Judicial Review shall be made unless the leave of the Court has been obtained in accordance with this rule.

(2) An application for leave shall be made *ex-parte* to the Court, except during vacation when it may be made to a Judge in chambers, and shall be supported by:

(a) a statement, setting out the name and description of the applicant, the relief sought and the grounds on which it is sought;

(b) an affidavit, to be filed with the application, verifying the facts relied on; and

(c) a written address in support of application for leave.

(3) The applicant shall file the application not later than the day before the motion is heard and shall at the same time lodge copies of the statement and every affidavit in support.

(4) The court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise on such terms, if any, as it thinks fit.

(5) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

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

(7) Where an application for leave is refused by a Judge the applicant may make a fresh application to another Judge.

(8) An application to a Judge under sub-rule (8) shall be made within 10 days after the Judge's refusal to give leave.

(9) Where leave to apply for judicial review is granted, then:

(a) if the relief sought is an order of prohibition or *certiorari* and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders.

(b) if any relief is sought, the Court may at any time in the proceedings grant such interim relief as could be granted in an action begun by writ.

(c) if the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

4. Delay in applying for relief

(1) Subject to the provisions of this rule, where in any case the Court considers that there has been undue delay in making an application for judicial review or, in a case to which sub-rule (2) applies, the application for leave under rule 3 is made after the relevant period has expired, the Court may refuse to grant:

(a) leave for the making of the application; or

(b) any relief sought on the application; if in the opinion of the Court the granting of the relief sought is likely to cause substantial hardship to, or substantially prejudice the rights of any person or would be detrimental to the administration of justice.

(2) In the case of an application for an order of *certiorari* to remove any judgment, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of sub-rule (1) is three months after the date of the proceedings.

(3) Sub-rule (1) is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

5. Mode of Applying for Judicial Review

(1) Subject to sub-rule (2), when leave has been granted to make an application for judicial review, the application shall be made by originating motion.

(2) Where leave has been granted and the Judge or Court so directs, the application may be made by motion to a Judge sitting in open court.

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

to be made, same shall be served on the Judge.

(4) Unless the Court granting leave has otherwise directed, there shall be at least 8 days between the service of the notice of motion and the day named therein for the hearing.

(5) A motion shall be entered for hearing within 14 days after the grant of leave.

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

(7) If on the hearing of the motion, the Court is of the opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice may be served on that person.

6. Statement and affidavits

(1) Copies of the statement in support of an application for leave under rule 3 shall be served with the notice of motion and, subject to sub-rule (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may on the hearing of the motion, allow the applicant to amend his statement whether by specifying different or additional grounds of relief or otherwise, on such terms if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

(4) Each party to the application shall supply to every other party on demand and on payment of the proper Court charges, copies of every affidavit which he proposes to use at the hearing including in the case of the applicant, the affidavit in support of the application for leave under rule 3.

7. Claim for damages

On an application for judicial review, the Court may, subject to sub-rule (2), award damages to the applicant if:

(a) he has included in the statement in support of his application for leave under rule 3, a claim for damages arising from any matter to which the application relates; and

(b) the Court is satisfied that if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

8. Interlocutory Application

Any interlocutory application in proceedings on an application for judicial review may be made to the Judge.

9. Hearing of the application for Judicial Review

(1) On the hearing of any Motion or summons under Rule 5, any person who desires to be heard on the Motion or Summons, and appears to the Judge to be a proper person to be heard, shall be heard notwithstanding that he has not been served with Notice of the Motion or the Summons.

(2) Where the relief sought is or includes an order of *certiorari* to remove any proceedings for the purpose of quashing them, the Applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record, unless before the hearing of the Motion or Summons he has filed a copy thereof verified by Affidavit or accounts for his failure to do so to the satisfaction of the 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), the Order shall, subject to sub-rule (4), direct that the proceedings 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 has 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 proceedings to continue as if they had been begun by Writ.

10. Person acting in obedience to an order of mandamus

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

11. Consolidation of applications

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 42

JURISDICTION OF CHIEF REGISTRAR

1. Chief Registrar

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

2. Business to be transacted by Chief Registrar

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) Application for the taxation and delivery of bills of costs and applications for the delivery by any legal practitioner of deeds, documents and papers;
(b) The taking of an account in any case where a Judge has ordered that the account be taken by the Chief Registrar;
(c) The taxation of bills of costs; and
(d) Applications leading to the issue of the grant of probate of the Wills or Letters of Administration of the estates of deceased persons in non-contentious or common form probate business.

3. Chief Registrar may refer matters to the Chief Judge

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

4. Appeal from order of Chief Registrar

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 times as may be allowed by the Judge. Unless otherwise ordered, there shall be at least 2 clear days between service of the notice of appeal and the day of hearing. An appeal from the decision of the Chief Registrar shall not operate as a stay of proceedings unless so ordered by the Judge.

5. Chief Registrar's list

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

6. Legal practitioner may represent party

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

1 – Chief Registrar's certificate

7. Certificate

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

8. Reference to Judgment, etc

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

9. Form of certificate

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

Civil Form 34

Form and contents of certificate in cases of Accounts and Inquiries

(2) In case of Accounts and Inquiries, the certificate of the Chief Registrar shall be in Form 34 with such variations as the circumstances may require. The certificate shall:
(a) state the result of the account and not set same out by way of schedule;
(b) refer to the account verified by the affidavit filed;
(c) specify by the numbers attached to the terms in the Account which (if any) or such items have been disallowed or varied;
(d) state what additions if any have been made by way of surcharge or otherwise;
(e) 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;
(f) the Accounts and transcripts (if any) referred to by certificates shall be filed therewith.

10. When certificate becomes binding

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

11. Bill of costs

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

13. Discharge or variation of certificate after lapse of any time

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 same has become binding on the parties.

ORDER 43

HABEAS CORPUS, ATTACHMENT FOR CONTEMPT

1 – Habeas Corpus

1. Application: how made

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

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

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

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

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

2. Power to issue order of release immediately

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

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

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

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

3. Service of notice

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

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

4. Copies of Affidavit

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

5. Service of order to release

(1) The order or notice of motion may be served personally or by courier on a jailer, where the

person is confined or restrained or on any other public official and copies of the order or motion may be served in like manner on each person connected with or having authority over the place of confinement or restraint.

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

6. Statement and verifying affidavit

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

7. Procedure at hearing

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

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

8. Bringing up prisoner to give evidence, etc.

(1) An application for a writ of habeas corpus ad testificandum or of habeas corpus ad respondendum shall be made on affidavit.

(2) An application for an order to bring up a prisoner, otherwise than by writ of habeas corpus, to give evidence in any cause or matter, civil or criminal, before any Court or tribunal shall be on affidavit.

Civil Forms 35, 36 and 37

9. Form of writ

A writ of habeas corpus shall be in Forms 35, 36, or 37 in the appendix, whichever is appropriate.

11 – Attachment for Contempt

10. Procedure for attachment

(1) The procedure in applications for attachment for contempt of Court in cases to which this rule applies shall be the same as for applications for an order for judicial review under Order 38 so far as may be applicable.

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

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

(a) in connection with proceedings to which the Order relates;

(b) in connection with criminal proceedings;

(c) subject to the provisions of the Sheriffs and Civil Process Act, and any proceedings in the High Court or where the contempt consists of disobedience to an order of the Court;

(d) in connection to the proceedings in an inferior Court:

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

11. Procedure on disobedience to Court

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, immediately endorse 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

12. Response

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

13. Return

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

ORDER 44

INTERPLEADER

1. When relief by interpleader granted

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

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

2. Matter to be provided by application

2(1) An applicant seeking relief by way of interpleader shall file an Interpleader Summons supported by an Affidavit calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

(2) The applicant must satisfy the Judge by affidavit or otherwise, that he:

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

3. Adverse title of claimants

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

4. When application is to be made by a defendant

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

5. Summons by applicant

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

6. Stay of action

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

7. Order upon summons

If the claimants appear in pursuance of the summons, the Judge may order either that any claimants 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 claimant is to be claimant and which is to be defendant.

8. Questions of law

Where the question is a question of law and the facts are not in dispute, the Judge may either decide the questions without directing the trial of an issue or order that a special case be stated for

the opinion of the Judge. If a special case is stated, Order 28 shall as far as applicable, apply thereto.

9. Failure of claimant to appear, or neglect to obey summons

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

10. Costs, etc.

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

ORDER 45

COMPUTATION OF TIME

1. Rules for computation of time

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

(a) as excluding the day on which the Order is made or on which the event occurs:
(b) where the last day of the period is a holiday, the time shall continue until the end of the next day following which is not a public holiday:
(c) where the act is required to be done within a period which does not exceed six (6) days, holidays shall be left out of account in computing the period.

2. Holidays

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

3. Time of Service

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

4. Court may extend time

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

Provided that any party who defaults in performing an act within the time authorized by the Judge or under these Rules, shall pay to the Court a fee of Two Hundred Naira (N200.00) for each day of such default at the time of compliance.

ORDER 46

SITTING OF THE COURT AND VACATION

1. Days of sitting
Subject to the provisions of the High Court Law, the Court may at its discretion, appoint any day or days and any place or places from time to time for the hearing of actions as circumstances require.

2. Public or Private sitting of the Court
The sittings of the Judge for the hearing of causes shall ordinarily be public but subject to the provisions of the Constitution of Federal Republic of Nigeria, 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.

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

4. Days of sitting and long vacation
(a) on any public holiday;
(b) during the week beginning with Easter Monday;
(c) during the period beginning on Christmas Eve and ending on 2nd January next following.
(d) during the week designated as settlement week;
(e) during the annual vacation, effective from the last week of July and ending on a date not more than 6 weeks later as the Chief Judge may declare by notification in the Gazette or any other means he deems appropriate.
(f) during the week the Chief Judge may fix for the Judges of the State Judiciary to proceed on an annual retreat.

5. Vacation Court
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), (d) or (e) 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 a cause or matter.

6. Vacation not reckoned in time for pleadings
The time for filing and service of pleadings shall not run during the annual vacation unless otherwise directed by the Court or a Judge in chambers.

7. Chambers
No business shall be transacted in chambers on Sunday and public holidays.

8. What orders to be made
Subject to particular rules, the Court may in all causes and matters, make any order which it considers necessary to do substantial justice.

9. Recovery of penalties and costs
All fines, forfeiture, pecuniary penalties, and costs ordered to be paid may be levied by distress

seizure, and or sale of the movable and immoveable property of the person making default in payment.

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

11. Filing
A document shall not be filed unless it has endorsed on it, the name and number of the case, the date of filing and whether filed by claimant or defendant, and on being filed, such endorsement shall be initialed by the Registrar.

12. How processes are addressed
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 person by name or to a person named or to officers of Court generally or to a Local Government Authority.

13. No fees where proceedings by government department
No fees are to be taken in respect of any proceedings where such fees would be payable by any 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.

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

15. Saving
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 47

ARREST OF ABSCONDING DEFENDANT

1. Application

The following rules shall apply to proceedings under section 31 of the law.

2. Defendant leaving Nigeria

If in any action where 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 be taken for his appearance to answer and satisfy any judgment that may be passed against him in the suit.

3. Warrant to arrest

(1) If the Court after making such investigation as he may consider necessary shall be of the opinion that there is probable cause for believing that the defendant is about to leave Nigeria and by that 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 as in Form 38 to bring the defendant before him, that he may show cause why he should not give good and sufficient bail for his appearance.

(2) **Civil Form 38**

The defendant shall be brought to Court within 2 days of the execution of the warrant.

4. Bail for appearance or satisfaction

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

5. Deposit in lieu of bail

(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 same be paid into an interest yielding account in a bank.

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

6. Committal in default

(1) If the defendant fails to furnish security or offer a sufficient deposit, the Judge may commit him to 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.

7. Cost of subsistence of person arrested

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

ORDER 48

PROCEEDINGS IN FORMA PAUPERIS

1. Application

This Order shall apply to proceedings, in respect of which there is no statutory provision for legal aid.

2. Who may sue or defend in forma pauperis

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.

3. Conditions to be fulfilled

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

(2) If in the opinion of the Chief Judge, the application is worthy 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.

4. Fees and costs

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

5. Procedure to be followed

(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 to the action taken or defended thereunder.

(2) If the applicant pays or agrees to pay any money to any person whosoever, 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.

6. Revocation of order, discontinuance, etc.

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

(2) Neither the applicant nor the legal practitioner assigned to him shall discontinue, settle or compromise the action without the leave of a Judge.

7. Payment to legal practitioner

The Judge may order payment to be made to the legal practitioner out of any money recovered by the applicant or may charge in favour of the legal practitioner, who shall take care that no application or notice is made or given without reasonable cause.

8. Duty of legal practitioner

Every order, notice or application on behalf of the applicant, except an application for the discharge of his legal practitioner, shall be signed by his legal practitioner, who shall take care that no application or notice is made or given without reasonable cause.

9. Appeals

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

ORDER 49

CHANGE OF LEGAL PRACTITIONER

1. Legal practitioner to conduct cause or matter to final judgment
Every legal practitioner who shall be 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.

2. Application for change of legal practitioner or withdrawal
An application for a change of legal practitioner or withdrawal may be made by the claimant or defendant or the legal practitioner as the case may be, not less than 3 clear days before the date fixed for hearing.

3. Service of application by legal practitioner
Where the application is made by a legal practitioner, it shall be served on all parties to the cause or matter and where applicable, also on the outgoing legal practitioner if he is not the applicant.

ORDER 50

COSTS

1. (I) Principle to be observed in fixing costs
In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been necessarily put in the course of proceedings, as well as compensated for his time and effort in coming to Court. Such expenses shall include:

(a) the cost of legal representation and assistance of the successful party to the extent that the Judge determines that the amount of such cost is reasonable;
(b) the travel and other expenses of parties and witnesses to the extent that the Judge determines that the amount of such expenses is reasonable, and such other expenses that the Judge determines ought to be recovered, having regard to the circumstances of the case.

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

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

2. Rejection of offer of settlement: Cost
Where an offer of settlement made in the course of Case management or ADR is rejected by a party and the said party eventually succeeds at trial but is awarded orders not in excess of the offer of settlement earlier made, the winning party shall pay the costs of the losing party from the time of the offer of settlement up to judgment.

3. Security for costs
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.

4. Security for costs by claimant temporarily within jurisdiction
A claimant ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction.

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

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

7. Costs at discretion of court

Subject to the provisions of any applicable law and these Rules, the costs of and incidental to all proceedings 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.

8. Costs out of fund or property

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

9. Stay of proceedings at which costs to be dealt with

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

10. Stage of proceedings at which costs to be dealt with

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

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

11. When costs follow events

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.

12. Matters to be taken into account in exercising discretion

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

13. Cost arising from misconduct or neglect

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

(2) Without prejudice to the generality of sub-rule (1) of the 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 proceedings.

(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 him that such a direction as aforesaid should have been given in relation to it, to act as if the appropriate direction had been given.

14. Personal liability of Legal Practitioner for costs

(1) Subject to the following provisions of this Rule, where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Judge may make against any Legal practitioner whom he considers to be responsible, whether personally or through a servant or agent, an order:
(a) disallowing the costs as between the Legal Practitioner and his client; and
(b) directing the Legal Practitioner to pay to his client costs which the client has been ordered to pay to other parties to the proceedings; or
(c) directing the Legal Practitioner personally to indemnify such other parties against costs payable by them.

(2) The provisions of Rule 13 sub-rule (1) shall apply where proceedings in Court cannot conveniently proceed or fails or are adjourned without useful progress being made:
(a) because of the failure of the Legal Practitioner to attend in person or by a proper representative; or
(b) because of the failure of the Legal Practitioner to deliver any document for the use of the Court which ought to have been delivered or 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) The Judge may direct that notice of any proceedings or order against a Legal Practitioner under this Rule shall be given to his client in such manner as may be specified in the direction.(5) If, on the taxation of costs to be paid out of a fund, one sixth or more of the amount of the bill for those costs is taxed off, the Legal Practitioner whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.

15. Taxation of Costs

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

16. Notice to other party

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

17. Power of Taxing Officer

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

18. Supplementary powers of taxing officers

ATaxing Officer may, in the discharge of his functions with respect to the taxation of costs:

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

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

(c) examine any witness in those proceedings;

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

19. Extension of time

(1) ATaxing Officer may:

(a) extend the period within which a party is required by or under these Rules to begin proceedings for taxation or to do anything in or in connection with proceedings 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 as he deems fit.

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

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

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.

21. Mode of beginning proceedings for taxation

(1) A party entitled to require any costs to be taxed shall begin proceedings for the taxation of those costs by filing in the Registry a bill of costs and obtain a day and time for the taxation thereof. Such party shall give at least seven (7) days notice to every other party of the day and time appointed for taxation proceedings and at the same time serve a copy of his bill of costs 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 any party who has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.

22. Provisions as to bills of costs

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

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

(a) the name or firm and business address, e-mail and telephone number 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, e-mail and telephone number of that other Legal Practitioner.

23. Provisions as to taxation proceedings

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

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

24. Scale of costs

(1) Subject to Rule 21, and the following provisions of this Rule, the scale of costs contained in the High Court of Lagos State (Fees) Law for the time being in force together with the notes and general provisions contained therein, 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 conveyance or in respect of any other non-contentious business is regulated, in the absence of agreement to the contrary, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything in the scale contained in the High Court of Lagos State (Fees) law.

25. Certificates of Taxing Officer

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

26. Fees on Taxation

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.

27. Application for review

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

28. Application by summons

(1) An application under the preceding Rule shall be made by Summons at any time within fourteen (14) days after the Taxing Officer's certificate.

(2) Unless the Judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on taxation but, save as aforesaid, on the hearing of any such application the Judge may exercise all such powers and discretion as are vested in the Taxing Officer in relation to the subject matter of the application.

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

ORDER 51

APPLICATIONS AND PROCEEDINGS IN CHAMBERS

1. Representation in Chambers

In any proceedings before a Judge in chambers, any party may, if he so desires, be represented by a legal practitioner.

2. Matter to be disposed of in chambers

Unless the opposite party or his counsel objects, the Judge may on application, conduct any proceedings, except actual trial, in chambers and may also on application, adjourn any such proceedings from Court to chambers and *vice versa*

II. Proceedings Relating to Persons under Legal Disability

3. Evidence upon application for appointment of guardians and for maintenance

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

(a) the ages of the infants;
(b) the nature and amount of the infants' fortunes and incomes; and
(c) what relations the infants have

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

4. Further consideration of matters originating in chambers

Where any matter originating in Chambers shall, at the original or any subsequent hearing have been adjourned for further consideration in chambers, such matter may, after the expiration of 8 days and within 14 days from the date of the adjournment, 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 Hon. Justice …… made on the …… day of …….. 20……. May be further considered," and shall be served seven (7) clear days before the return:

Provided that this Rule shall not apply to any matter, the further consideration whereof shall, at the original or any subsequent hearing, have been adjourned in Court.

ORDER 52

FORECLOSURE AND REDEMPTION

1. Originating summons for foreclosure

Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out any originating summons, for such relief of the nature or kind as may by the summons be specified, and as the circumstances of the case may require, that is:

(a) Payment of money secured by the mortgage or charge:
(b) Sales;
(c) Foreclosure;
(d) Delivery of possession, whether before or after foreclosure to the mortgagee or person entitled to the charge, by the mortgagor or person having the property subject to the charge, or by any other person in, or alleged to be in possession of the property;
(e) Redemption;
(f) Reconveyance; and
(g) Delivery of possession by the mortgagee.

2. Civil Forms 39, 40 and 41

Orders for payment and for possession shall be in Form 39, 40 and 41 of these Rules, with such variations as the circumstances of the case may require, and the like Forms shall be used under corresponding circumstances in actions for the relief commenced by writ.

3. Service and execution of judgment

The Judge may give any special directions concerning the execution of the judgment, or the service thereof upon persons not parties to the cause or matter, as he deems fit.

ORDER 53

SUMMONS TO PROCEED

1. Bringing in judgment, etc

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

2. Summons to proceed with accounts and inquiries: directions

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 the:

(i) manner in which each of the accounts and inquiries is to be prosecuted;
(ii) evidence to be adduced in support thereof;
(iii) parties who are to attend on the several accounts and inquiries; and
(iv) time within which each proceedings 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.

3. Settling deed where parties differ

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

4. Where service of notice of judgment or order dispensed with

Where, upon the hearing of the summons to proceed, it appears to the Judge that by reason of absence, or for any other notice of 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.

5. Stoppage of proceedings where all necessary parties have not been served with notice of judgment or order

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 notice of the parties to be served, until all necessary parties shall have been served and until directions shall have been given as to

the parties who are to attend the proceedings.

6. Documents, copies for use

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

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

11 Summons to Proceed Book

7. Entry in summons to proceed book

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

ORDER 54

SUMMARY PROCEEDINGS FOR POSSESSION OF LANDED PROPERTY OCCUPIED BY SQUATTERS OR WITHOUT THE OWNER'S CONSENT

1. Application of this Order

(1) This Order shall not apply where the person in occupation of land is:
- (a) a tenant; or
- (b) a tenant holding over after termination of his tenancy; or
- (c) a licensee of the owner or person entitled to possession; or
- (d) a person who had the consent of the predecessor-in-title of the person who is entitled to possession.

(2) Where a person claims possession of land which he alleges is occupied solely by persons other than those listed in sub-rule 1, proceedings may be brought by originating summons in accordance with the provisions of this Order.

2. Proceedings to be brought by originating summons: Form 42

The originating summons shall be in Form 42 and no acknowledgement of service shall be required.

3. Affidavit in support.

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.

4. Service of originating summons

(1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit shall be served on him:
- (a) Personally or in accordance with Order 7 rule 1 sub-rule 2; or
- (b) by leaving a copy of the summons and of the affidavit, or sending them to him at the premises; or
- (c) in such other manner as the Judge may direct.

(2) The summons shall, in addition to being served on the named defendants, if any, in accordance with sub-rule 1 of this rule be served, unless the Judge

otherwise directs, by:

(a) affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises; and

(b) if practicable, inserting through the letter box at the premises, a copy of the summons and a copy of the affidavit enclosed in a sealed envelope addressed to "the occupiers".

(c) placing stakes in the ground at conspicuous parts of the occupiers land, to each of which shall be affixed a sealed transparent envelope addressed to "the occupiers" and containing a copy of the summons and a copy of the Affidavit.

3. Every 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.

5. Application by occupier to be made a party

Without prejudice to rule 16 of Order 13, any person not named as a defendant who is in occupation of the land and wishes to be heard in the question whether an order for possession should be made, may apply at any stage of the proceedings to be joined as a defendant.

6. Order for possession

(1) An order for possession in proceedings under this Order shall be in Form 43 with such variations as circumstances may require.

Form 43

(2) The Judge may forthwith, order a writ of possession to be issued.

(3) Nothing in this Order shall prevent the Judge from ordering possession to be given on a specified date, in the exercise of any power which could have been exercised, if possession had been claimed in an action begun by writ.

7. Writ of Possession

(1) No writ of possession to enforce an order for possession under this Order, shall be issued after the expiration of 3 months from the date of the order without the leave of the Judge.

(2) The application for leave may be made *ex-parte* unless the Judge otherwise directs.

8. Setting aside of order

(1) The Judge may, on such terms as he deems fit, set aside or vary any order made in the proceedings under this Order.

(2) In this Order, "landed property" means land with or without building thereon.

ORDER 55

STAY OF EXECUTION PENDING APPEAL TO THE COURT OF APPEAL

1. Stay of execution pending appeal

Where any application is made to the Court for a stay of execution or of proceedings under any judgment or decision, appeal from such application shall be made by notice of motion supported by affidavit setting forth the grounds upon which a stay of execution or of proceedings is sought.

2. Court may grant or refuse order for stay

(1) An order for stay may be made subject to such conditions as shall appear just, including the deposit in Court, of any money adjudged due to any party in the judgment appealed from.

(2) Where a Judge has struck out an application for stay, no further application for stay of execution shall be made in the same matter.

(3) Where parties in an application referred to in rule 1 above have exchanged written briefs and the Judge has set the application down for hearing, no request for adjournment by any of the parties shall be entertained. When the application is called and the parties have been duly served with the notice of hearing, but if any party or any legal practitioner appearing for him does not appear to present oral argument even though briefs have been filed by all the parties concerned in the application, the application will be treated as having been duly argued.

3. Formal order to be drawn up

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

ORDER 56

PROCEEDINGS IN REVENUE MATTERS

1. Application

This Order shall apply to the practice and procedure in all cases and proceedings relating to the revenue of the State Government in which the Government or any of its departments, agencies or parastatals is suing or is being sued.

2. Revenue Court

The Chief Judge shall designate such number of Courts as may be sufficient as "Revenue Courts" in each Division of the High Court of Edo State for the purpose of hearing all cases brought under this Order.

3. Commencement Form 40

(1) An action under this Order shall be commenced by filing a Petition which shall be in Form 40 with such modifications and variations as the circumstances may require, setting out the name and description of the Petitioner(s) and the Respondent(s).

(2) The Petition shall be accompanied by an Affidavit verifying the facts deposed to by the Petitioner(s), together with the Exhibits and a Written Address.

4. Further Information

(1) A Petition under this Order shall refer to the enactment under which the payment, account, information or the production of books is claimed or required.

(2) Where information is required, the Petitioner shall show sufficient particulars of the information required.

5. Payment into Court

(1) Where the Respondent is a tax payer and does not dispute the reliefs in the Petition, he shall, within fourteen (14) days of the service of the Petition on him, pay into Court, the amount alleged to be due from him as revenue to the Government.

(2) Upon payment into Court as stated in sub-rule (1) of this Rule, the proceedings against the Respondent shall be discontinued.

6. Filing of the Answer

(1) Where the Respondent disputes the reliefs in the Petition, he shall file his Answer within twenty-one (21) days of the service of the Petition on him.

(2) The Answer referred to in sub-rule (1) of this Rule shall be by way of an Affidavit deposed to by the Respondent, setting out the facts relied upon in opposition to the Petition and accompanied by Exhibits and a Written Address.

7. Reply

Upon being served with the Answer, the Petitioner may, within seven (7) days of such service on him, file a Further Affidavit together with his Written Reply and same shall be served on the Respondent not later than five (5) days of filing.

8. Hearing

(1) A Petition shall be heard within seven (7) days after the expiration of the time limited for filing and service of the Reply under this Order.

(2) Where there is conflict in the Affidavits of the parties, the Court may either decide the matter upon the Affidavits or may direct that the matter be decided by oral evidence in Court.

9. Orders of Hearing

The Court hearing a Petition under this Order may give directions for:-

(a) service of further particulars;
(b) discovery of documents; and
(c) service of interrogations and answer thereto.

10. Duration

The hearing of a Petition shall as far as practicable be held from day to day.

11. Default of Answer

Where the Respondent fails to file his Answer within the time provided for doing so in this Order, the Petitioner shall apply that Judgment be entered against the Respondent on such terms as the Court may deem fit in the circumstances.

12. Non-appearance of parties

When a Petition is called for hearing and the parties have been duly served with the Notice of Hearing, if any party or his Legal Practitioner does not appear, the Court shall proceed as it deems fit.

13. Proceeding under other provision

Nothing in this Order shall preclude any person from proceeding under any provision of these Rules or any law as may be appropriate.

14. Interpretation

In this Order, unless the context otherwise requires;
"Government" means the Government of Edo State or of a Local Government Council or any person who exercises power on its behalf.
"Revenue" means any sum due or alleged due to the Government in form of levy, charge, tax, rate or dues under any law in force.

ORDER 57

FAST TRACK CASES

1. Fast Track Judges

(1) The Chief Judge shall designate such number of Fast Tack Judges as he thinks fit, who may act as Motion Fast Track Judges and/or Trial Fast Track Judges.

2. Pre-trial Conference

A Fast Track Judge may conduct settlement of issues in compliance with Order 27 as he considers expedient in the circumstances.

3. Coordinator, Fast Track Division

(1) The Chief Judge shall appoint an officer as coordinator for the Fast Track Division.

(2) The Coordinator shall:

(a) Process Fast Track cases;
(b) Monitor the performance of the Fast Track Division and submit weekly and monthly performance appraisal report to the Chief Judge;
(c) Make recommendations on how to improve the operation of the Fast Track Division.
(d) Publish the weekly Cause List every Friday or on an earlier day if Friday is a public holiday;
(e) Manage, coordinate and supervise the operation of the Fast Track Division; and
(f) Perform any other function that may be assigned to him by the Chief Judge.

4. Jurisdiction of Fast Track Division, Form 45

Where any of the parties specifically requests to proceed by way of Fast Track as in Form 45, the Fast Track Court shall have jurisdiction to hear and determine that case and any other case requiring exceptional urgency including but not limited to the following:

(a) Banker/customer disputes;
(b) Commerce and Industry;
(c) Landlord and tenant;
(d) Edo State or Local Government Council Revenue;
(e) Where any of the parties specifically requests to proceed by way of Fast Track as in Form 45.
(f) Provided that the monetary claim in paragraphs (a) and (b) above is not less than Fifty Million Naira; and
(g) any other case which the Chief Judge may approve.

5. Assignment of Cases

A Fast Track Judge may not be assigned more than three cases a week.

6. Procedure for filing of cases

(1) The claimant or counterclaimant shall present his originating process prepared by him or his legal practitioner accompanied by:

(a) Statement of claim
(b) List of witnesses to be called at the trial
(c) Written statement on oath of the witnesses
(d) Copies of every document or exhibit to be relied on at the trial,
(e) Certificate of pre-action counseling, and
(f) A duly completed application form as in Form 46 obtained from the Division to place the cause or matter on the Fast Track Division.

(2) The Coordinator shall upon receipt of the processes in (1) above issue an acknowledgement and forward the cause or matter to the Chief Judge for approval or otherwise as in Form 47 or 48.

(3) Where a matter is placed on the Fast Track, a filing fee of N100,000 (One Hundred Thousand Naira) shall be paid by the Applicant.

7. Accounts for fees, Civil Form 49

The coordinator shall render monthly account of the monies received by the revenue officer for filing processes, forms or notices as in Form 49.

8. Service of process

(1) The bailiff shall serve all processes or notices filed within 24 hours of filing and file a proof of service.

(2) Where a bailiff is unable to effect service, a certificate of non-service shall be filed.

(3) Any court official who receives or dispatches a file or process relating to a Fast Track case shall state the date and time of receipt or dispatch.

(4) Service of process may be effected on parties or counsel in the court.

(5) All proofs of service must be filed within 24 hours.

9. Hearing dates

Trial shall be conducted on daily basis and parties are bound by hearing dates fixed in advance.

10. Adjournment

(1) A Judge may not grant an application for an adjournment, unless it is for cogent and compelling reasons.

(2) Where an application for adjournment is granted, the order shall not exceed

three days from the date of the order.

(3) Where a matter is adjourned at the instance of a party, he shall pay cost of not less than ten thousand (N10,000.00) naira per day for every day of the adjournment to each other party.

11. Absence of counsel

(1) Where a party or his counsel will be absent from court, the party or his counsel shall promptly inform the court.

(2) Where a trial has commenced, the court will hold counsel responsible to his commitment to continuous trial. The court shall proceed, notwithstanding the absence of counsel, parties or witnesses.

12. Timetable for taking steps

The timetable for steps in Fast Track action is as follows:

(a) Administrative action by the Chief Jude after filing of process, form or notice – within 24 hours;
(b) Service of process – within 3 days;
(c) Memorandum of appearance, defence and accompanying documents – within 7 days, and 30 days outside jurisdiction;
(d) Reply to defence – within 7 days;
(e) Trial and scheduling, motions and other applications within 7 days of close of pleadings.
(f) Commencement to conclusion of trial – within 30 days;
(g) Filing and adoption of final address – within 14 days;
(h) Judgment – within 30 days; and
(i) Issuance of certified true copy of Judgment – within 4 days.

13. Compliance with timetable

(1) Where service has been duly effected and there is proof of service, an extension of the time provided under the timetable for taking steps, shall not be allowed, unless for cogent and compelling reasons.

(2) A party who fails to comply with the period prescribed in the timetable shall not be heard on an interlocutory application, except on an application for extension of time.

14. Absence of parties

(1) Where trial cannot commence on a date fixed for hearing due to the absence of the claimant, the case shall be struck out.

(2) Where the trial cannot commence on a date fixed for trial due to the absence of the defendant, hearing shall continue and may be concluded without further notice to the defendant.

(3) Where a case is struck out under paragraph (1) above, the claimant may apply to relist within 7 days.

(4) Where a case is relisted pursuant to sub-rule (3) above, the claimant shall pay a cost as shall be determined by the court.

15. Form of Addressee, Objections and Application

(1) Addresses, objections and applications, except those arising extempore, shall be in writing and served on the other party.

(2) Final addresses shall be deemed adopted in the absence of parties.

16. Application of Transcript, Civil Form 50

(1) The registrar shall prepare record of proceedings within three days of the conclusion of sittings.

(2) Parties may apply for the record of proceedings upon payment of fees, to be issued within three days of the application as in Form 50.

ORDER 58

PROBATE AND ADMINISTRATION

GRANT OF PROBATE OR

ADMINISTRATION IN GENERAL

1. Petition to be made to Probate Registrar

(1) Subject to the provisions of rules 39 and 40, when any person subject to the jurisdiction of the Court dies, all petitions for the granting of any letters of administration of the estate of the deceased person, with or without a Will attached, and all applications on other matters connected therewith, shall be made to the Probate Registrar of the Court at Benin City.

(2) In regard to any such application, the Chief Judge shall have power to request the Court of any Judicial Division to take measures and make such orders as may appear necessary or expedient for the interim preservation of the property of the deceased within such Judicial Division, for the discovery or preservation of the Will of the deceased or for any other purpose 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 be issued within seven days of the death of the deceased; and no grant of administration (not with the Will annexed) shall be issued within fourteen days of such death.

2. Preservation of property

The Court shall, when the circumstances of the case appear to require forthwith on the death of a person, or as soon after, appoint and authorize 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.

3. Unauthorised persons intermeddling with property

If any person, other than the person named executor or administrator, or an officer of the Court or person authorized by the Court, 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 such fine not exceeding N50,000.00 (fifty thousand naira) as the Court, having regard to the condition of the person so interfering with the property and the other circumstances of the case, may think fit to impose.

4. Production of testamentary papers

(1) 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.

(2) If any person fails to do so for fourteen days after having had knowledge of the death of

the deceased, he shall be liable to such fine not exceeding N50,000.00 (fifty thousand naira) as the Court having regard to the condition of such person so in default and the other circumstances of the case, thinks fit to impose.

5. Court may order production

Where it appears that any paper of the deceased, being or purporting to be testamentary, is in the possession of, or under the control of any person, the Court may in a summary way, whether a suit or proceedings respecting probate or administration is pending or not, order him to produce the paper and bring it into Court.

6. Examination respecting papers

Where it appears that there are reasonable grounds for believing that any person has knowledge of any paper being or purporting to be testamentary, (although it is not shown that the paper is in his possession or under his control), the Court may in summary way, whether a suit or proceedings respecting probate or administration is pending or not, order that he may be examined in respect of same in Court, or on interrogatories, and that he attends for that purpose, and after examination, that he produces the paper and brings it into Court.

7. Notice to executor to come in and prove

The Court may of its own motion, or on the application of any person claiming an interest under a Will, give notice to the executors (if any) therein named, to come in and prove the Will, or to renounce probate, and they, or some or one of them, shall, within (21) twenty-one days after notice, come in and prove or renounce accordingly.

8. Liability of executor neglecting to apply for probate

If any person named executor in the Will of the deceased, takes possession and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within one month after the death, or after the termination of any suit or dispute respecting probate or administration, he may independently of any other liability, be deemed guilty of a contempt of Court, and shall be liable to such fine, not exceeding N50,000.00 (fifty thousand naira), as the Court thinks fit to impose.

9. Identity

The Court shall require evidence, in addition to that offered by the applicant, where additional evidence in that behalf seems to the Court 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 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 Court relevant to the question whether the applicant is the proper person to whom the grant should be made:

Provided that the Court may refuse the grant unless the applicant produces the required evidence on these points or any of them as required by the Court

10. Court may refuse grant until all persons interested are given due notice

Where it appears to the Court that some person or persons other than the applicant may have at least an equal right with the applicant to the grant sought, the Court 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 Court may in its discretion refuse the grant unless and until all persons

entitled to the grant in priority to the applicant, shall have expressly renounced their prior right.

11. Value of property

Every applicant for a grant of letters of administration shall file in the Court, a true declaration of all personal property of the deceased and the value thereof:

Provided that for the purpose of the fees payable on letters of administration, the value of the property in respect of which the grant is made shall be deemed not to include:

(a) any gratuity payable by the Government of the Federation of Nigeria, or the Government of a State, to the property in respect of which the grant is made;

(b) any sum of money payable to an estate from a Provident Fund established under the provisions of any written law.

12. Answers required before grant

(1) In no case shall the Court issue letters of administration until all inquiries which the Court deems fit to institute have been answered to its satisfaction.

(2) The Court shall, however, afford as great a facility for the obtaining of letters of administration as is consistent with due regard to the prevention of error and fraud.

13. Notice to prohibit grant

A notice to prohibit a grant of administration may be filed in the Court.

14. Effect of notice

(1) The notice shall remain in force three months only from the day of filing, but it may be renewed from time to time.

(2) The notice shall not affect a grant made on the day on which the notice is filed.

(3) The person filing the notice shall be warned in writing delivered at the place mentioned in the notice as his address.

(4) Notices in the nature of citation shall be given in such manner as the Court directs.

15. Form of suits

Suits respecting administration shall be instituted and carried on as nearly as may be in the like manner and subject to the same rules of procedure as suits in respect of ordinary claims.

Custody of Wills

16. Testator may deposit Will

Any person may, in his lifetime, deposit for safe custody in the Court at Benin City, his own will, sealed up under his own seal and the seal of the Court.

17. Custody of Wills of which probate granted

(1) Every original Will, of which probate or administration with Will annexed is granted, shall be filed and kept in the Probate Registry, in such manner as to secure at once the due preservation and convenient inspection of same.

(2) A copy of every such Will, and of the probate or administration, shall be preserved in a book kept for the purpose in the Registry.

18. Will not given out without order of court

(1) No original Will shall be delivered out for any purpose without the direction in writing of the Court where the Will is filed.

(2) A certified transcript, under the seal of the Court of the probate or administration with the Will annexed, may be obtained from the Court.

Probate or Administration with Will Annexed

19. Examination of Will as to its execution

(1) On receiving an application for administration with Will annexed, the Court shall inspect the Will, and see whether it appears to be signed by the testator, or by some other person in his presence, and by his direction, and to be subscribed by two witnesses according to the enactments relative thereto, and shall not proceed further if the Will does not appear to be so signed and subscribed.

(2) If the Will appears to be so signed and subscribed, the Court shall then refer to the attestation clause (if any), and consider whether the wording thereof states the Will to have been, in fact, executed in accordance with those enactments.

20. Proof of execution where attestation clause is defective

(1) If there is no attestation clause, or if the attestation clause is insufficient, the Court shall require an affidavit from at least one of the subscribing witnesses, if either of them is living, to prove that the Will was, in fact executed in accordance with those enactments

(2) The affidavit shall be engrossed and form part of the probate, so that the probate may be a complete document on the face of it.

21. Where Will was not executed according to law

If on perusal of the affidavit, it appears that the Will was not, in fact, executed in accordance with those enactments, the Court shall refuse probate.

22. Evidence on failure of attesting witnesses

If both the subscribing witnesses are dead, or if from other circumstances, such an affidavit cannot be obtained from either of them, resort for such an affidavit shall be had to other persons (if any) present at the execution of the Will; but if no such affidavit can be obtained, proof shall be required of that fact, and of the 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.

23. Will of blind or illiterate testator

Where the testator is 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 the time knowledge of its contents.

24. Interlineations, erasures, obliterations

(1) The Court, on being satisfied that the Will was duly executed, shall carefully inspect it to see whether there are any interlineations or alterations, or erasures, if 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 invalid by the re-execution of the Will, or by the subsequent execution of some codicil thereto.

(3) Where interlineations, alterations, erasures, or obliterations appear in the Will (unless duly executed or recited in or otherwise identified by the attestation clause), an affidavit in proof of their having existed in the Will before its execution, shall be filed.

(4) If so, satisfactory evidence is adduced respecting the time when an erasure or obliteration was made, and the words erased or obliterated are not entirely defaced, and can, on inspection of the Will, be ascertained, they shall form part of the probate.

(5) Where any words have been erased which might have been of importance, an affidavit shall be required.

25. Documents referred to in a Will: or annexed or attached

(1) Where a Will contains a reference to any document of such a nature as to raise the questions 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.

(2) A document cannot form part of a Will unless it was in existence at the time when the Will was executed.

(3) If there are vestiges of sealing wax or wafers, or other marks on the Will, leading to the inference that some documents have been at sometime annexed or attached thereto, a satisfactory account of them shall be proved, or the production of the document shall be required, and if it is not produced, a satisfactory account of its non-production shall be proved.

26. Executor dying without proving or not appearing

Where a person appointed executor in a Will survives the testator, but either dies without having taken probate, or having been called on by the Court to take probate, does not appear, his right in respect of the executorship wholly ceases; and without further renunciation, the representation to the testator and the administration of his property may go and be committed as if that person had not been appointed executor.

27. Marking of Will or copy sworn to

(1) Every Will or copy of a Will to which an administrator with the Will annexed is worn, shall be marked by the executor or administrator and by the person before whom he is sworn.

(2) Codicils

The provisions respecting Wills apply equally to codicils.

28. Viva voce examination of persons making affidavits

(1) In every case where evidence is directed or allowed to be given by affidavit, the Court may require the personal attendance of the deponent, if within the jurisdiction, before the Court, to be examined viva voce respecting the matter of his affidavit.

(2) The examination may take place before any affidavit has been sworn or prepared, if the Court thinks fit.

Administration (not with Will)

29. Form of administration not with Will annexed

(1) The Court in granting letters of administration shall proceed as far as may be as in cases of probate.

(2) The Court shall ascertain the time and place of the deceased's death, and the value of the property to be covered by the administration.

30. Administration bond

(1) The person to whom administration is granted shall give a bond, with two or more responsible sureties, to the Probate Registrar of the Court, conditioned for duly collecting, getting in and administering the personal property of the deceased, such sureties to be to the satisfaction of the Probate Registrar.

(2) The Court may, if it thinks fit, take one surety only.

(3) The bond shall be in a penalty of double the amount under which the personal estate of the deceased is sworn, unless the Court, in any case, thinks it expedient to reduce the amount.

(4) The Court may also in any case, direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the Court thinks reasonable.

31. Assignment of bond

The Probate Registrar may, on being satisfied that the condition of the bond has been broken, assign the same to some person, and that person may thereupon sue on the bond in his own name as if it had been originally given to him instead of the Probate Registrar, and may recover thereon, as trustee for persons interested, the full amount recoverable in respect of any breach of the bond.

Administration of Property

32. Administration summons

Any person claiming to be a creditor or legatee, or the next-of-kin, or one of the next-of-kin of a deceased, may apply for and obtain a summons from the Court requiring the executor or administrator (as the case may be) of the deceased to attend before the Court, and show cause why an order for the administration of the property of the deceased should not be made.

33. Order for administration

(1) On proof of service of the summons or on appearance of the executor or administrator, and on proof of all such other things (if any) as the Court may direct, the Court may, if it

thinks fit, make an order for the administration of the property of the deceased.

(2) The Court shall have discretionary power to make or refuse any such order or to give any special directions respecting the carriage or execution of it, and in the case of applications for such an order by two or more different persons or classes of persons, to grant same to such one or more of the claimants or classes of claimants, as the Court thinks fit.

(3) If the Court thinks fit, the carriage of the order may subsequently be given to such person, and on such terms, as the Court thinks fit.

34. Orders relating to property

On making such an order, or at any time afterwards, the Court may, if it thinks 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.

35. Administration may be granted to officer

In a case of intestacy, where the special circumstances of the case appear to the Court so to require, the Court may, if it thinks fit, on the application of any person having interest in the estate of the deceased, or of its own motion, grant letters of administration to an officer of the Court, to a consular officer, or to a person in the service of the government.

36. Officer to act under direction of court

(1) The officer or person so appointed, shall act under the direction of the Court, and shall be indemnified thereby.

(2) The Court shall require and compel him to file in the Court, his accounts of his administration at intervals not exceeding three months.

37. Court may appoint persons to be administrator

Where a person has died intestate as to his personal estate or leaving a Will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person, be resident out of the jurisdiction, and it shall appear to the Court to be necessary or convenient in any such case to appoint some person to be administrator of the personal estate of the deceased or of any part thereof, the Court may appoint such person as it shall think fit, to be such administrator upon his giving such security, if any, as the Court shall direct, and every such administrator may be limited as the Court shall think it.

38. Remuneration of administrator

The Court may direct that any administrator, (with or without the Will annexed), shall receive out of the personal and real estate of the deceased, such reasonable remuneration as the Court shall think fit, not exceeding a fee of N50,000.00 (fifty thousand naira) and in addition thereto, a sum not exceeding five per centum-on the amount of the realized property, or when not converted into money, on the value of the property duly administered and accounted for by him: *Provided that where the Court shall be satisfied that by reason of exceptional circumstances, the administration of the property has required an extraordinary amount of labour to be bestowed on it, the Court may allow, in respect of such property, a higher rate of remuneration.*

Administration of Estate of Foreign Citizen

39. Securing and collection of estate

(1) Where any citizen of any country other than Nigeria, dies within the jurisdiction without leaving within the jurisdiction, a widow or next-of-kin, then, if any such person dies within a Government station or had his usual place of residence therein, the Magistrate having jurisdiction within such station, or if he does not die within a Government station, or had not his usual place of residence therein, then the Local Government Secretary in charge of the station in which he died, shall collect and secure all monies and other property belonging to the deceased, and shall then request the Secretary to the Government to inform the nearest consular officer of such country, of the death of the deceased, and transmit to him a list of the money and property of the deceased.

(2) In the case last mentioned in which it is declared that a Local Government Secretary shall collect and secure all money and other property of the deceased, such Local Government Security may appoint any administrative officer attached to his local government or, with his consent, any magistrate or any administrative officer attached to any other Local Government to act in his place.

40. Application by consular officer or person authorized by him to administer estate

Application may be made to the Court by any such consular officer, or by any person authorized by him in writing and under the consular seal, for leave to administer the estate of the deceased, and the Court may make such order as to security for payment of debts and the method of administration as the Court shall think fit, and vary such order when and so often as is expedient.

Administration Generally

41. Accounts to be filed

(1) Every person to whom a grant of probate or letters of administration shall have been made, and every administrator appointed by the Court shall, if called upon by the Court so to do, file in Court the accounts of his administration, and shall thereafter file such further periodic accounts as the Court may direct until the completion of the administration.

(2) Any such executor or administrator who fails within any such period to file his accounts as aforesaid, shall be liable to such penalty not exceeding N1,000.00 (one thousand naira) as the Court may think fit to impose. Every such fine shall, on non-payment be enforceable by distress, and failing sufficient distress, by imprisonment for a term not exceeding six months.

(3) When an account is filed in Court under this rule, the Court shall scrutinize such account and if it appears to the Court that by reason of improper unvouched or unjustifiable entries or otherwise, such account is not a full and proper account, the Court may give written notice to the person filing the account, to remedy such defects as there may be within such time as the Court may seem reasonable for the purpose; and on failure to remedy such defects within such time, the person who filed such defective account shall be deemed to have failed to file an account within the meaning of this rule and proceedings may be taken against such person accordingly.

(4) The Court may, on the motion of any party interested, or of its own motion, summon any executor or administrator failing as aforesaid, to show cause why he should not be punished.

(5) The Court may for good cause shown, extend the time for such filing or accounts.

(6) Any executor or administrator who has been granted an extension of time to file such accounts, and who fails within such extended time to file such accounts, shall be liable to the penalty set out above, and the procedure for bringing him before the Court shall be as set out above.

(7) It is the duty of the Probate Registrar to bring to the notice of the Court, the fact that any executor or administrator has failed to file his accounts as required by this rule.

(8) Such accounts shall be open free of charge to the inspection of all persons satisfying the Probate Registrar that they are interested in the administration.

(9) In this rule, the word "accounts" shall mean and include an inventory, an account of the administration, the vouchers in the hands of the executor or administrator relating thereto, and an affidavit in verification.

42. Duties and powers to be performed and exercised by Probate Registrar

The duties imposed and powers conferred upon the Court by rules 5, 6, 7, 9, 10, 11, 12, 14, 17, 18, 19, 20, 21, 22, 28, 31, 38, 40 and 4(1), (3), (5), (7) and (8) shall be performed and exercised by the Probate Registrar on behalf of the Court, subject to any directions which the Chief Judge may give, restricting or enlarging this delegation to the Probate Registrar of the duties and powers of the Court under this Order:

Provided always that the Court shall have power, either of its own motion, or on the application of any person interested, to review any exercise by the Probate Registrar of the powers delegated to him. On such review, the Court shall have power to cancel anything which may have been done by the Probate Registrar in such exercise of his delegated powers or otherwise, and make such order on the premise as the Court may deem just.

43. Court may refuse application

The Court may refuse to entertain any application under the last preceding rule, if it considers that there has been unreasonable delay by the applicant in making his application.

44. Grant to be signed by Probate Registrar

The grant of letters of administration under this Order shall be signed by the Probate Registrar on behalf of the Court.

ORDER 59

PROBATE (NON-CONTENTIOUS) PROCEDURE

1. Production of testamentary papers

Any person having in his possession or under his control, any paper or writing of any deceased person, being or purporting to be testamentary shall forthwith deliver the original to the Probate Registrar of the Court. If any person fails to do so for fourteen days after having had knowledge of the death of the deceased, he shall be liable to such fine not exceeding N50,000.00 (fifty thousand naira) as the Court, having regard to the condition of such person so in default and the other circumstances of the case, thinks fit to impose.

2. Court may order production

Where it appears that any paper of the deceased, being or purporting to be testamentary, is in the possession, or under the control of any person, the Court may in a summary way, whether a suit or proceedings respecting probate or administration is pending or not, order him to produce the paper and bring it into Court.

3. Examination respecting paper

Where it appears that there are reasonable grounds for believing that any person has knowledge of any paper being or purporting to be testamentary (although it is not shown that the paper is in his possession or under his control), the Court may in a summary way, whether a suit or proceedings for probate or administration is pending or not, order that he may be examined in respect of same in Court, or on interrogatories, and that he attends for that purpose, and after examination that he produces the paper and brings it into Court.

4. Notice to executor to come in and prove

The Court may of its own motion, or on the application of any person claiming an interest under a Will, give notice to the executors (if any) therein named, to come in and prove the Will, or to renounce probate, and they, or one of them shall, within fourteen days after notice come in and prove or renounce accordingly.

5. Liability of executor to come in and prove

If any person named executor in the Will of the deceased takes possession and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within one month after the death, or after the termination of any suit or dispute respecting probate or administration, he may, independently of any other liability, be deemed guilty of a contempt of Court, and shall be liable to such fine, not exceeding N50,000.00 (fifty thousand naira), as the Court thinks fit to impose.

6. Petition to be made to Probate Registrar

(1) When any person subject to the jurisdiction of the Court dies, all petitions for the grant of probate of his Will and all applications on other matters connected with it, shall be made to the Probate Registrar of the Court at Benin City.

(2) In regard to any such application, the Chief Judge shall have power to request the Court of any Judicial Division, to take measures and make such order as may appear necessary or expedient for the interim preservation of the property of the deceased within such Judicial

Division, for the discovery or preservation of the Will of the deceased or for any other purposes connected with the duties of the Court under this Order, and every Court shall carry out any such request as far as practicable and report to the Chief Judge.

7. Application for grants through legal practitioners

(1) A person applying for a grant through a legal practitioner may apply otherwise than by post at the Probate Registry.

(2) Every legal practitioner through whom an application for a grant is made, shall give the address of his place of business within jurisdiction.

8. Personal applications

(1) A personal applicant may apply for a grant otherwise than by post at the Probate Registry.

(2) A personal applicant may not apply through an agent, whether paid or unpaid, and may not be attended by any person acting or appearing to act as his adviser.

(3) No personal application shall be received or proceeded with if:
- (a) it becomes necessary to bring the matter before the Court on motion or by action.
- (b) an application has already been made by a legal practitioner on behalf of the applicant and has not been withdrawn.
- (c) the Registrar otherwise directs.

(4) After a Will has been deposited in the Registry by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the Registrar so directs.

(5) A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as the Registrar may 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 authorized officer.

9. Duty of Registrar on receiving application for grant

(1) The Registrar shall not allow any grant to be issued 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 that contained in the oath.

(3) No grant of probate or of administration with the Will annexed shall be issued within seven days of the death of the deceased.

10. Oath in support of grant

(1) Every application for a grant shall be supported by an oath in the form applicable to the

circumstances of the case, which shall be contained in any affidavit sworn by the applicant and by such other persons as the Registrar may require.

(2) Unless otherwise directed by the Registrar, the oath shall state where the deceased died domiciled.

11. Grant in additional name

Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the oath, the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name, or as to any other reason that there may be for the inclusion of the other name in the grant.

12. Marking of Wills

Every Will in respect of which an application for a grant is made, shall be marked by the signatures of the applicants and the person before whom the oath is sworn and shall be exhibited to any affidavit which may be required under this Order as to the validity, terms, condition or date of execution of the Will.

Provided that where the Registrar is satisfied that compliance with this rule might result in the loss of the Will, he may allow a Photostat copy thereof to be marked or exhibited in lieu of the original document.

13. Engrossment for purposes of record

(1) Where the Registrar considers that in any particular case, a photostat copy of the original Will would not be satisfactory for purposes of record, he may require an engrossment suitable for photostat reproduction to be lodged.

(2) Where a Will contains alterations which are not admissible to proof, there shall be lodged an engrossment of the Will in the form in which it is to be proved.

(3) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the Will and, if it is one to which sub-rule (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 there shall be underlined in red ink those portions which appear in pencil in the original.

14. Evidence as to due execution of Will

(1) Where a Will contains no attestation clause or the attestation clause is insufficient or where it appears to the Registrar that there is some doubt about the due execution of the Will, he shall before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the Will was executed.

(2) If no affidavit can be obtained in accordance with the last foregoing paragraph, the Registrar may, if he thinks fit, having regard to the desirability of protecting the interest of any person who may be prejudiced by the Will, accept evidence on affidavit from any person he may think fit, to show that the signature on the Will is the 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 on motion.

15. Execution of Will of blind or illiterate testator

Before admitting to proof, a Will which appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason gives rise to doubt as to the testator having had knowledge of the contents of the Will at the time of its execution, the Registrar shall satisfy himself that the testator had such knowledge.

16. Evidence as to terms, conditions and date of execution of Will

(1) Where there appears in a Will any obliteration, interlineations, or other alteration which is not authenticated in the manner prescribed by law, or by the re-execution of the Will or by the execution of a codicil, the Registrar shall require evidence to show whether the alteration was present at the time the Will was executed and shall give directions as to the form in which the Will is to be proved:

Provided that this 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 think fit.

(3) Where there is doubt as to the date on which a Will was executed, the Registrar may require such evidence as he thinks necessary to establish the date.

17. Attempted revocation of Will

Any appearance of attempted revocation of a Will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for, to the Registrar's satisfaction.

18. Affidavit as to due execution, terms, etc, of Will

The Registrar may require an affidavit from any person he may think fit, for the purpose of satisfying himself as to any of the matters referred to in rules 15, 16, and 17 and in any such affidavit sworn by an attesting witness or other person present at the time of the execution of a Will, the deponent shall depose to the manner in which the Will was executed.

19. Wills of persons on military service and seamen

If it appears to the Registrar that there is *prima facie* evidence that a Will is one to which Section 9 of the Wills Act, 1837, or any provision of the equivalent enactment in force in the State applies, the Will may be admitted to proof if the Registrar is satisfied that it was made by the

testator in accordance with the provisions of that section or enactment, as the case may be.

20. Evidence of foreign law

Where evidence as to law of any country or territory outside the State is required on any application for a grant, the Registrar may accept an affidavit from any person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably qualified to give expert evidence of the law in question.

21. Order of priority for grant where deceased left a Will

Where the deceased died after the commencement of this Order, the person or persons entitled to a grant of probate or administration with the Will annexed shall be determined in accordance with the following order of priority.

(1) The executor;
(2) Any residuary legatee or devisee holding in trust for any other person;
(3) Any residuary legatee or devisee for life;
(4) The ultimate residuary legatee or devisee, including one entitled on the happening of any contingency, or where the residue is not wholly disposed of by the Will, any person entitled to share in the residue not so disposed of, or the personal representative of any such person.

Provided that

(a) 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

(b) where the residue is not in terms wholly disposed of, the Registrar may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made (subject however to rule 53) to any legatee or devisee entitled to, or to a share in the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the Will;

(5) Any specific legatee or devisee or any creditor or subject to sub-rule (3) of rule 44, the personal representative of any such person or, where the estate is not wholly disposed of by Will, any person who, not withstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion thereto;

(6) Any specific legatee or devisee entitled on the happening of any contingency, or any person having no interest under the Will of the deceased who would have been entitled to a grant if the deceased had died wholly intestate.

22. Grant to attesting witnesses, etc.

Where a gift to any person fails by reason of the fact that he is an attesting witness or the spouse of an attesting witness, such person shall not have any right to a grant as a beneficiary named in the Will, without prejudice to his right to a grant in any other capacity.

23. Value of property

Every applicant for a grant of probate or letter of administration with the Will attached,

shall file in the Court a true declaration of all the personal property of the deceased and the value thereof:

Provided that for the purpose of the fees payable on probate and such letters of administration, the value of the property in respect of which the grant is made shall be deemed not to include-

(a) any gratuity payable by the Government of the Federation of Nigeria, or the Government of a State to the estate of any person formerly employed by either of such Government or by a Statutory Corporation; and

(b) any sum of money payable to an estate from a provident fund established under the provisions of any written law.

24. Answers required before grant

In no case, shall the Court issue probate or letters of administration with the Will attached until all inquiries which the Court deems fit to institute have been answered to its satisfaction. The Court shall, however, afford as great, a facility for the obtaining of probate or such letters of administration as is consistent with due regard to the prevention of error and fraud.

25. Notice to prohibit grant

A notice to prohibit a grant of probate or administration with the Will attached, may be filed in the Court.

26. Effect of notice

(1) The notice shall remain in force three months only from the day of filing, but it may be renewed from time to time. The notice shall not affect a grant made on the day on which the notice is filed. The person filing the notice shall be warned in writing, delivered at the place mentioned in the notice as his address.

(2) Citations

Notices in the nature of citations shall be given in such manner as the Court directs.

27. Form of suits

Suits respecting probate or administration shall be instituted and carried on as nearly as may be in the like manner and subject to the same rules of procedure as suits in respect of ordinary claims

Custody of Wills

28. Testator may deposit Will

Any person may, in his lifetime, deposit for safe custody in the Court at Benin City his own Will, sealed up under his own seal and the seal of the Court.

29. Custody of Wills of which probate is granted

Every original Will, of which probate or administration with Will annexed is granted, shall be filed and kept in the probate registry, in such manner as to secure at once, the due preservation and convenient inspection of same. A copy of every such Will, and of the probate or administration, shall be preserved in a book kept for the purpose in the registry.

30. Will not given out without order of Court

No original Will shall be delivered out for any purpose without the direction in writing of the Court where the Will is filed. A certified transcript under the seal of the Court of the Probate

or Administration with the Will annexed, may be obtained from the Court.

Probate or Administration with Will Annexed

31. Examination of Will as to its execution

(1) On receiving an application for probate or for administration with Will annexed, the Court shall inspect the Will, and see whether it appears to be signed by the testator, or by some other person in his presence, and by his direction, and to be subscribed by two witnesses according to the enactments relative thereto, and shall not proceed further if the Will does not appear to be so signed and subscribed.

(2) If the Will appears to be so signed and subscribed, the Court shall then refer to the attestation clause (if any), and consider whether the wording thereof states the Will to have been, in fact executed in accordance with those enactments.

32. Proof of execution where attestation clause is defective

If there is no attestation clause, or if the attestation clause is insufficient, the Court shall require an affidavit from at least one of the subscribing witnesses if either of them is living, to prove that the Will was, in fact, executed in accordance with those enactments. The affidavit shall be engrossed and form part of the probate, so that the probate may be a complete document on the face of it.

33. Where Will not executed according to law

If on perusal of the affidavit it appears that the Will was not, in fact executed in accordance with those enactments, the Court shall refuse probate.

34. Evidence on failure of attesting witnesses

If both subscribing witnesses are dead, or if from other circumstances, such an affidavit cannot be obtained from either of them, resort to such an affidavit shall be had from other persons (if any) present at the execution of the Will; but if no such affidavit can be obtained, proof shall be required of that fact, and of the handwriting of the deceased and of the subscribing witnesses, and also of any circumstances raising a presumption in favour of the due execution of the Will.

35. Will of blind or illiterate testator

Where the testator was blind or illiterate, the Court shall not grant probate of the Will, or administration with the Will annexed, unless the Court is first satisfied, by proof or by what appears on the face of the Will, that the Will was read over to the deceased before its execution, or that he had at that time knowledge of its contents.

36. Interlineations, erasures, obliterations

The Court on being satisfied that the Will was duly executed, shall carefully inspect it to see whether there are any interlineations or alterations, or erasures, or obliterations appearing in it, and requiring to be accounted for. 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. 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. 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.

37. Documents referred to in a Will

(1) Where a Will contains a reference to any document of such a nature as to raise a question whether it ought or ought not to form a constituent part of the Will, the Court shall require the production of the document, with a view to ascertaining whether or not it is entitled to probate and if it is not produced, a satisfactory account of its non-production shall be proved. A document cannot form part of a Will unless it was in existence at the time when the Will was executed.

(2) If there are vestiges of sealing wax or wafers, or other marks on the Will, leading to the inference that some document has been at some time annexed or attached thereto, a satisfactory account of them shall be proved, or the production of the document shall be required and if not produced, a satisfactory account of its non-production shall be proved.

38. Executor dying without proving or not appearing

Where a person appointed executor in a Will survives the testator, but either dies without having taken probate, or having been called on by the Court to take probate, does not appear, his right in respect of the executorship wholly ceases, and without further renunciation, the representation to the testator and the administration of his property may go on and be committed as if that person had not been appointed executor.

39. Marking of Will or copy sworn to

(1) Every Will or copy of a Will to which an executor or an administrator with the Will annexed is sworn, shall be marked by the executor or administrator and by the person before whom he is sworn.

(2) *Codicils*
The provisions respecting Wills apply equally to codicils.

40. Viva voce examination of persons making affidavits

In every case where evidence is directed or allowed to be given by affidavit, the Court may require the personal attendance of the deponent, if within the jurisdiction, before the Court, to be examined *viva voce* respecting the matter of his affidavit. The examination may take place before any affidavit has been sworn or prepared if the Court thinks fit.

41. Right of assignee to grant

(1) Where all the people entitled to the estate of the deceased under a Will have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace in the order of priority for a grant of probate, the assignor or if there are two or more assignors, the assignors with the highest priority in the absence of a proving executor.

(2) Where there are two or more assignees, probate may be granted with the consent of the others to anyone or more (not exceeding four) of them.

(3) In any case where probate is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the registry.

42. Joinder of administrator

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, by a person in a lower degree shall, in default of renunciation by all persons entitled in priority to such last-mentioned person, be made to the Registrar and shall be supported by an affidavit by the 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, by a person having the right thereto, shall be made to the Registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Registrar may require:

Provided that there may, without any such application, be joined with a person entitled to administration with the Will attached.

(a) on the renunciation of all other persons entitled to join in grant, any kin of the deceased having no beneficial interest in the estate.
(b) unless the Registrar otherwise directs, any person whom the guardian of an infant may nominate for the purpose;
(c) a trust corporation.

43. Additional personal representatives

(1) An application to add a personal representative shall be made to the Registrar and shall be supported by an affidavit by the applicant, the consent of the person proposed to be added as personal representative and such other evidence as the Registrar may require.

(2) On any such application, the Registrar may direct that a note shall be made on the original grant, of the addition of a further personal representative, or he may impound or revoke the grant or make such other order as the circumstances of the case may require.

44. Grants where two or more persons entitled in same degree

(1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same degree.

(2) A dispute between persons entitled to a grant in the same degree, shall be brought by application before the Registrar.

(3) If an application under this rule is brought before the Registrar, he shall not allow any grant to be sealed until such application is fully disposed of.

(4) Unless the Registrar otherwise directs, probate or administration with the Will attached, shall be granted to a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same degree, and to a person not under disability in preference to an infant entitled in the same degree.

45. Exceptions to rules as to priority

(1) Nothing in rules 21, 42, or 44 shall operate to prevent a grant being made to any person to whom a grant may or may require to be made under any enactment.

(2) The rules mentioned in the last foregoing sub-rules shall not apply where the deceased died domiciled outside the State, except in a case to which the proviso to rule 47 applies.

46. Grants where two or more persons entitled in same degree

When the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant of administration with the Will attached, and has consented to such administration being granted to the person or persons who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or one or more (not exceeding four) of such persons:

Provided that a surviving spouse shall not be regarded as a person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate, whatever its value may be.

47. Where the deceased died domiciled outside the State

Where the deceased died domiciled outside the State, the Registrar may order that a grant be issued:

(1) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the deceased died domiciled;

(2) to the person entitled to administer the estate by the law of the place where the deceased died domiciled;

(3) if there is no such person as is mentioned in sub-rule (1) or (2) of this rule or if in the opinion of the Registrar, the circumstances so require to such person as the Registrar may direct;

(4) if a grant is required to be made to, or if the Registrar in his discretion considers that a grant should be made to, not less than two administrators, to such person as the Registrar may direct jointly with any such person as is mentioned in sub-rule (1) or (2) of this rule or with any other persons:
Provided that without any such order as aforesaid:

(a) probate of any Will which is admissible to proof may be granted-
  (i) if the Will is in English or in the local vernacular, to the executor named therein;
  (ii) if the Will describes the duties of a named person in terms sufficient to constitute him executor according to the tenor of the Will to that person;
(b) where the whole of the estate in the State consists of immovable property, a grant limited thereto may be made in accordance with the law which would have been applicable if the deceased had died domiciled in the State.

48. Grant to attorneys

(1) Where a person entitled to a grant resides outside the State, a grant may be made to his lawfully constituted attorney, for his use and benefit, limited until such person shall obtain a grant or in such other way as the Registrar may direct:

Provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any.

(2) Where the Registrar is satisfied by affidavit that it is desirable for a grant to be made to the lawfully constituted attorney of a person entitled to a grant and resident in the State, he may direct that a grant be made to the attorney for the use and benefit of such person, limited until such person shall obtain a grant or in such other way as the Registrar may direct.

49. Grants on behalf of infants

(1) Where the person to whom a grant would otherwise be made is an infant, a grant for his use and benefit until he attains the age of eighteen years shall, subject to sub-rules (3) and (5) of this rule be granted:
(a) to both parents of the infant jointly, or to any guardian appointed by a Court of competent jurisdiction; or
(b) if there is no such guardian able and willing to act and the infant has attained the age of sixteen years, to any next-of-kin nominated by the infant or, where the infant is a married woman, to any such next-of-kin or to her husband, if nominated by her.

(2) Any person nominated under paragraph (b) of the last foregoing sub-rule, may represent any other infant whose next-of-kin he is, being an infant below the age of sixteen years entitled in the same degree as the infant who made the nomination.

(3) Notwithstanding anything in this rule, administration for the use and benefit of the infant until he attains the age of eighteen years may be granted to any person assigned as guardian, by order of a Court in default of, or jointly with, or to the exclusion of any such person as is mentioned in sub-rule (1) of this rule; and such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the Court, an affidavit of fitness sworn by a responsible person.

(4) Where a grant is required to be made to not less than two persons and there is only one person competent and willing to take a grant under the foregoing provisions of this rule, a grant may, unless the Registrar otherwise directs, be made to such person jointly with any other person nominated by him as a fit and proper person to take the grant.

(5) Where an infant who is a sole executor has no interest in the residuary estate of the deceased, administration with the Will attached for the use and benefit of the infant until he attains the age of eighteen years shall, unless the Registrar otherwise directs, be granted to the person entitled to the residuary estate.

(6) An infant's right to administration may be renounced only by a person assigned as guardian under sub-rule (3) of this rule authorized to renounce by the Registrar.

50. Grants where infant is co-executor

(1) Where one of two or more executors is an infant, probate may be granted to the other executor or executors not under disability, with power reserved for making the like grant to the infant on his attaining the age of eighteen years, and administration for the use and benefit of the infant until he attains the age of eighteen years may be granted under rule

49 if and only if the executors who are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application therefore.

(2) An infant executor's right to probate on attaining the age of eighteen years may not be renounced by any person on his behalf.

51. Grants in case of mental or physical incapacity

(1) Where the Registrar is satisfied that a person entitled to a grant is by reason of mental or physical incapacity, incapable of managing his affairs, a grant for his use and benefit, limited during his incapacity or in such other way as the Registrar may direct, may be made:

(a) in the case of mental incapacity, to the person authorized by the Court to apply for the grant; or

(b) where there is no person so authorized, or in the case of physical incapacity –

(i) if the person incapable is entitled as executor and has no interest in the residuary estate of deceased, to the person entitled to such residuary estate;

(ii) if the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate; or to such other person as the Registrar may by order direct.

(2) Unless the Registrar otherwise directs, no grant shall be made under this rule unless all persons entitled in the same degree as the person incapable, have been cleared off.

(3) In the case of mental incapacity, notice of intended application for a grant under this rule shall, unless the Registrar otherwise directs, be given to the person alleged to be so incapable.

52. Renunciation of probate and administration

(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 some other person entitled in a lower degree.

53. Notice to State of intended application for grant

In any case in which it appears that the State is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Attorney-General, and the Registrar may direct that no grant shall be issued within a specified time after the notice has been given.

54. Guarantee

(1) The Registrar shall not require a guarantee as a condition of making a grant except where it is proposed to make it:

(a) by virtue of sub-rule (5) of rule 21; to a creditor or the personal representative of a creditor, or to a person who has no immediate beneficial interest in the estate of the deceased, but may have such an interest in the event of an accretion to the estate;

(b) under rule 46; 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 48; to the attorney of a person entitled to a grant;

(d) under rule 49; for the use and benefit of a minor;

(e) under rule 51; for the use and benefit of a person who is by reason of mental or physical incapacity, incapable of managing his affairs;

(f) to an applicant who appears to the Registrar, to be resident elsewhere other 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 trust corporation.

(3) Every guarantee entered into by a surety for the purposes of this Order, shall be in Form 51.

Civil Form 51

(4) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an authorized officer, commissioner for oaths or any other person authorized by law to administer an oath.

(5) Unless the Registrar otherwise directs:

(a) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed N50,000.00 (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 become 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 status by an affidavit of means.

(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 final 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.

55. Resealing

(1) An application for the resealing of probate or administration with the Will attached, granted by the Court of a place not within the State, shall be made by the person to whom the grant was made or by any person authorized 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 sub-rule (1) of rule 54, or except where he considers that there are special circumstances making it desirable to require sureties;
- (b) sub-rule (4) of rule 8 and sub-rules (2), (4), (5) and (6) of rule 54 shall apply with any necessary modifications; and
- (c) a guarantee entered into by a surety shall be in Form 51.

Civil Form 52

(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-rule (1) or (2) of rule 47 or to a person to whom a grant could be made under a proviso to that rule.

(5) No limited or temporary grant shall be resealed except by leave of the Registrar.

(6) Every grant lodged for resealing shall include a copy of any Will to which the grant relates or shall be accompanied by a copy thereof, 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.

56. Amendment and revocation of grant

If the Registrar is satisfied that a grant should be amended or revoked, he may make an order accordingly.

Provided that, except in special circumstances, no grant shall be amended or revoked under this rule except on the application or with the consent of the person to whom the grant was made.

57. Caveats

(1) Any person who wishes to ensure that no grant is sealed without notice to himself, may enter a caveat in the registry.

(2) Any person who wishes to enter a caveat (in this rule called "the caveator") may do so by completing Form 53 in the appropriate book at the registry and obtaining an acknowledgment or entry from the proper officer, or by sending through the post, at his own risk, a notice in Form 51 to the registry in which he wishes the caveat to be entered.

Civil Form 53

(3) Where the caveat is entered by a legal practitioner on the caveator's behalf, the name of the caveator shall be stated in Form 53.

Civil Form 53

(4) Except as otherwise provided by this rule, a caveat shall remain in force for six 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.

(5) 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 a caveat having been entered against the sealing of a grant for which application has been made.

(6) 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.

(7) A caveator may be warned by the issue from the Registry, of a warning in Form 54, at the instance of any person interested (in this rule called "the person warning") which shall state his interest and if he claims under a Will the date of the Will, and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased; and every warning or a copy thereof, shall be served on the caveator.

Civil Form 54

(8) 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 thereupon 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.

(9) A caveator having an interest contrary to that of the person warning may, within eight 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 (11) of this rule, enter an appearance in the Registry by filing Form 55, and making an entry in the appropriate book, and shall forthwith thereafter serve on the person warning, a copy of Form 55 sealed with the seal of the Registry.

Civil Form 55

(10) 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 eight 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 (11) of this rule, issue and serve a summons for

directions, which shall be returnable before the Registrar.

(11) 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 foregoing sub-rule, and thereupon the caveat shall cease to have effect.

(12) Upon the commencement of a probate action, the Probate Registrar shall, in respect of each caveat then 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.

(13) Unless the Registrar otherwise directs:

(a) Any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to sub-rule (8) of this rule, remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such proceedings, and upon such application, any caveat entered by a party who had notice of the proceedings, shall cease to have effect;

(b) Any caveat in respect of which an appearance to a warning has been entered, shall remain in force until the commencement of a probate action;

(c) The commencement of a probate action shall, whether or not any caveat has been entered, operate to prevent the sealing of a grant until application for a grant is made by the person shown to be entitled thereto by the decision of the 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 (12) of this rule, shall cease to have effect.

(14) 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 (11) or (13) of this rule.

58. Citations

(1) Every citation shall be settled by the Registrar before being issued.

(2) Every averment in a citation and such other information as the Registrar may require, shall be certified by an affidavit sworn to by the person issuing the citation (in this Order called "the citor") or, if there be two or more citors, by one of them:
Provided that the Registrar may, in special circumstances, accept an affidavit sworn to by the citor's legal practitioner.

(3) Every Will referred to in a citation, shall be lodged in the Registry before the citation is issued, except where the Will is not in the citor's possession and the Registrar is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may within eight 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 59 or sub-rule (2) of rule 60, enter an

appearance in the Registry, by filing Form 55 and making an entry in the appropriate book and shall forthwith thereafter serve the citor, a copy of Form 55 held with the seal of the Registry.

Civil Form 55

59. Citation to accept or refuse to take a grant

(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 at least survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased.

(4) A person cited, who is willing to accept or take a grant, may apply *ex-parte* to the Registrar for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor, with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may:

(a) in the case of a citation under sub-rule (1) of this rule, apply to the Registrar for an order for a grant to himself.

(b) in the case of a citation under sub-rule (2) of this rule, apply to the Registrar for an order that a note be made on the grant that the executor in respect of whom power was reserved, has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly 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 a grant to himself or some other person specified in the summons.

(6) An application under the last foregoing sub-rule (5) shall be supported with 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 citation under sub-rule (1) of this rule, apply by summons to the Registrar for an order for a grant to himself;

(b) in the case of a citation under sub-rule (2) of this rule, apply by summons to the Registrar for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (b) of sub-rule (5) of this rule:

(c) in the case of a citation under sub-rule (3) of this rule, apply by summons to the Registrar for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons and the summons shall be served on the person cited in each case.

60. Citation to propound a Will

(1) A citation to propound a Will shall be directed to the executors named in the Will and to all persons interested thereunder and may be issued at the instance of any citor having an 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 59, apply by summons to the Registrar for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (b) of sub-rule (5) of rule 59.

(c) in the case of a citation under sub-rule (3) of rule 59, apply by summons to the Registrar for an order requiring the person cited, to take a grant within a specified time or for a grant to himself or some other person specified in the summons, and the summons shall be served on the persons cited in each case.

61. Address for service

All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

62. Application for order to bring in a Will or to attend for examination

(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 of 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.

63. Limited grants

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 cleared off.

64. Grants of administration ad colligenda bona

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.

65. Application for leave to swear to death

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.

66. Grants in respect of codicils and copies of Wills

(1) An application for an order, admitting to proof a codicil, or a Will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original Will is not available, may be made to the Registrar.

Provided that, where a Will is not available owing to its being retained in the custody of a foreign court or official, a duly 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) its existence after the death of the testator; and

(c) the accuracy of the copy or other evidence of the contents of the Will; together with any consent in writing to the application given by any person not under disability who would be prejudiced by the grant.

67. Grants durante absentia

An application for an order for a grant of special administration where a personal representative is residing outside the State, shall be made to the Court on motion.

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

(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 56 in the Registry.

Civil Form 56

(2) A notice filed under this rule shall be noted on the grant and the record which shall be open to inspection.

69. Issue of copies of original Wills and other documents

(1) Where copies are required of original Wills or other documents deposited under the provisions of any written law, such copies may be Photostat copies 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 photostat copies 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.

70. Taxation of costs

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

(2) The party applying for taxation, shall file the bill and give notice to all 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.

(3) If any party entitled to be heard on the taxation does not attend within a reasonable time after the time appointed, the taxing officer may proceed to tax the bill upon being satisfied that such party had due notice of the time appointed.

(4) 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.

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

The Registrar may require any application to be made by motion or by summons.

72. Exercise of powers of a Judge

All powers exercisable under this Order by a Judge in chambers, may be exercised by the Registrar.

73. Appeals from Registrars

(1) Any person aggrieved by a decision or requirement of the Registrar, may appeal by summons to a Judge.

(2) If in the case of an appeal under the last foregoing paragraph, any person besides the appellant who appeared or was represented before the Registrar from whose decision or requirement the appeal is brought, the summons shall be issued within seven days thereof for hearing on the first available day and shall be served on every such person concerned.

74. Service of notice of motion and summons

(1) A judge or the Registrar may direct that a notice of motion or summons for the service of which no other provision is made in this Order, shall be served on such person or persons as the Judge or Registrar may direct.

(2) Where by the provisions of this Order or by any direction given under the last foregoing sub-rule, a notice of motion or summons is required to be served on any person, it shall be served not less than five days before the hearing of the motion or summons.

75. Notices etc

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 prepaid registered post to that person's address for service or if he has no address for service, his last known address.

76. Affidavits

Every affidavit used in non-contentious probate business shall satisfy the requirements of the Evidence Act on affidavits.

77. Time

The provisions of Order 43 shall apply to the computation, enlargement and abridgement of time under this Order.

78. Application to pending proceedings

Subject in any particular case to any direction given by a Judge, this Order shall apply to any proceedings which is pending on the date on which these Rules come into operation, as well as to any proceedings commenced 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.

79. Contentious probate: form of suit

Suits respecting 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 ordinary civil claims.

80. Interpretation

(1) 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 a registry who is for the time being, authorized 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 sworn by every applicant for grant.

"**Personal applicant**" means a person other than a trust corporation, who seeks to obtain a grant without employing a legal practitioner and "personal application" has a corresponding meaning.

"**Registrar**" means the Probate Registrar, being the Chief Registrar of the High Court of the State;

"**Registry or Probate Registry**" means the Probate Registry at Benin City;

"**Will**" includes a codicil and any testamentary document or copy or reconstruction thereof.

(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.

Proceedings Generally

81. Probate actions

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.

82. Service of writ of summons

In probate actions, service of a writ of summons may, by leave of a Judge, be allowed out of Nigeria.

83. Pleadings and further actions

In probate actions, the 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.

84. Where claimant disputes defendant's interest

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.

85. Notice of opposition to Will

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.

86. Inquiry as to outstanding personal estate

Every judgment or order for a general account of the personal estate of a testator or intestatus, shall contain a direction for any inquiry as to what parts of such personal estate are outstanding or undisposed of unless the Judge shall otherwise direct.

87. Discretion to order costs

Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Judge otherwise orders, be entitled to the costs of such proceedings in so far as they are not recovered from or paid by any other person out of the fund held by the trustee or personal representative or the mortgaged property as the case may be, and the Judge may otherwise order only on the ground that the trustee, 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.

88. Originating summons relating to deceased person

The executors or administrators of a 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 interest 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 pouching, when necessary, of such account;
(d) The payment into Court, of any money in the hands of the executors or administrators of trustees;
(e) Directing the executors or administrators or trustees to do or abstain from doing any particular act, as 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.

89. Order for administration of estate of deceased and of trust

Any of the persons named in rule 90 of this Order, may in like manner, apply for and obtain an order for:

(a) the administration of the personal or real estate of the deceased.
(b) the administration of the trust;
(c) any act to be done or step to be taken which the Judge could have ordered to be done or taken if any such administration order as aforesaid had previously been made.

90. Persons to be served

The person to be served with the summons under rules 88 and 89 of this Order in the first instance, shall:

(a) Where the summons is taken out by an executor or administrator or trustee:
  (i) for the determination of any question under paragraph (a), (c), (f) or (g) of rule 88 of this Order, the person or one of the persons whose rights or interests are sought to be affected;
  (ii) for the determination of any question, under paragraph (b) of rule 88 of this Order, any member or alleged member of the class;
  (iii) for the determination of any question under paragraph (c) of rule 88 of this Order, any person interested in taking such accounts;
  (iv) for the determination of any question under paragraph (d) of rule 88 of this Order, any person interested in taking such money;
  (v) for relief under paragraph (b) of rule 89 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;
  (vi) for relief under paragraph (b) of rule 89 of this Order, the *cestui que* trust or some of them;
  (vii) 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;

(b) where the summons is taken out by any person other than the executors, administrators or trustees, the executors, administrators or trustees, or some of them must be served.

91. Judge not bound to order administration

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.

92. Order which may be made on application for administration or execution of trusts, where no account or insufficient accounts have been rendered

Upon an application for administration or execution of trusts by a creditor or beneficiary under a Will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the Judge may, in addition to the powers already existing;

(a) order that the application shall stand over for a certain time, and that the executors, administrators or trustees in the meantime shall render to the applicant, proper statement of their accounts, with an intimation that if this is not done, they may be made to pay the costs of the proceedings;

(b) when necessary to prevent proceedings by other creditors, or by persons beneficially interested, make the usual judgment or order for administration with a proviso that no proceedings are to be taken under such judgment or order without leave of the Judge.

93. Interference with discretion of trustee

The issue of a summons under rule 88 of this Order shall not interfere with or control any power or discretion vested in any executor, administrator or trustee except so far as such interference or control may necessarily be involved in the particular relief sought.

94. Application by summons

Any of the following applications may be made by summons:

(a) *Appointment of new trustees and vesting order.*
An application for the appointment of a new trustee with or without a vesting or other consequential order;

(b) An application for a vesting order or other order consequential on the appointment of a new trustee where the appointment is made by a Judge.

(c) *Vesting order on sale, etc*
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.

(d) *Payment out of Court*
An application relating to a fund paid into Court in any case coming within the provisions of this Order.

ORDER 60

APPEAL FROM MAGISTRATE'S COURT, ETC

1. Notice of appeal

Every appeal shall be brought by notice of appeal, which shall be lodged in the lower court within 30 days of the decision appealed from and served on all other parties affected by the appeal within that period.

2. Contents, etc, of notice of appeal

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

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

(3) The notice of appeal shall give an address within Edo State to which notices may be sent to the appellant and such notices may be sent to him by registered post.

(4) The notice of appeal shall be in Form 57 in the Appendix and may be varied to suit the circumstances of the case but no variation of substance shall be made.

3. Copies of proceedings

(1) The Registrar of the lower court shall, within three months of the decision appealed from, prepare as many certified copies of the proceedings required for the consideration of the appeal as there are parties on record:

Provided that where the Registrar fails to compile the record of appeal within the time stipulated above, the appellant shall within 60 days thereafter, compile the record, for certification by the Registrar

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

4. Appeal to Judge of High Court

The Registrar of the lower court shall within 7 days of preparing the copies aforesaid, send same to the Registrar of the Court in the Judicial Division in which the lower court is situated and the appeal shall be decided by the Judge of that Division.

5. Respondent to be supplied with copy of proceedings

When notifying a party of the day fixed for the hearing of the appeal, the Registrar of the Court shall send him a copy of the proceedings.

Filing of brief

(a) The appellant shall file his brief of argument within 30 days of receipt of the record of appeal;

(b) The brief of argument shall be served on the respondent, who shall file his own brief of argument within 30 days of its receipt;

(c) The appellant shall upon receipt of respondent's brief of argument, file his reply on point of law only, if any, within 7 days thereof.

6. Proceedings time

The times prescribed in rules 1 to 4 may be enlarged at any time by the Court, on such terms (if any) as may seem fit, after notice given to the respondent by the appellant of his application for enlargement of time.

7. Where time expires

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

8. Constitution of court hearing appeals

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

9. Time and place for hearing

The appeal shall come on for hearing at such time and at such place as the Registrar of the Court shall certify to the parties after either party must have filed and exchanged their respective briefs of argument.

10. Where appellant fails to appear

(1) If, on the day of hearing or at any adjournment of the case, the appellant does not appear, the appeal shall be struck out and the decision shall be affirmed, unless the Court thinks fit for sufficient cause, to order otherwise.

(2) If in any such case the respondent appears, the judgment shall be with costs of the appeal against the appellant, unless the Court expressly orders otherwise; but if the respondent does not appear, the costs of the appeal shall be at the discretion of the Court.

11. Where appellant appears

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 in form:

Provided that if it appears or is proved to the Court that the appellant has not complied with the requirements precedent to the hearing of an appeal hereinbefore contained the Court shall dismiss the appeal and affirm the position with or without costs of the appeal against the appellant.

12. Appeal limited to grounds given in notice

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 for appeal:

Provided that where, in the opinion of the Court, other grounds for appeal than those set forth in the memorandum of grounds for appeal should have been given, or statement of grounds of appeal is defective, the Court, in its discretion, may allow such amendments of the memorandum of grounds for appeal upon such

conditions as to service upon the respondent and as to costs, as it may think fit.

13. Request to confirm judgment on other grounds

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

(2) The notice shall be accompanied by a clear statement of the grounds on which the respondent tends 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 for appeal, and shall be served on the appellant or his legal practitioner.

14. Counter appeal

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

(2) Such grounds shall be filed by the respondent within 14 days of service on him of the appellant's notice and grounds of appeal and shall be served on the appellant or his legal practitioner before the hearing.

15. Objections to form of grounds of appeal

(1) No objection on account of any defect in the form of setting forth any ground for appeal, shall be used unless the Court is of opinion that the ground of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the respondent to enquire into the subject-matter thereof or to prepare for the hearing.

(2) In any case where the Court is of opinion that any objection to any reason for appeal ought to prevail, the Court may, if it thinks fit, cause the reason for appeal forthwith to be amended upon such terms and conditions, if any, as the Court may think just.

16. Defect in proceedings under appeal

On any appeal from a decision of a lower court, no objection to any reason for appeal ought to prevail, the Court may, if it thinks fit, cause the reason for appeal forthwith to be amended upon such terms and conditions, if any, as the Court may think just:

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 appellants have been thereby deceived or misled, it shall be lawful for the Court either to refer the case back to the lower court with directions to re-hear and determine the same or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.

17. Defects in notice of appeal or recognizance

No objection shall be taken or allowed on any appeal to any notice of appeal which is in writing or to any recognizance entered into under this Order for the due prosecution of such appeal for any alleged error or defect therein, but if any such error or defect appears to the Court to be such that the respondent on such appeal has been thereby deceived or misled, it shall be lawful for the Court to amend same 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 deem just.

18. Additional evidence

The Court may, in any case where it may consider it necessary that evidence should be adduced, either:

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

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

19. Mode of taking evidence

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

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

(3) Evidence taken in pursuance of rule 18 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 18, the lower court may express its opinion on the demeanour of the witnesses and of the value of their evidence and may also, if it is the same court against whose decision the appeal has been made, state whether or not it would have come to a different decision had the additional evidence been brought forward at the trial.

20. Fees

The fees in the second schedule shall be chargeable in civil appeals, save where same would have to be paid by a government officer acting in his official capacity or where the lower court or the Court waives or remits same on the ground of poverty of the person chargeable therewith where it appears that there are substantial grounds of appeal.

2nd Schedule

21. Allowance to witnesses

Allowances may be made to witnesses in accordance with the provisions of the third schedule.

3rd Schedule

22. Stay of execution

(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 money or the value of the property affected by the decision or

said sum;

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

(c) That the appellant shall, where the decision or judgment appealed from relates to possession of land 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 such performance within the time so limited, execution may be issued or proceeded.

(3) An application for stay of execution under the enactment establishing the lower court, may be made at any time after judgment of the notice of appeal and shall in the first instance, be made to the lower court;

Provided that, 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 made 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 it 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 proceedings shall be invalidated except so far as either court may direct.

23. Costs

judgment appealed from, or give security to the satisfaction of the Court for the

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

24. Security for costs

(1) The Court may, in special circumstances, upon application on notice by motion (original or interlocutory as the case may require), supported by affidavit, order the appellant to deposit such sum or give such security as may seem fit for the respondent's costs of appeal, including the costs incidental to the application.

(2) The order shall limit the time (not exceeding thirty days) within which the deposit or security shall be made or given and may direct that in default of its being made or given within the time so limited, the appeal shall without further order stand dismissed.

(3) Where an appeal so stands dismissed, the respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such costs may be stated in the order in anticipation or may be assessed at any time by the Court of its own motion or on notice given within (30 days) of such dismissal (but not otherwise).

(4) Where an appeal so stands dismissed, the appellant shall take no further step or proceedings therein, save by leave of the Court for reinstatement of the appeal, which may be granted on such terms (if any) as may seem fit upon application by motion on notice given within (30 days) 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), costs shall not normally be granted to the applicant save where the net proceeds of execution levied on the appellant's goods are sufficient to satisfy the amount payable under the judgment or decision appealed from.

25. Orders of High Court to be certified to Magistrate's Court

(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 in conformity with the judgment or order of the Court and, if necessary, the records shall be amended in accordance therewith.

26. Enforcing of Judgment

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

27. Enforcement of orders

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

28. High Court may enlarge time

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

29. Interpretation

In this Order:

"**the lower court**" means the Court whose judgment is appealed against, and includes a Magistrate's Court but does not include an Arbitrator, a Referee or an Auditor;

ORDER 61

APPEALS TO THE HIGH COURT

FROM DECISIONS OF AUDITORS

1. Application

"**Judgment**" includes an order or a ruling.

This Order shall apply to any appeal to the Court from a decision of an auditor made under the provisions of any written law which confers the right to appeal to the High Court against any such decision.

2. Method of appeal

An appeal to the Court from a decision of an auditor shall be by notice of motion.

3. Evidence

The evidence upon the hearing of the appeal, shall be by affidavit except in so far as the Court at the hearing, may direct oral evidence to be given.

4. Service

The notice of motion shall be served before the expiration of six weeks after the date of the decision of which it relates, upon the auditor in charge of the audit in respect of which the decision has been made and also upon the local government or other body in relation to whose accounts or to the accounts of whose officer the decision was given, if that local government or other body is not the appellant.

5. Contents of notice, date of hearing

The notice of motion shall state the grounds of appeal and the date mentioned in the notice for the hearing of the appeal shall not be less than twenty-eight days after the service of the notice.

6. Reasons for appeal to be filed

(1) The appellant shall within seven days after service on the auditor, of the notice, of motion file with the Registrar, a copy of such notice and an affidavit or affidavits setting out the reasons stated by the auditor for his decision and the facts upon which the appellant intends to rely at the hearing, and thereupon the motion shall be set down for hearing.

(2) If the notice of motion is not set down in accordance with this provision, either the local government or other body or the auditor, may apply to the Court, upon notice to the appellant, for an order discharging the notice of motion and for the costs of the application.

7. Copy of affidavits to be served on the parties

The appellant shall deliver forthwith, to the local government or other body and to the auditor, a copy of any affidavit filed under rule 6 in support of the motion and any person intending to oppose the motion shall four days at least before the hearing, deliver to the appellant, a copy of any affidavit intended to be filed by him in opposition to the motion.

8. Service on Auditor other than the Auditor who gave the decision

Where under rule 4, notice of motion is served on an auditor other than the auditor who gave the decision, that auditor may appear in opposition thereto in all respects as if he were the auditor by whom the decision was given and these provisions shall apply accordingly.

ORDER 62

FEES AND ALLOWANCES

1. Fees

(1) Subject to the provision of any written law and the following Orders:

(a) The fees set out in the Second, Third and Fourth Schedules hereunder, shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in those schedules.

2nd, 3rd and 4th Schedules

(b) *Allowances*

The allowances set out in Part II of the Second Schedule shall be payable to the various categories of witnesses mentioned therein, by any person at whose instance they testify;

(Part II of 2nd 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. Regulations

The regulations set out in the Fourth Schedule shall be observed by all officers of Court concerned with the rendering of services, and/or collection of fees payable, under the provisions of the foregoing Orders.

(4th Schedule)

Fees and Allowances

1. Fees Appendix 1

(1) Subject to the provisions of any written law and of the foregoing Orders, the fees set out in Appendix 1 to these Rules, shall be payable by any person commencing the respective proceedings, or desiring the respective services for which they are specified in the Appendix.

Exemptions

(2) These fees are waived in respect of a party which is or represents a Government Ministry, non-Ministerial Departments, Federal, State and Local Government or any of their agencies.

Allowances: Appendix 2

(3) The allowances set out in Appendix 2 to these Rules, shall be payable to the various categories of witnesses mentioned therein by any person at whose instance they testify. A witness who testifies at the instance of the Court, acting on its own motion, shall be paid out of public revenue.

2. Regulations Appendix 3

The regulations set out in Appendix 3 to these rule shall be observed by all officers of Court concerned with the rendering of services and/or collection of fees payable under the provisions of the foregoing Orders.

1. Order to be made

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

2. Other procedure rules

The Chief Judge may modify or add to the list of rules set out in the Appendices to these

Rules.

3. Recovery of Penalties and cost

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

4. Notice

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

5. Filing

A document shall not be filed unless it has endorsed on it, the name and number of the case, the date of filing, the telephone and e-mail address of the legal practitioner filing, and whether filed by the claimant or defendant, and on being filed, the endorsement shall be initialed by the Registrar.

6. Fees: Appendix 4

The fees set out in Appendix 4 to these Rules, may be charged in respect of the duties of a notary public or of a notarial act and other duties therein mentioned.

7. Where no rules exist

Where a matter arises in respect of which no provision or no adequate provisions are made in these Rules, the Court shall adopt such similar procedure in other Rules as will in its view do substantial justice between the parties concerned.

ORDER 63

POWERS OF THE CHIEF JUDGE TO AMEND RULES AND ISSUE PRACTICE DIRECTIONS

1. Power of Chief Judge over new Rules

Whenever additional provisions are made to these Rules or any part thereof is amended or modified, the Chief Judge may issue directives for addition, publication or reprint of supplements to these Rules.

2. Publication of new Rules

Whenever the Chief Judge makes amendment or modification to these Rules, it shall be sufficient to publish same as supplemental provisions without the necessity of new body of Rules, except when necessary.

3. Chief Judge's power to issue practice directions, etc.

The Chief Judge shall have the power to issue practice directions, protocols, directives and guidance towards the realization of speedy, just and effective administration of justice.

4. Practice directions, etc, to be published

Such practice directions, protocols, directives and guidance, shall be published in the State Gazette and be given effect towards the realization of the fundamental objective of these Rules.

ORDER 64

ESTABLISHMENT OF COMMUNICATIONS AND SERVICE CENTRE FOR E-FILING

1. Power of the Chief Judge

The Chief Judge may issue directions to establish communication and service centre for the purpose of achieving the fundamental objective of these Rules, which may include designated electronic filing sites for on-line filing of processes and documents.

2. Further rules thereof

The Chief Judge may make such further rules to guide the effective operation of the communications and service centre for E-filing.

3. Time for establishment

"The Chief Judge from time to time, may make necessary rules and issue appropriate practice directions for the establishment, upgrading and updating of the communications and E-filing Service Centre."

FORM I

General Form of Writ of Summons, etc. (0.3, r.5)

20.....

(Here put the letter and number (see note (a) following this form).
In the High Court of Edo State

In the ……Judicial Division
Suit No.....

Between
A. B. ..... Claimant
and
C. D.....Defendant

To C.D. ….....in the .....of.....You are hereby commanded that within forty-two 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 of 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.

N. B:

This writ is to be served within six calendar months from the date thereof or if renewed, within three calendar months from the date of the last renewal, including the day of such date and not afterwards.

Forms of Writ of Summons, etc., continued

The defendant may enter appearance personally or by legal practitioner either by handing in the appropriate form, duly completed, at the Registry of the High Court of the Judicial Division in which the action is brought or by sending them to the Registry by registered post.

Endorsements to be made on the writ before issue thereof:
The claimant's claim is for, etc. (b) .....
This writ was issued by G H ...of..... whose address for service (c) is ..... agent for ..... of. .....legal practitioner for the said claimant who resides at (d). ..... (mention the city, town district and also the name of the street and number of the house of the claimant's residence, if any).

Endorsement to be made on copy of the writ forthwith after service.

This writ was served by me at..... on the defendant (here insert mode of service on the .....day of.....20.....Endorsed the .....Day of .....20.....

.....
(Signed)

.....
(Address)$_N$

Note:

(a) Heading and Title- if the action for administration, the writ must be headed "In the matter of the Estate of..... deceased." lf it is a debenture holder's action, the writ must be headed in the matter of the company, and in a probate action- "In the Estate of A.B. deceased."A writ of summons claiming administration of a trust or settlement may be instituted as "In the matter of the (Trust or settlement)."

(b) Endorsement of Claim-if the claimant sues or the defendant is sued in a representative capacity, the endorsement must state in what capacity the claimant sues or the defendant is sued. See 0.4 r.2. If the claim is a debt or liquidated demand only, the Endorsement, even though not special, must strictly comply with the provisions of O.4 r. 4 including a claim for four days' costs.

(c) Address for Service-see O. 4. r. 6. The address must be within the jurisdiction.

(d) Address of Claimant-In the case of a company in liquidation the claimant's address should run ".....claimants, who is a company in liquidation. The liquidation is (name of liquidator), of (address of liquidator)."

In the case of a foreign corporation within the meaning of part 10 of the Companies and Allied Matters Act. the claimants' address should run thus: "..... claimants, who are a foreign corporation within the meaning of the Companies and Allied Matters Act. The registered name and address of the person to be served are (here add registered name and address)."

(e) Endorsement of Service-See O.7. r. 13.

(f) Probate Actions-In these actions, the endorsement of claim must show the nature of the claimant's interest, under which he claims (0.4, r. 3), and the alleged interest of the defendant.

The Registry, High Court of Edo State
In the..... Judicial Division

A sufficient affidavit in verification of the endorsement on this writ to authorise the sealing thereof has been produced to me this.....day of ..... 20. .....

.....
(Signature of Registrar)

Before the writ is issued, the following certificate must be endorsed on it·

FORM 2

Writ for Service out of Nigeria
(O. 3, r. 8)

To C.D. of..... you are hereby commanded that within (here insert the number of days directed by the Court or Judge ordering the service or notice) days after service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you i n the ..... Judicial Division of the High Court of Edo State in an action at the suit of 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. ..... by order of the Court.

.....
Registrar

Memorandum to be subscribed on the writ.

N. B:
This writ is to be served within six calendar months from the date thereof, or, if renewed, within three calendar month from the date of the last renewal, including the day of such date, and not afterwards. The defendant (or defendants) may appear hereto by entering appearance (or appearances) either personally or by legal practitioner at the Registry of the judicial division in which the writ is issued.

This writ was served (as in Form No. 1).

Endorsement to be made on the writ before the issue thereof:

N. B:
This writ is to be used where the defendant or all the defendants or one or more defendants is or are out of the jurisdiction.

Note:

The above endorsement "N.B." must be on every writ or concurrent writ for service out of the jurisdiction. The endorsement "N.B." need not be made on a writ against defendants domiciled abroad, but whom it is intended to be served on within the jurisdiction. Endorsement: If the claim is for a debt or liquidated demand only, the endorsement, even though not special, must strictly comply with the provision' of O.4 r. 4, including a claim for costs.

See also notes to Form No. l, supra

FORM 3

General Form of Originating Summons
(O. 3, r. 12)

In the High Court of Edo State

In the.....Judicial Division

(If the question to be determined arises in the administration of an estate or a trust, entitle it: In the matter of the estate or trust.)

Between

A.B ..... Claimant

and

C.D. and E. F ..... Defendants

Let..... of..... in..... within forty-two days after service of this summons on him, inclusive of the day or such service, cause an appearance to be entered for him and file any other process in response to this summons which is issued upon the application of ……... of..... who claims for the determination of the following questions: (State the questions).

DATED the .....day of .....20.....

This summons was taken out by .....legal practitioner for the above-named .....

The defendant may appear hereto by entering appearance personally or by legal practitioner either by handing in the appropriate forms, duly completed at the High Court registry of the .....Judicial Division of Edo State or by sending them to that office by post.

Note:
If the defendant does not enter appearance within the time and at the place above mentioned, such orders will be made and proceedings may be taken as the Judge may think just and expedient.
.

FORM 4

Originating Summons
(O.3, r 12)

No.....of 20 .....

In the High Court of Edo State

In the..... Judicial D1vision

Suit No.....

In the matter of A. B. a legal practitioner (Re Taxation of costs, etc.) (or as may be).

Let A.B. of .....attend the Court, (or Chief Registrar's Office) High Court of Edo State on the ..... day of ..... 20..... at 9 O'clock in the forenoon (on the hearing of an application on the part of. .....). (State relief sought).

(If for leave to endorse award under the Arbitration Act, add, *"And that the respondent pays the costs of this application to be taxed"*).

DATED the ..... day of .....20..... This summons was taken out by.....

Note:
It will not be necessary for you to enter an appearance in the *HIGH COURT REGISTRY,* but if you do not attend either in person or by your legal practitioner, at the time and place above mentioned (or at the time mentioned in the endorsement thereon), such order will be made and proceedings taken as the Judge may think just and expedient.

FORM 5

Form of *ex-parte* Originating Summons
(O.3, r.12)

In the High Court of Edo State

ln the,.....,. .....Judicial Division

Suit No.....

In the matter of A.B. an infant (or, as may be). Let all parties concerned attend before the Judge or (Chief Registrar's Office). High Court, Edo State, at the time specified in the margin hereof, on the hearing of an application on the part of the above named A.B, an infant, by C.D. his next friend, that etc.

This summons was taken out by ..... of ..... agents for ..... of .....legal practitioner for the applicant

FORM 6
CERTIFICATE OF PRE-ACTION COUNSELLING
(O.3 r.3 (e))

I, *(full name of legal practitioner)* certify that as legal practitioner representing *(full name of party)* the claimant/ defendant has counseled my client in the strength and weakness of his cause or matter and informed him/ them of the opportunities available for the alternative dispute resolution of this case and the possibility of a reconciliation between the parties being effected either with or without the assistance of such an organization and should this matter turn out to be frivolous, I am prepared to be liable as per the provisions of the rules of this court.

Dated this……day of……20……

Legal practitioner's name and Signature.

FORM 7

Form of Memorandum for ReneWed Originating Process
(O.6. r.6 (2))
(Heading as in form No. 1)

Seal renewed Originating Process in this action endorsed as follow:
The originating Process renewed on the .....day of.....20.....pursuant to Order of Court made .....day of.....20..... for 3 months

(Copy original Originating Process and the endorsement).

FORMS 8

Request to Minister of Affairs to Transmit Writ to Foreign Government (O. 8, r. 3(a))

The Chief Judge of Edo State presents his compliments to the Minister of Foreign Affairs, and encloses herewith, a notice of a summons issued in an action of A.B……Versus……C…… ……..D… .....pursuant to orders, out of the Judicial Division of the High Court of Edo State for transmission to the Ministry of Foreign Affair in (name of country with the request that same may lie served personally upon (name of defendant to be served) against whom proceeding have been taken in the.....Judicial Division of the High Court of Edo State and with the further request that such evidence of the service of same upon the said defendant, may be officially certified to the High Court of Edo State, or declared upon oath, or otherwise, in such manner as is consistent with the usage or practice of the courts of the (name country) in proving service of legal process.

The Chief Judge further request that in the event of efforts to effect personal service of the said notice of writ proving ineffectual, the Government or Court of the country be requested to certify same to the High Court of Edo State.

FORM 9

Request for Service Abroad (Title as in for No.4) (O. 8 r. 3(b))

I (or we) hereby request that the writ of summons in this action be transmitted through the proper channels to(name of country) for service (or substituted service) on the defendant (naming him)at(address of defendant) or elsewhere in (name of country, And I (or we) hereby personally undertake to be responsible for all expenses incurred by the Ministry of Foreign Affairs in respect of the service hereby requested, and on receiving due notification of the amount or such expenses. I (or we) undertake to pay same into the High Court Registry for transmission to the permanent secretary of the Ministry of Foreign Affairs.

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

….....

Signature of Legal Practitioner

FORM 10

Letter ForWarding Request for Substituted Service (0.8, r.3(d))

The Chief Judge of Edo State presents his compliments to the Minister of Foreign Affairs and endorsed herewith, a writ of summons in the case of ..... versus ..... in which the claimant has obtained an order of the. .....Judicial Division of the High Court of Edo State (which is also enclosed) giving leave to make a request that the said writ may be served by substituted service on the ....at. ..... in the (name of country).

The Chief Judge requests that the said writ and order may be
forwarded to the proper authority in (name of country) with the request that same may be transmitted by post addressed to the defendant at (the last known place of abode or the place of business.) of the said defendant or there delivered in such manner as may be consistent with the usage or practices of the courts of (name of country) for Service of legal process where personal service cannot be effected; and with the further request that same may be officially certified to the ... . Judicial Division of the High Court of Edo State, or declared upon oath, or otherwise, in such manner as is consistent with the practice of the courts of the (name of country) in proving service of legal process.

FORM 11

MEMORANDUM OF THE APPEARANCE (O.9, r. 9(1)) In the High Court of Edo State

The Chief Judge of Edo State presents his compliments to the Minister of Foreign Affairs and encloses herewith, a writ of summons issued in an action ..... of ..... versus the (insert name of the defendant High Contracting Party) pursuant to an order out of the..... Judicial Division of the High Court of Edo State for delivery to the Government of (insert name of the country of the contracting party) and to request that an official certificate may in due course be dispatched to the.....Judicial Division of the High Court of Edo State, stating that the writ of summons has been delivered, and on what date

FORM 12

MEMORANDUM OF APPEARANCE
(O. 9 r. 1(1))
In the High Court of Edo State

In the.....Judicial Division

Suit No.....

Between

.....Claimant(s)

and

.....Defendant(s)

Please enter an appearance for I(a) .... sued as I(b) .....

in this action.

DATED the ..... day of .....20.....

Signed ....'..... Whose address for service is l(c).....

N.B:
Additional notes for the guidance of defendants seeking to enter an appearance are given on the back, please read carefully.

Note:

1. (a) The defendant must give his or her full name

(b) Give name by which the defendant is described in the writ if this differs from defendant's full name, otherwise delete words "such as"

(c) A Defendant appearing in person must give his residence or some other place within the Judicial Division of Edo State to which communication for him should be sent. Where he appears by a legal practitioner, the legal practitioner's place of business should be given.

2. Where the defendant is a firm, the appearance must be entered by the individual partners by name with the description "Partner in the firm of... ....."

3. Where the defendant is an individual trading in a name other than his own, the appearance must be entered by him in his own name with the addition of the description "Trading as".

4. Where the defendant is a limited liability company, the appearance must be entered by a legal practitioner.

5. Where the appearance is being entered by leave of the Court, a copy of the order granting leave must accompany this Form.

6. Where the defendant has no defence or admits the claimant's claim, the entry of appearance will delay judgment and may increase the costs payable by the defendant.

7. Acknowledgment of service shall be as follows:

1. ..... acknowledge that on the ..... day of .....

20.....at (time and place) received the following documents :

(a) .....
(b) .....
(c) .....

I also acknowledge that I am the person referred to in the sealed copy of the originating process.

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

.....
Signature

FORM 13

Notice of Counter-Claim
(O.17 r.8)

In the .....Judicial Divi ion

Between

A.B.....Claimant

and

C.D.....Defendant

To the within-named X. Y.

Take notice that if you do not appear to the counter-claim of the within-named C. D. within 8 days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

Appearance to be entered at the.....Judicial Division High Court Registry Edo State

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

.....
Legal Practitioner/Claimant .

FORM 14

Concession to Defence
(O.17, r. 15)
In the High Court of Edo State

In the… ..... Judicial Division

Between

A.B…. .....Claimant

And

C.D.E.F. and G.H…. .....Defendant(s)
The claimant concedes to the defence stated in the paragraph.....of the defendant's defence (or, of the defendant's further defence).

DATED this ……day of ……..20……

.....……
Legal Practitioner/Claimant.

FORM 15

Notice of Payment into Court
(O., 21, r. 1(6))

In the High Court of Edo State

In the..... Judicial Division

Between.

A.B. ..... Claimant and
C.D.E. F. and G H..... Defendants

Take notice that the defendant ..... has paid into Court to..... and says that (. ..... paid of) that the sum is enough to
satisfy the claimant claim (for and N.....the other part of that sum is enough to satisfy the claimant's claim for.....)

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

.....
Mr. P.O. legal practitioner for the defendant. C.D.

To X. Y. the claimant's legal practitioner, and to Mr. R. S. legal practitioner for the defendant E. F.

To be signed by the cashier, High Court.

I received the above sum of ..... Naira

.....kobo ..... into Court in this action.

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

FORM 16

Acceptance of sum Paid into Court
(O.21, r. 2(1))
In the High Court of Edo State

In the ..... Judicial Division

Between

A.B. .....Claimant

and

C.. D., E. F., and G H. ..... Defendants

Take notice that the claimant accepts the sum of N. ..... paid by the defendant (C.D.) into Court in satisfaction of the claim in respect of which it was paid in (and abandons his other claims in the action).

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

.....
X. Y. Claimant's Legal Practitioner

To

Mr. P. O. legal practitioner for the defendant C. D. and Mr. R. S. legal practitioner for the defendant E. F.

FORM 17

Acceptance of sum Paid into Court By one of Several Defendants (O.21, r. 4(2))

In the High Court of Edo State

In the. .....Judicial Division

Between

A.B. .....Claimant

and

C.D.E. F. and G H.....Defendants

Take notice that the claimant accept the sum of N. ..... paid by the defendant C.D. into Court, in satisfaction of his claim against the defendant C.D.

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

.....
X.Y. Claimant's Legal Practitioner

To:

Mr. P. O. legal practitioner for the defendant C.D. and Mr. R.S. Iegal practitioner for the defendant E. F.

FORM 18

Acceptance of sum Paid into Court (O.21, r. 2(1)) In the High Court of Edo State

in the .....Judicial Division
Holden at ……..
Suit No……..
This Honourable Court hereby orders that the matter
between……
….....Claimant
Address……
..
And
……
….....Defendants
Address……

Be referred to the Edo State Multi-Door Courthouse for settlement.
By Order

……
Honourable Judge

FORM 19

Interrogatories
(O.27, r. 2)
In the High Court of Edo State

In the ..... Judicial Division

Suit No .....

Between

A.B.....Claimant

and

C.D., E. F. and G H ..... Defendants

Interrogatories on behalf of the above-named (claimant or defendant C.D.) for the examination of the above-named (defendants E.F. and G H. or claimant).

1. Did not, etc.

2 Has not etc.

(The defendant E. F. is required to answer the interrogatories numbered .....)
(The defendant G.H. 1s required to answer the Interrogatories numbered.....

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

. .....
Legal Practitioner/Claimant

FORM 20

AnsWer to interrogatories
(O. 27 r. 6)

In the High Court of Edo State

In the.....Judicial Division

Suit No .....

Between

A.B..... Ciaimant

and

C.D..E.F. and GH ..... Defendants

The answer of the above named defendant E.F., to the interrogatories for his examination by the above-named claimant

In answer to the said interrogatories, I the above-named E.F. make oath and say as follows:

I, the above-named defendant E.F. do hereby solemnly swear by Almighty God that this is my name and handwriting and that the facts deposed by me in this affidavit arc the truth. the whole truth and nothing but the lnlth.

.....

Deponent

Sworn to at the High Court Registry,
on the .... Day of .....20.....

Before me

Commissioner for Oath

FORM 21

Affidavit as to Document
(O. 27 r. 8 (3))

In the High Court of Edo State

In the ..... Judicial Division

Suit No .....

Between

A.B. .....Ciaimant

and

C.D..E.F. and GH..... Defendants

I, the above-named defendant CD., make oath and say as follows:

1. I have in my possession or power, the documents relating to the matters in question in this suit set forth in the first and second par1s of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto (state grounds of objection).

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on (stale when, and what has become of them and in whose possession they now are).

5. To the best of my I. knowledge, information and belief. I have not now, and never had in my possession, custody or power. or in the possession. custody or power of my legal practitioner or agent. or in the possession. custody or power of any other persons or person on my behalf, any deed, account, book of account. voucher. receipt,. letter, memorandum, paper, or writing, or any copy extract of any such document. or any other document whatsoever, relating to the manners in question in this suit, or any of them, or wherein any entry ha\ been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedule hereto.

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

(ILLITERATE JURAT)

.....

.....

FORM 22

Form of Order for Accounts and Inquiries
(O. 28 r. 11)

In the High Court of Edo State

In the.....Judicial Division

Suit No .....

Between

A.B. .....Claimant

And

C D.. E. F. and G. H. ..... Defendants

This Court doth order that the following accounts and inquiries be taken and made; that is to say:

I.

2.

3.

4.

And it is ordered that the following further inquiries and accounts be made and taken; that is to say:

5.

6.

7

8

And it is ordered that the further consideration of this cause be adjourned and any of the parties are to be at liberty to apply as they may be advised.

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

.....

Registrar

FORM 23

Legal Practitioner's Undertaking as to Expenses
(O. 32 r. 8(a))

(Heading as in Form No. 1)

I (or We) hereby undertake to be responsible for all expenses incurred by the Ministry of Foreign Affairs in respect of the letter of request issued herein on the.....and on receiving due notification of the amount of such expenses, undertake to pay same as directed by the Chief Registrar of the High Court.

The following have been appointed as agents for the parties in connection with the execution of the above letter of request.

Claimant's Agent ..... of..... .....
Defendant's Agent .....of .....

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

.....
Legal Practitioners for
.....
.....

FORM 24

Letter of Request to take Evidence Abroad
(Convention Country)
(O. 32 r. 8(b) (1))

To the Competent Judicial Authority of ..... in the. ..... of . .....Whereas a civil (commercial) action is now pending in the ..... Judicial Division of the High Court of Edo State, Nigeria. in which ..... is the claimant and .....is the defendant and in the said action the claimant claims .....

And whereas it has been represented to the said Court that it is necessary for the purpose of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is.....of ..... and.....,.....of and it appears that such witnesses are resident within your jurisdiction.

Now. the Chief Judge of the High Court of Edo State Nigeria, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you will be pleased to summon the said witnesses (and such other witnesses being the agents of the said claimant and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before you or such other person as according to your procedure is competent to take the examination of witnesses and that will cause such witnesses to be examined (upon the interrogatories which accompany this letter of request and viva voce*)* touching the said matters in question in the presence of the agent, so the claimants and defendant or such of them as shall, or due notice given attend such examination.

And I further have the honour to request that you will permit the agents of both the said claimant and defendant or such of them as shall be present to be at liberty to examine (upon interrogatories and viva *voce* upon the subject-matter thereof or arising out of the answers thereto) such witnesses as may, after due notice in writing, be produced on their behalf, and give liberty to the other party to cross-examine the said witnesses (upon cross-interrogatories and *viva voce and* the party producing the witnesses for examination is at liberty to re-examine them viva *voce.*

And I further have the honour to request that you will be pleased to cause (the answers of the said witnesses and all additional *viva voce* questions, whether on examination, cross examination or re-examination, the evidence of such witnesses to be reduced into writing and all books, letters, papers and documents produced upon such examination to be duly marked for identification and that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as is in accordance with your procedure, and to return same together with (the interrogatories and cross interrogatories), and a note of the charges and expenses payable in respect of the execution of the request through the Ministry of Foreign Affairs from whom the name was received for transmission to the said High Court of Edo State.

And I further beg to request that you will cause me, or the agents of the parties if appointed, to be informed of the date and place where the examination is to take place.

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

.....
Judge

Note:
If the convention requires that the invitation or notice to the witnesses must expressly state that no compulsory powers may be used, this requirement must be complied with.

FORM 25

Order for Appointment of the Nigeria Diplomatic Agent As Special Examiner (in Convention Country) (O. 32 r. 9)

(Heading as in Form No. 1)

Upon hearing the legal practitioners on both sides and upon reading the affidavit of . ....., It is ordered that the Nigerian Diplomatic Agent or his deputy at..... be appointed as Special Examiner for the purpose of making the examination, cross-examination and re- examination, *viva voce,* on oath or affirmation of ..... witnesses on the part of .... at..... aforesaid. The examiner shall be at liberty to invite the attendance of the said witnesses and the production of documents, but shall not exercise any compulsory powers, otherwise such examination shall be taken in accordance with the Nigerian High Court Procedure.

The..... legal practitioners to give to the legal practitioners .....days after the service of such notice, the legal practitioners for the claimants and defendants respectively do exchange the names of their parties at..... to whom notice relating to the examination of the said witnesses may be sent. That .....days (exclusive of Sunday prior to the examination of any witness held under notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party unless such notice be dispensed with). That the depositions when taken together with any documents referred to therein or certified copies of documents or of extracts therefrom, be transmitted by the examiner under seal, to the Chief Registrar of the High Court of Edo State, Nigeria, on or before the ..... day of ..... next, or such further or other day as may be ordered, there to be filed in the proper office. That either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions. That the trial of the action be stayed until the filling of such depositions. That the costs of and incidental to this application and such examination be costs in the action.

Note:
If the Convention requires that the invitation or notice of the witnesses must expressly state that no compulsory powers may be used, these requirements must be complied with.

FORM 26

Form of Praecipe
(O. 32 r. 21)

In the High Court of Edo State

In the .....Judicial Division

Suit No .....

Between

A.B.....Claimant

and

C.D..and others ..... Defendants

Seal Writ of *Subpoena* ..... on behalf of the.....directed on . .....returnable.

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

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

Legal Practitioner for the ....

FORM 27

Subpoena ad Testificandum
(O. 32 r. 22)

In the High Court of Edo State

In the ..... Judicial Division

Suit No .....

Between

A.B. ..... Claimant

And

.....Defendant

To ..... of..... You are commanded in the name of the Governor of Edo State to attend before this Court at ..... on .....the ..... day of ..... 20 ..... at ..... O'clock in the forenoon. and so from day to day till the above cause is tried, to give evidence on behalf of the.....

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

.....

Judge

FORM 28

Habeas Corpus Ad Testificandum
(O. 32 r. 22)

In the High Court of Edo State

In the ..... Judicial Division
Suit No .....

Between

A.B. .....Claimant

And

.....Defendant
... .The Controller of Prison at .....) you are commanded in the name of the Governor of Edo State to have.....who it is said is detained in your custody in Prison at ..... before the ..... at.....on.....the ..... day..... at. .....O'clock in the forenoon; and so from day to day until the above action is tried to give evidence in the above-named cause and immediately after the said. ..... shall have so given *his* evidence, you shall duly conduct him to the prison from which he shall have been brought.

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

....
Judge

FORM 29

Subpoena Duces Tecum (Ad Testificandum)
(O. 32 r. 22)

In the High Court of Edo State

In the ..... Judicial Division
Suit No .....

Between

A.B. .....Claimant

And

.....Defendant

To ..... of .....You are commanded in the name of the Governor of Edo State to attend before this Court at ..... on .....the ..... day of ..... 20 ..... at.....O'clock in the forenoon and so from day to day until the above cause is tried, to give evidence on behalf of the. .....and also to bring with you and produce at the place aforesaid.....

(Specify Document to be produced)

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

.....
Judge

FORM 30

Form of Guarantee for the Defaults of a Receiver (O. 39 r. 10)

In the High Court of Edo State

In the ..... Judicial Division

Suit No:……

PARTIES

Re……Vs…….Guarantee for N…..... Annual premium N……This guarantee is made the… ..... day of……..20… ..... Between (XYZ) of (called "The Receiver") of the first part, and ……of… ..... (called "the surety") of the second part and The President of the Federal Republic of Nigeria. By an order of the High Court of Edo State….....Judicial Division dated the……day of……20…….and made in the above-mentioned action the receiver has been appointed to receive (and manage) (follow words of the order). And it was ordered that the Receiver should give security to the satisfaction of the Judge on or before the ..... day of……..20……

The surety in considerable of the annual premium stated above at the request of the Receiver has agreed to issue this guarantee agreeable to the Judge as proper security pursuant to the court order.
Now this guarantee witnesses as follows:

1. The Receiver and the surety jointly and severally convent with the president of the Federal Republic of Nigeria and his successors that the Receiver shall and will from time account for what he has already received since the date of the order appointing him and shall further receive or for what since the date of the appointing him he has or shall be become liable to pay or account for as such Receiver (and manager) including as well every sum of money or other property received during the period for which he has been appointed. Also every sum of money or other property received for any extended period for which he may be appointed and shall pay or deliver every sum or property as the court or a Judge may direct

2. It is hereby mutually agreed as follows:

a) If the Receiver shall not for every successive twelve moth to be computer from the date of his appointed as such receiver as aforesaid or within fifteen days after expiration of such twelve months pay the office of the surely the annual premium or sum of N… .....then the surely shall be at liberty to apply by summons in the action to be relieved from all further liability as surety under this guarantee except any damage or loss occasioned by any act or default of the receiver in relation to his duties as receiver (and Manager) prior to the hearing and determination of such summons.

b) A statement under the hand of any registrar of the High Court of Edo State of the amount which the receiver is liable to pay and has not paid under this guarantee and that the loss or damage has been incurred through the act or default of the receiver, shall be conclusive evidence in any action or information by the President of the Federal Republic of Nigeria against the receiver and surety or either of them or by surety against the receiver of the truth of the contents of such statement and shall constitute a binding charge not only against the receiver and his personal representatives but also against the surety and his funds and property without being necessary for the President of the Federal Republic of Nigeria to take any legal or other proceeding against the receiver for the recovery and without any further proof being given in that behalf in any action to enforce this guarantee.

c) The liability of the surety under this guarantee is limited to the sum of N…… provided nevertheless that a register of the High Court may be his signature to the endorsement on this guarantee (in the form printed) reduce the said liability of the surety further or with the consent of the surety by an instrument in writing duly executed increase such liability shall continue in full force but in that case the premium shall be correspondingly reduced or increase.

3. It is further agreed between the receiver and the surety as follows:

a) The receiver on being discharge from his office or the surety to act as receiver (and manager) shall give written notice to the surety by registrar post and also within 7 days of such notice furnish to the surety free of charge an office copy of the order, if any, of the Judge discharging him.

b) The receiver and his personal representatives shall at all times indemnify the surety and its property and funds against all loss damage, costs and expenses which the surety or its funds or property may or might otherwise sustain by reason of the surety having executed this guarantee at his request.

In witness, the receiver has his hand seal and the surety has caused its Common Seal to be affixed the ……day of……20……in the matter of …..... increase liability.

To be attached by way endorsement of guarantee

The liability of the surety under the guarantee has, with the consent of the receiver and the surety, been increased from N……..to N……for any acts or omissions to which the guarantee relates committed by the receiver subsequent to the date the total liability of the surety for both the guarantee and his endorsement being limited to the increased sum above stated.

Sealed with the seal of the receiver and also the Common Seal of the surety this…..... day of……20… ..... as evidence of such increased liability and the admission by the receiver and the surety respectively.

Signed, sealed and delivered by……..the receiver in the presence of ……the common Seal of the surety was affixed in the presence of…….

FORM 31
Receiver's Security by Undertaking
(O. 39. r .10)

In The High Court of Edo State

In the .....Judicial Division
Suit No……

PARTIES

Re…….....……vs…….....……

I, …….....……Of..... the receiver (and manager) appointed by order dated…..... (or proposed to be appointed) in this action hereby undertake with the court to duly account for all moneys and property received by me as receiver for manager) or for which I may be held liable and to pay the balance from time to time found from me and to deliver any property received by me as receiver (or manager) at such times and manner as the court or a judge shall direct.

And we.....jointly and severally (in the use of guarantee or other company strike out "jointly and severally") undertake with the court to be answerable for any default by the said, as receiver (or manager) and upon default to pay to any person as the court shall direct any sum not exceeding in the whole N…..... that may from time to time be certified by a registrar of the High Court to be due from the receiver and we submit to the jurisdiction of the court in this action to determine any claim made under this undertaking.

Dated this……day of…….20…….

Signature of receiver and his surety or sureties, In the case of a surety being a guarantee or other company, must be sealed or otherwise duly executed.

FORM 32

Receiver's Account
(O.39. r 13)
(TITLE)

Suit No……. of 20 ……

The (. .....) account of A.B., the receiver appointed in this cause (or, pursuant to an order made in this cause, dated the .....day of….....), to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate of C.D, the testator (or intestate) in this cause named, from the…… day of……..
(To accord with the order)

REAL ESTATE – RECEIPTS

No of item	Date when received	– –	Description of premises	Annual rent	Arrears due at ……	Amount received	Amount due at ……..	Amount remaining due	observations
				₦	₦	₦		₦	

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE

No of item	Date of payment or allowance	Names of persons to whom paid or allowed	For what purpose paid or allowed	amount	
			One year's insurance of due ……..		
			Bill for repairs at house let to ……		
			Allowance for a half-year income		
			Tax, due …….		
			Total Payments ₦		

RECEIPT ON ACCOUNT OF PERSONAL ESTATE ACCOUNT

PAYMENT AND ALLOWANCES ON PERSONAL ESTATE PERSONAL ESTATE

No of item	Date when received	Names of persons from whom received	On what account received	Amount Received	No of item	Date when paid or allowed	Names of persons to whom paid or allowed	For what purpose paid or allowed	Amount paid or allowed

SUMMARY

₦ ₦

Amount of balance due from receiver on account of real estate on test account …….....……..
Amount of receipts on the above account of real estate…….....…….

Balance of fast account paid into court…….....……
Amount of payments and allowances on the above account of real estate…….....
Amount of Receiver's costs of passing this account as to real estate.....₦

Balance due from the Receiver on account of real estate
Amount of balance due from Receiver on last account of personal estate …….....
Amount of receipts on the above of personal estate…. .....₦

Balance of last account paid into court …….....….
Amount of payments and allowance on the above account of personal estate…….
Amount of receiver's costs of passing this account as to personal estate……..
Balance due from the receiver on account of personal estate .....₦

FORM 33

Affidavit Verifying Receiver's Account

(O.42, r. 14) (O.39 r.14)

In The High Court of Edo State

In the .....Judicial Division

Suit No:……...

Between:

A.B ..... Claimant (s)

And

C.D. and E.F..... Defendant(s)
I,……..of .....the Receiver appointed …..... in this cause, make oath and states as follows:

1. The document now shown to me marked "A" is as specified.

2. ……..…..and ……..…….my sureties named in the guarantee (or undertaking) dated 20.... are both alive and neither of them has become bankrupt or insolvent.

3. The ……Co. Ltd, my surety named in the… ..... guarantee (or undertaking) dated.....20……is still carrying on business and no petition or other proceeding for its winding-up is pending).

Additional paragraphs as to wages and petty cash are sometimes necessary.

FORM 34

(O. 42 r. 9(11))
Certificate of the Chief Registrar
(Title as in Form 1)

In pursuance of the directions given to me by Hon. Justice… .....I hereby certify that the result of the accounts and inquiries which have, been taken and made in pursuance, of the judgment (or order) Sit this cause dated the..... Day of……20… ..... is as follows:

1. The defendants.....the executions of (the testators), have received personal estate to the amount of N ..... and they have paid, or are entitled to be allowed an account thereof, sums to the amount of N .....leaving a balance due from (or to) them of N….....on that account. The particulars of the above receipts and payments appear in the account marked verified by the affidavit of filed on the ….....…… day of……...….20… ..... and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums (state the same here or in a schedule), and except that l have disallowed the item of disbursement in the same account numbered and (or in cases where a transcript has been made).

   The defendants… ..... have brought in an account verified by the affidavit of … .....and which account is marked and is to be filed with this certificate. The account has been altered, and the account marked… ..... and which is also to be filed with this certificate, is a transcript of the account as altered and passed.

2. The debts of the testator which have been allowed, are set forth in the schedule hereto and with the interest thereon and cost mentioned in the schedule are due to the person therein named, and amount altogether to N.....

3. The funeral expenses of the testator amounted to the sum of N .....which I have showed the said executors in the said amount of personal estate.

4. The legacies given by the testators are set forth in the….....schedule hereto, and with the interest therein mentioned remain due to the persons therein named, and amount altogether to N ….....……..

5. The outstanding personal estate of the testator consists of the particulars set forth in the schedule hereto.

6. The real estate to which use the testator was entitled consist of the particulars set forth in the schedule.....hereto.

7. The defendants have received rents and profits of the testator real estate, etc, (in a form similar to that provided with respect to the personal estate).

8. The encumbrances affecting the said testator's real estate are specified in the schedule hereto.

9. The real estate of the testator directed to be sold, have been sold and the purchase moneys amounted altogether to..... and have been sold and the purchase moneys which amounted altogether to N.....have been paid into Court

Notes:
The above numbers are to correspond with the numbers in the Order after each statement, the evidence produced is to be stated as follows:

The evidence produced on this account (or inquiry) consist of the probate of the testator's Will, the affidavit of A. B, filed,……. and paragraph number of the a ffidavit of C.D, filed ……

DATED this……day of …….. 20 ……..

……
Registrar

FORM 35

(O. 40, r.10)
Writ of Habeas Corpus ad Subjiciendum
(Heading as to Form 1)

To:
The Asst Comptroller of Prisons,
Federal Prisons Service,
…….....……
You are hereby ordered to have in the High Court of Justice (or before a Judge in chambers) at …..... on the day and at the time specified in the notice served with this writ, the body of…….....…….. being taken and detained under your custody as is said, together with a statement of the day and cause of its being taken and detained, by whatever name he may be called therein, that the Court (or Judge) may then and there examine and determine whether such cause is legal, and have you there this writ.

…….
Judge

DATED this…….day of ……20…….

ENDORSEMENT

By order of Court (Honourable Justice. .....)
This writ was issued by ……..of..……..
Legal Practitioner for…….

FORM 36

(O.40. 10)
Notice to be served With Writ of Habeas Carpus ad Subjiciendum

In the High Court of Edo State

In the… .....Judicial Division (if in a cause already begun, here insert the title, not otherwise)

Whereas this Court (or the Honourable Justice……) has granted a writ of *Habeas Corpus* directed to……..... (or other person having the custody of…… if so) commanding him to have the body of… ..... before the said Court (or before the Judge in chambers), at the High Court on the day and at the time specified in this notice, together with a statement of the day and at the time specified in this notice, together with a statement of the day and cause of his being taken and detained.

Take notice that you are required by the said writ to have the body of the said…… before this Court (or before the Judge aforesaid) on ..... the…… day of .....20.....at… .....O'clock before noon, and to make a return to the said writ.

In default, thereof, the said Court will then, or so soon thereafter as counsel can be heard, tie moved to commit you to prison for your contempt in not obeying the said writ (or if in vacation, will be made to one of the Judges of the said Court for a warrant for your arrest in order that you may be held to bail to answer for your contempt in not obeying the said writ).

Dated the …… day of ……. 20 …….

(Signed): ……
Of ……..
Legal Practitioner for……

FORM 37

(O. 43 . r.9)
Writ of Habeas Corpus ad Testificandum
(Heading as in form 1)

To:

The Asst. Comptroller of Prisons,
Federal Prisons Service,
…….

You are hereby commanded to have before …… (give description of court) on ……. The …… day of …… 20 …… at..... O'clock in the forenoon, the body of …… being to testify to the truth and give evidence on behalf of ……..…… against …….. for ……..……. (description of office or other proceedings) and so from day to day until the said ……..……. shall have given his evidence as aforesaid. And when he shall have given his evidence, then you take him back without delay to the said prison under your custody and cause him to be detained therein under safe custody, until he shall from hence be discharged by due course of law.

……
Judge/Magistrate

By order of …….

ENDORSEMENT

This writ was issued by ……. of ……
Legal Practitioner for ……

FORM 38

(O.47,r.3 (1)
Warrant to Arrest Absconding Defendant
(For use in the High Court)
(General Title)

Whereas there is probable cause for believing that the defendant… ..... is about to leave (or has, or is about) dispose of, or remove (his property out of) the jurisdiction of the Court by reason whereof the execution of any judgment which may be given against him in this suit is likely to be obstructed or delayed.

You are therefore commanded to bring the said defendant before this Court forthwith, in order that he may show why he should not (give bail for his appearance at any time when called upon while this suit is pending and until execution or satisfaction of the judgment, if any).

DATED the ……. day of …….. 20…..…

……
Judge

To the Sheriff and Bailiffs of the Court.
Fee on the issue of this warrant…….....……..

Note:
If the defendant gives bail before a Magistrate or Justice of the peace in the sum of N … .....with sufficient surety (for his appearance as aforesaid) or for the satisfaction of the judgment or other property of the same or greater value, he shall thereupon, in respect of this warrant, be discharged from your custody.

FORM 39

Order for Payment of Principal Money or Interest Secured by Mortgage or Charge (O.52, r. 2)

It is ordered that the claimant do recover against the defendant N… ..... secured by a mortgage (or charge) dated the ……day of ……...20…….(being the total of the principal sum of N……..and N ……..for interest thereon at N …….. percent, per annum less tax to the ……day of (date of order) and N..... for costs (or his costs of the summons to be taxed).

And it is ordered that upon the defendant paying to the claimant, the moneys ordered to be recovered and all other moneys (if any) secured to claimant, by the said mortgage (or charge), the claimant (subject and without prejudice to the due exercise of any power of sale for the time feting vested in Aim) releases to the defendant, the security constituted by the said mortgage (or charge).

And it is ordered that all parties be at liberty to apply to the Court as they may be advised.

FORM 40

Order for Possession of Property forming a security for payment to the claimant of any principal Money or Interest (O.52,r.2)

It is ordered that the defendant do give the claimant possession on or before the…….....day of ……20…..…….....of the land hereinafter described and comprised in a mortgage (or charge) dated the……..... day of …….....…20…..…..…..that is to say… .....(description of the property).

And it is ordered that upon the defendant paying to the claimant, the moneys remaining due to the claimant upon the security of the said mortgage (or charge) the claimant (subject and without prejudice to the due exercise of any power of sale for the time being vested in him) do re-deliver to the defendant, possession of the property, subject to the said mortgage (or charge), and release to the defendant, the security constituted by the said mortage (or charge)

And it is ordered that all parties be at liberty to apply to the Court as they may be advised.

FORM 41

Order for payment of Principal Money or Interest Secured by Mortgage or Charge and for Possession of Property Comprised therein (O.52,r.2)

It is ordered that the claimant do recover against the defendant N. ..... secured by mortgage (or charge) dated the ……day of ……. 20 …… (being the total of the principal sum of N ……and N …….for interest thereon at N.....percent per annum less tax to the day of (date of order), and N.....for costs (or his costs of this summons to be taxed).

And it is ordered that the defendant, do give the claimant possession on or before the ……day of ……20…….....of the land hereinafter described and comprised in the said mortgage (or charge) that is to say……..... (description of the property).

And it is ordered that upon the defendant paying to the claimant the monies hereby ordered to be recovered and till other monies (if any) secured to the claimant by the said mortgage (or charge) the claimant (subject and without prejudice to the due exercise of any power of sale for the time being vested in Same) re-delivers to the defendant, possession of the property subject to the said mortgage (or charge) and releases to the defendant, the security constituted by the said mortgage (or charge),

And it is ordered that all parties be at liberty to apply to the Court as they may be advised.

FORM 42

Originating Summons for Possession (O.54, r. 2) In The High Court of Edo State

In the .....Judicial Division
Suit No……..

Between

A.B…..... Claimant

and

C.D.E.F., and G.H.…..... Defendants (if any) whose name is known to the claimant

To (C.D. and) every (other) person in occupation of..... Let all persons concerned attend before…… at the High Court of the …….. Judicial Division, Edo State on…… the ……. day of …….. 20……at….....9 O'clock in the forenoon for the hearing of an application by A.B, for an order that he recovers possession of.....on the ground that he is entitled to possession and that the person(s) in occupation is (are) in occupation without his license or consent .

Dated this ……. day of ……..20…….

This summons was taken out by ……. Of …….. legal practitioner for the said Claimant whose address is.....(or This Summons was taken out) by……
of……..
for…… of ……..
Legal Practitioner for the said claimant whose address is.....) (or when the claimant acts in person).

This Summons was taken out by the said claimant who resides at .....and is (state occupation) and (if the claimant does not reside within the jurisdiction) whose address for service is……

Note:
Any person occupying the premises who is not named as a defendant by this summons, may apply to the Court personally or by legal practitioner, to be joined as defendant. If a person occupying the premises does not attend personally or by legal practitioner at the time and place also mentioned, such order will be made as the court may think just and expedient.

FORM 43

Order for Possession
(O.54, r.6 (1))
(Heading as in Form No. 1)

Upon hearing..... and upon reading the affidavit of …….. filed on the …… day of …… 20… ..... it is ordered that the claimant A.B, do recover possession of the land described in the originating summons as ……. (and the defendant… ..... do give possession of the said land on …….) (and that the defendant .....do pay the claimant N…..... costs (or costs to be taxed).
(The above costs have been taxed and allowed at N… ..... as appears by a taxing officer certificated dated ……..day of …..... 20.....).

DATED the……. day of ……20…….

……
Judge

FORM 44
PETITION
(O.56, r.3 (1))

IN THE HIGH COURT OF EDO STATE

Suit No……

In the..... Judicial Division

Between

A.B…..Petitioner

And

C.D…..Respondent

To C.D. of ……. in the …….. of ……..

You are hereby commanded that within fourteen (14) days after the service of this Petition on you, inclusive of the day of such service, to cause appearance to be entered for you in action at the suit of A.B. and take notice that in default of your so doing, the Petitioner may proceed therein, and judgment may be given in your absence.

Dated this …… day of……20…….

……
Registrar

FORM 45

Application to place matter on the Fast Track Division (O. 57, r. 4 (e))

In the HIGH COURT OF EDO STATE

DATE……

The Hon Chief Judge
Edo State High Court,
Benin City.

SUIT NO. / /20

_____CLAIMANT

AND

_____DEFENDANT

I hereby apply for the above named matter to be placed in the Fast Track Division of the court.

I undertake to comply with all the conditions.

Solicitor to Claimant/Claimant

FOR THE COURT
Approved/Refused to be heard in the Fast Track Division

……..…
Chief Judge

FORM 46

General Form of Writ of Summons (Fast Track) (O.3, r.7)

_____/20____
(Here put the letter and number (see note (a) following this form).

In the HIGH COURT OF EDO STATE
In the..... Judicial Division

Between:

A.B……..
Claimant

And

C.D .....D
efendant

To C.D of ……..in the……..of……..

You are hereby commanded that within _____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, and judgment may be given in your absence.

DATED this……..day of …….20…….

…..……..
Registrar

Memorandum to be subscribed on the writ.

N.B:
This writ is to be served within three calendar months from the date or if renewed, within three calendar months from the date of the last renewal, including the day of such date, and not afterwards

Form of Writ of Summons, continued

The defendant may enter appearance personally or by legal practitioner either by handling in the appropriate forms, duly completed at the registry of the High Court of the Judicial Division in which the action is brought or by sending them to the registry by

registered post.

Endorsements to be made on the writ before issue.
The claimant's claim is for (b)…….....……
This writ was issued by G.H. of ……....whose address for service (c) is… agent for.....of ….....legal practitioner for the said claimant who resides at (d)……..(mention the city town or district and also the name of the street and number of the house of the claimant's residence, if any).

Endorsement to be made on copy of writ after service.

This writ was served by me at ..... on the defendant (here inset mode of service) on the ……day of…… 20……
Endorsed the …….day of ……..20…….

. .....……
(Signed)

……
(Address)

Note:

(g) Heading and Title – if the action is for administration the writ must be headed – "In the matter of the Estate of ..... deceased". If it is a debenture holder's action the writ must be headed "In the matter of the company" and in a probate action "In the Estate of A.B. deceased". A writ of summons claiming administration of a trust or settlement may be instituted "In the matter of the (Trust or settlement)".

(h) Endorsement of Claim – If the claimant sues or defendant is sued in a representative capacity the endorsement must state in what capacity the claimant sues or the defendant is sued. See O.4, r.2. If the claim is for a debt or liquidated demand only, the Endorsement, even though not special must strictly comply with the provisions of O.4, r.4, including a claim for four day's costs.

(i) Address for service – see O.4.r.6. The address must be within the jurisdiction.

(j) Address of Claimant – In the case of a company in liquidation the claimant's address should run "…..claimants who are a company in liquidator)".

In the case of a foreign corporation within the meaning of part 10 of the Companies and Allied Matters Act the claimants' address should run thus:

"……..claimants who are a foreign within the meaning of the Companies and Allied Matters Act. The registered name and address of the person to be served are (here add registered name and address)".

(k) Endorsement of Service- see O.7, r.13.

(l) Probate Actions – In these actions the endorsement of claim must show the nature of the claimant's interest under which he claims (O.4, r.3); and the alleged interest of the defendant.

Before the writ is issued the following certificate must be endorsed on it:
The Registry, HIGH COURT OF EDO STATE.

In the ..... Judicial Division

A sufficient affidavit in verification of the endorsement on this writ to authorize the sealing has been produced to me this……day of…… 20……

.....……..…….
(Signature of Registrar)

FORM 47

Notice of Acceptance to Place Case on Fast Track Division

(O.59, r. 6 (2))

IN THE HIGH COURT OF EDO STATE

……..

……..

……..

……..

Suit No …...…/…..…/….……

…..... Claimant

And

…..... Defendant

NOTICE OFACCEPTANCE TO PLACE CASE ON FAST TRACK DIVISION

PLEASE TAKE NOTICE that following your application in the above-named matter, the above case has been placed on FAST TRACK LIST.

PLEASE NOTE that henceforth this matter shall be dealt with in accordance with FAST TRACK case Management directions, application and guidelines

Dated at ……. this ……. day of ……. 20……..

……..

COORDINATOR

FOR SERVICE

FORM 48

Non-Acceptance to Place Case on Fast Track Division

(O.57, r. 6 (2)

IN THE HIGH COURT OF EDO STATE

……..

……..

……..

……..

Suit No ……,,,,,,/……/……

Between

…..... Claimant

And

…..... Defendant

NON-ACCEPTANCE TO PLACE CASE ON FAST TRACK LIST

I refer to your application to place the above-named case on Fast Track list and wish to inform you that the case cannot be placed on Fast Track List. It has accordingly been placed on the general cause list.

You may contact the Coordinator for other details on this matter.

Dated at High Court…… this ……day of…….20……..

COORDINATOR

FORM 49

Daily Record of Cases Heard and Summary of Orders

(O.57 r.7)

IN THE HGH COURT OF EDO STATE MONTHLY

RECORD OF CASES HELD AND SUMMARY OF ORDERS

DATE…….

1. TITLE OF CASE _____SUIT NO……
2. NAME OF JUDGE _____TIME CASE CALLED…….
3. COURT MANAGER _____
4. APPEARANCES:
Counsel for Claimant_____
Counsel for Co-Claimant_____
Counsel for Defendant_____
Counsel for Co-Defendant_____
5. CASE CALLED COUNSEL FOR ALL SIDES PRESENT
6. COUNSEL FOR_____ABSENT_____PRESENT
7. STAGE CASE HAS REACHED_____
8. ACTION FOR THE DAY: motion heard; granted; not granted; adjourned
9. REASONS_____DATE_____
10. PART HARD STAGE
11. EVIDENCE OF CLAIMANT EXHIBIT TENDERED

---

12. EVIDENCE OF CLAIMANT WITNESS …….
13. EVIDENCE: OF DEFENDANT EXHIBIT TENDERED
14. EVIDENCE: OF DEFENDANT'S WITNES ……..
15. ADDRESS BY COUNSEL FOR THE CLAIMANT_____
16. ADDRESS BY COUNSEL FOR THE DEFENDANT_____
17. SPECIFIC ORDERS (if any) MADE IN THE DAY
18. TIME CASE ENDED FOR THE DAY_____
19. AT WHOSE INSTANCE _____
20. COST _____

FORM 50

Application for copies of proceeding (Transcript)

(O.57, r.16)

IN THE HIGH COURT OF EDO STATE

FAST TRACK COURT

APPLICATION FOR COPIES OF PROCEEDING

(TRANSCRIPT)

I..... Of (Postal Address)
Phone Number ……Fax Number .....E-mail Number.....
Wish to apply for copies of daily proceedings (or state portion required) of this Court in respect of (title of case).....Suit No.....
i pending before (name of Judge)

CERTIFICATION

By signing hereunder, I commit myself to the process of electronic recording of all the proceedings in this case and do hereby certify that I will pay all charges.

Dated at this …… day of ……..20 ……

Solicitor For Claimant/Defendant

The Coordinator,
Fast Track Court

FORM 51

(O.59, r.54 (3))

Surety's Guarantee
In the High Court of Edo State
Probate Registry

Suit No ……

In the Estate of.....deceased

Whereas …… of …… died on the …….. day of …….. 20 …… (and ……) (hereinafter called "the administrators" is/are the intended administrator(s) of his estate.)

Now therefore:

1. I/ We …… of …….. (and.....) hereby (jointly and severally) guarantee that I/We will, when lawfully required to do so, make good any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of the breach by the administrator(s) of his/her/ their duty:

(a) To collect and get in the estate of the deceased and administer it according to law;

(b) When required to do so by the Court, to Exhibit on oath in the Court, a full inventory of the estate and when so required, to render an account of the estate:

or

FORM 52

(O.59 r. 55 (3) (c))
Surety's Guarantee on application for Resealing
In the High Court of Edo State
Probate Registry

Suit No ……

In the estate of.....deceased.
Whereas …… of …….. ……..died on the ……..
Day of …….. 20 ……. And letters of administration of his estate were on the …… day of …… 20 ……. Granted by the …… to..... (and … .....) and are about to be sealed in the state under the succession Law.

Now therefore:

1. I/We …… of …… (and .....) hereby (jointly and severally) guarantee that I/We will, when lawfully required to do so, make good any loss which any person interested in the administration of the estate of the deceased in the state may suffer in consequence of the breach by the administration(s) of his/her their duty:

(a) To collect and get in the estate of the deceased which is situate in the State, and administer it according to law;

(b). When required to do so by the Court, to exhibit on oath in the Court, a full inventory of the estate and when so required, to render an account of the estate; or

2. The giving of time to the administrator(s) or any other forbearance or indulgence, shall not in any way affect my/our liability under this guarantee.

3. The liability under this guarantee shall be containing and shall be for the whole amount of the loss mentioned in paragraph "1" above, but my/our aggregate total liability shall not in any event exceed the sum of N…….

DATED this …….day of ……20……..

Signed, sealed and delivered by the above name in the presence of… .....Commissioner for Oaths, (or other person authorized by law to administer an oath)

The common seal of …….. was hereto affixed in the presence of …….

FORM 53

(O.59, r. 57 (2), (3)

Caveat

In The High Court of Edo State
Probate Registry

Suit No……..

Let no grant be sealed in the estate of .....deceased, who died on the ……. Day of ……20……at… ..... without notice to …….....

DATED this …… day of..... 20

(Signed……..
Legal Practitioner for the said Caveator whose address for service is
…….

FORM 54

(O.59, r. 57 (2), (7))

Warning of Caveat or
In The High Court of Edo State
Probate Registry

Suit No……..

To …… of..... a party who has entered a caveat in the estate of .....Deceased, you are hereby warned within eight days after service hereof upon you, inclusive of the day of such service:

1. To enter an appearance either in person or by your legal practitioner, at the Probate Registry, Setting forth what interest you have in the estate of the above-named deceased, contrary to that of the party at whose instance this warning is issued: or
2. If you have no contrary interest but wish to show cause against the sealing of a grant to such party, to issue and serve a summons for direction by the Registrar of the said registry.

And take notice that in default of your so doing, the Court may proceed to issue a grant of probate or administration in the said estate not withstanding your caveat

DATE this …… day of …….. 20…….

…….
Registrar

Issued at the instance of (here set out the name and interest, (including the date of the Will if any, under which the interest arises) the party warning, the name of his legal practitioner and the address for service, (if the party warning is acting in person, this must be stated)

FORM 55

(O. 59, r. 57 (9) & 58 (6))
Appearance to Warning or Citation

In the High Court of Edo Stale
Probate Registry

Suit No….....

Caveat No……. dated the…….. day of..... 20.....
Citation dated the……day of ……20.....

Full name and address of deceased:.....
Full name and address of person warning (citor):.....
Interest of person warning (or citor):.....
Full name and address of caveator (of person cited);.....
Date of will:.....
Interest, of caveator;.....

Enter an appearance for the above-named caveator (or person cited) .....
In this matter:.....

DATED this…….....day of…….....20……

Whose address, for service is:.....

(Signed):……

……
Legal Practitioner
(or "in person")

FORM 56

(O. 59, r, 68 (I))'
Notice of Election to Redeem Life Interest

In the High Court of Edo State
Probate Registry

Suit No……

Whereas …….....…. Of ……..……..died on the ……day of ……..20 ..... wholly/partial intestate leaving his/her lawful wife/husband and.....lawful issue of the said……..

And whereas probate/letters of administration of the estate of the said…….were granted to me, the said.....(and to……of……..) at the probate registry on the ……day of ……20……

And whereas (the said…….has ceased to be a personal representative because……) and I am now the sole personal representative.

Now I, the said..... hereby give notice that I elect to redeem the life interest to which I am entitled in the estate of the late……..by retaining N…….its capital value and N… .....the cost of the transaction.

DATED this…….....day of…….....20……

(Signed):……

To the probate registrar.

FORM 57

(O. 60, r, 2 (4))'
Notice of Appeal (Civil)

In the High Court of Edo State

In the .....Judicial Division

Suit No…….....……

Between:
A.B. Vs C.D.

Take notice that the claimant (or defendant, as the case may be A.B or C.D. name the party who is appealing) appeals from the judgment (order, or decision) dated the day of ……20… ..... in the above proceedings

And further take notice that the grounds of appeal…….....….
……
…….....

Dated……

……
A.B. (or C.D) (for the Legal Practitioner acting for him)

To C.D. (or A.B.) of……
Note:
This note must be filled with the registrar of the Magistrate's Court within a month of the decision appealed from and served on all parties affected by the appeal within the period. The ground of appeal should be given in full.

The rules on civil appeals from magistrates should be looked at carefully

SECOND SCHEDULE

High Court LaW (Cap. 65)
Sheriffs & (Process LaW (Cap. 151)
Fees payable and AlloWances to Witnesses
High Court of Edo State.
(O.60,r,20,21)

APPENDIX 1

1.	**CLAIMS**	**FEES**
A.	Filing of Action	₦200.00
B.	For the recovery of a specified sum	
	a) Below ₦600,000	₦2,000.00
	b) ₦600,001 -₦1,000.000	₦2500.00
	c) ₦1,000.001-₦5.000,000	₦5 ,000.00
	d) Above ₦5,000,000	₦7,000.00
C.	**For the recovery of non-monetary claims**	
	a) Each declaration	₦200.00
	b) Each order	₦100.00
	c) Maximum	₦1,000.00
D.	**For an account to be taken and payment of the sum found due:**	
	a) Initial fee	₦500.00
	b) Second fee payable before setting down for judgment per ₦1,000 or part thereof found due in excess of N2,000.00	₦100.00
	c) Maximum total fee	₦5,000.00

2. ACTION FOR POSSESSION

For possession of property, as between Landlord and Tenant.

a)	Where the annual rent or value does not exceed ₦100.000	₦500.00
b)	Above ₦100,000 and not exceeding ₦500,000	₦1,000.00
c)	Above ₦500,000	₦3,000.00

3. DECLARATION OF TITLE

For declaration of title to land and possession of the land other than as between Landlord and Tenant .

a)	Where the annual rent or value does not exceed ₦100.000	₦1,000,00
b)	Where annual rent or value is specified	₦2,000.00
c)	Maximum fee	₦5,000.00

4. ADMINISTRATION SUMMONS

For the administration of the property of a deceased person where there is no dispute regarding succession or distribution.

Where the gross value of the property is

a) ₦1,000.00-₦100,000.00 ₦500.00
b) ₦100,001.00-₦500,000.00 ₦1,000.00
c) Where the gross value of the property is N500,001.00-N1,000,000.00 ₦2,000 .00
d) Above ₦1,000,000.00 or not specified ₦3,000.00

5. For the administration of the property of a person of the unsound mind; same as under item 4.

6. For the determination of a question relating to the distribution of or the succession to the property of a deceased person, or to a trust whether the person who created the same is dead or alive.

a) Where the gross value of t he property of the deceased or of the property under trust does not exceed ₦100,000 ₦500.00
b) Where it exceeds ₦100,000 ₦1,000.00
c) Where no gross value can be specified ₦2,000.00
d) Maximum fee ₦3,000.00

7. For any other relief or assistance not specifically provided for ₦200.00

8. MOTION

a) Filing Fee ₦200.00
b) Filing Application for Amendment ₦200.00

9. AFFIDAVITS/AFFIRMATIONS/DECLARATIONS

a) In support of Court Process ₦100.00
b) Statutory Declarations ₦200.00
c) In cases other than a) & b) ₦1,000.00

10. CERTIFICATON/AUTHENTICATION OF DOCUMENT

a) Certification of document ₦300.00
b) For endorsing paper annexed to an Affidavit or declaration ₦50.00

c) For sealing any document not in Court process ₦300.00
d) For attesting the execution of or signature on an instrument or document not otherwise provided for ₦100.00
e) For any other document ₦500.00

11. PLEADINGS

a) Filing of Statement of Claim ₦200.00
b) Filing of Statement of Defence ₦200.00
c) Filing of Reply ₦200.00
d) Filing of Terms of Settlement ₦200.00
e) Any other Pleadings ₦200.00

12. MATRIMONIAL MATTERS

a) For every petition (other maintenance ₦1,000.00
b) Citation (if one person was named) ₦200.00
c) For each other person(s) cited ₦200.00
d) For the Registrar's Certificate ₦200.00
e) For a petition for maintenance ₦300.00

13. REGISTRAR'S DIRECTIONS FOR TRIAL DECREE NISI TO BE MADE ABSOLUTE

a) Application ₦100.00
b) Sealing the Decree Absolute ₦100.00
c) Copy of the Decree Absolute ₦300.00
d) Searching ₦100.00

14. PROBATE AND ADMINISTRATION OF ESTATES

15. On filing an application for Probate or Letters of Administration ₦200.00
16. On filing Oath of Executor or Administrator ₦200.00
17. On taking justification of sureties for each survey ₦100.00
18 On filing/Administration bond ₦100.00
19 On entering a Caveat ₦500.00
20. On every warning to a Caveat ₦200.00
21. On an application for Probate or Letters of or order for Administration:
10% of the total value of the property which exceeds ₦50,000.00
(Provided that the 10% Probate fee in respect of pensioners Entitlement would be deducted at the point of payment)

22. For re-sealing a grant so as to bring it within this jurisdiction. ₦2,000.00

23. On inventory taken by a Court officer per hour ₦200.00

24. Deposit of Will for safe custody ₦2,000.00

25. Applications, Affidavits, Judgments, Orders, Security Bonds, Warrants and Writs or other documents ₦200.00

26. On filing any other application ₦200.00

27. On filing a security bond ₦200.00

28. Justification of sureties for each surety ₦100.00

29. Withdrawal of Will ₦500.00

30. Sealing and Certification of Will ₦500.00

31. Sealing and Certification of Codicil ₦500.00

32. Filing Schedule of Debts and Funeral Expenses ₦500.00

33. Drawing up of Order or Grant ₦200.00

34. Swearing and filing of Affidavit of Alias ₦500.00

35. Application to search index to Grants or wills ₦500.00

36. Inspection of Grants or Wills ₦500.00

MISCELLANEOUS SERVICE/APPLICATIONS

37. For a special interpreter of a language not in common use: per day ₦200.00

38. For an inquiry by a Court official where so ordered by the court ₦200.00

39. For taking down a person's statement where so ordered by the court ₦100.00

40. For searching the Court archives ₦200.00

41. Inspection of the Court's case file ₦200.00

42. To prepare where authorized, any record of proceeding every folio 72 words or less ₦50.00

43. For every subpoena or witness summons ₦100.00

44. On warrant for prisoner to give evidence at a party's instance ₦200.00

45. For attesting the execution or signature on an instrument or document not otherwise provided for ₦100.00

46. For sealing any document not in proceedings ₦200.00

47. For certificate of service of foreign process (where not disallowed by convention) ₦500.00

48. For service of process on one person payable to the registrar for process serves per kilometer ₦100.00

TRANSFER OF CASES

49. On written application to the Chief Judge to transfer a case from Court to Court ₦100.00

50. On the directive or application to the Chief Judge transferring a civil case before the High Court from one Judge to another, or to a Magistrates Court or to a Customary court, where the order is made on the application of a party. ₦1,000.00

51. Upon the granting of an application to the Chief Judge or a Judge to transfer a civil case from one court to another court except the fees be waved ₦500.00

52. On an order transferring a civil case from one Magistrate's Court to another Magistrate's Court or the High Court or from one Magistrate; to another within the same District where the order is made on the application of a party. ₦500.00

ENFORCEMENT OF JUDGMENT

1. (a) Registration of a certificate of judgment of a High Court ₦400.00
(b) Registration of a certificate of judgment of any other court ₦500.00
(c) Endorsing processes for service from another State ₦200.00
(d) Other related processes ₦100.00

ATTACHMENT

2. (a) Writ of attachment ₦300.00
(b) Interpleader ₦200.00
(c) Other related processes ₦100.00

3. Where the amount of the judgment debt or the value of the property to be recovered
(a) Does not exceed ₦25,000.00 ₦250.00
(b) Exceeds ₦25,000.00 but not above ₦100,000.00 ₦500.00
(d) Exceeds ₦250,000.00 ₦1,000.00

4. For execution of every writ:
(a) Not exceeding ₦100,000 ₦200.00

APPENDIX 2

ALLOWANCES TO WITNESSES AND INTRPRETERS

		Per day
1.	Professional men, mercantile agents auctioneers, bank managers , Surveyors and any officer of the public service whose salaries are not less than Grade level 08	N2, 000.00
2.	Mercantile assistants, other persons and Officers in the public service whose salaries are less than Grade level 08	₦500.00
3.	If more than Grade level 07	₦1, 000.00
4.	Any other person not specifically provided for in the Appendix	₦300.00
5.	(a) The Interpreter of Nigerian language	₦200.00
	(b) The interpreter of foreign language	₦200.00

TRANSPORT ALLOWANCE

(a)	By private car per kilometer	₦100.00
(b)	By private motorcycle per kilometer	₦50.00

NOTE

- The traveling expenses of witnesses shall be allowed according to the sums reasonably and actually paid.

!No allowance is made to an officer of the public service is summoned as a witness by Government or by any department of the government, In all other cases, he/she is allowed costs and travelling expenses as if he/she were not an officer in the public service.

!Fees, cost and expenses payable to an officer in the public service shall be paid into revenue unless otherwise ordered.

APPENDIX 3

REGULATIONS REGARDING FEES

1. **Fees to be paid before any process is issued**
No process shall, except by special order of the Court, be issued until:

(a) all fees payable thereon as contained in the appropriate Appendix of fees shall have been paid; and

(b) An account thereof, initialed as received, is set forth by the officer issuing the process both in the margin and in the counterfoil thereof.

2. **Fees to be carried to account on being signed**
All such fees shall be carried to account immediately on the process on being signed by the Judge.

3. **Documents endorsed amongst of and number receipt**
Every document, for or in respect of which any fee shall have been paid, shall bear an endorsement initialed by the Registrar or other officer showing the amount of the fee or fees so paid and the number of the receipt referring to the payment:

Provided that when any form of process specifies the fee thereof, it shall be sufficient for the Registrar or other officer to initial the amount of the fees appearing thereon, and to q u o t e the number on the receipt.

4. **Counterfoil to produce signature**
Every Registrar or other officer submitting any writ of summons or other process whatever to be signed by a Judge, shall at the same time, produce the stamp of the receipt, given for the fees of such process.

5. **No document to be used unless fees are paid**
No document in respect whereof a fee is payable shall be used in any legal proceedings, unless it shall have been initialed as aforesaid by the Registrar or other officer or unless t h e Court shall have otherwise satisfied that the proper fees in respect thereof have been paid.

6. All fees for Service, execution and distance in kilometers, shall be paid into revenue.

7. No hearing fee or other fee shall be returned except upon a voucher payable at treasury, in favour of the party entitled to receive same and prepared at the direction of the Judge before whom the cause or matter is set down and comes on for hearing.

APPENDIX 4

NOTARIES' FEES OF OFFICE

Noting protest on bill or note	₦100.00
Extending protest on bills of exchange	₦200.00
Promissory note	₦200.00
Minuting or noting ship's protest	₦100.00
Extending ship's protest	₦200.00
Attestation to any document	₦100.00

TRANSLATIONS

For every folio of 72 words	₦500.00
Attestation to translation of any document	₦3, 000.00

FEES FOR REGISTRATION OF JUDGMENT

Registration of a certificate of judgment	₦2, 000.00

REGISTRATION OFA CAVEAT

For filling a Caveat	₦2, 000.00

HIGH COURT RULES OF EDO STATE 2018

EDO STATE OF NIGERIA

Published under licence from Edo State Judiciary By Dele Igbin

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

All rights reserved. No part of this publication may be reprinted or transmitted in any form or any means, electronic, Mechanical or Photocopying, recording or otherwise, stored in any retrieval system of any nature, without the written permission of the Honourable Chief Judge of the Edo State Judiciary, application for which shall be made to:
The Chief Registrar
Edo State Judiciary
High Court of Justice Complex
Sapele Road
Benin City, Edo State

HIGH COURT OF EDO STATE (CIVIL PROCEDURE) RULES, 2018

In exercise of the powers conferred on me by Sections 274 and 315 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 53 of the High Court Law Cap. 65 Volume III Laws of the defunct Bendel State of Nigeria, 1976 as made applicable to Edo State by virtue of Section 11 of States (Creation and Transitional Provisions) Decree No. 37 of 1991 (now Act), I, Hon. Justice Esohe Frances Ikponmwen, the Chief Judge of Edo State hereby make these Rules:

6. Rules of Civil Procedure

(1) The Civil Procedure Rules set out in the First Schedule hereinafter called: "The Rules" shall be the Rules of procedure to be applied to all civil cases/proceedings in the High Court of Edo State.

(2) Where no rules exist: where a matter arises in which no provisions or no adequate provision exist in these Rules, a court shall adopt a procedure as may do substantial justice between the parties concerned.

7. Construction of reference under these Rules

(1) A reference in these Rules to anything done under these Rules includes a reference to anything done before the commencement of these Rules under any enactment or rule of court ceasing to have effect on the commencement of these Rules.

(2) Except where the context otherwise requires, any reference in these Rules to any enactment shall be construed as a reference to that enactment as amended, extended or applied by or under other enactment.

8. Forms

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

9. Short title and commencement

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

10. Cessation of application

The Edo State High Court (Civil Procedure) Rules, 2012 shall cease to apply to Edo State upon the coming into effect of these Rules.

Dated this 1st day of November, 2018

Honourable Justice Esohe Frances Ikponmwen

CHIEF JUDGE, EDO STATE.

FIRST SCHEDULE

HIGH COURT OF EDO STATE

(CIVIL PROCEDURE) RULES 2018

ARRANGEMENT OF RULES

RULE ORDER PAGE

ORDER 1

APPLICATION AND INTERPRETATION

3. Application....1
4. Interpretation of terms. 1

ORDER 2

PLACE OF INSTITUTING AND TRIAL OF SUITS

5. Suits relating to land and personal property distrained or seized… 4
6. Suits for recovery of penalties, forfeitures and against public officers 4
7. Suits upon contract….4
8. Other suits… 4
9. Transfer of proceedings 5
10. Transfer of suits to Magistrate Court… 5
11. Power to transfer Suits where court has no Jurisdiction… 5
9 Electronic Service… 5

ORDER 3

FORM AND COMMENCEMENT OF ACTION

19. Form and Commencement of Action… 6
20. Proceedings which must be commenced by writ… 6
21. Mode of beginning Civil Proceedings… 6
22. Claimant to provide copies of processes….6
23. Where Claimant fails to comply….6
24. If pleadings are amended….7
25. Form of writ: Civil Form 1 7
26. Form of Writ for service outside Nigeria… 7

27. Proceedings which may be commenced by originating summons….7
28. Any person claiming legal or equitable rights which depend upon questions of construction of an enactment….7
29. Discretion of the Judge…. 7
30. Forms of originating summons: Civil Forms 3, 4, 5 7
31. Service outside Edo State; Edo State 1990 L.F.N…. 8
32. Originating process to be tested by its date….8
33. Consolidation of causes….8
34. Screening for ADR…. 8
35. Certificate of Pre-action counseling… 8
36. Affixing of NBA seal by Counsel on court process….9

ORDER 4

ENDORSEMENT OF CLAIM AND ADDRESS

10. Endorsement…. 10
11. Endorsement to show representative capacity… 10
12. Probate actions…. 10
13. Endorsement where the claim is liquidated….10
14. Ordinary account 10
15. Endorsement of address by claimant or his legal practitioner… 10
16. Originating process for service on Defendant outside Jurisdiction.... 11
17. Originating Process to contain endorsement by Registrar…. 11
18. Originating Process without an address or with fictitious address… 11

ORDER 5

EFFECT OF NON-COMPLIANCE

4. Non-compliance with Rules…. 12
5. Judge to give direction to regularise such steps…. 12
6. Application to set aside for irregularity…. 12

ORDER 6

ISSUANCE OF ORIGINATING PROCESS

11. Preparing originating process....13
12. Signing and sealing of originating process.... 13
13. What is to be done after signing and sealing… 13
14. Copies to be served.... 13
15. Probate actions: affidavit with originating process 13
16. Renewal of originating process: (Civil Form 7)....13

17. Endorsement renewal… 14
18. Loss of originating process… 14
19. Concurrent originating process… 14
20. Concurrent originating process for service within and out of jurisdiction… 14

ORDER 7

SERVICE OF PROCESSES

19. Persons to serve originating Process 15
(1) By whom service is to be effected… 15
(2) Person serving to have privileges and liabilities of an officer of the court..... 15
(3) Counsel to counsel service….....15
20. Service of originating process, etc., how effected….....15
21. Service of originating process on legal practitioner… 15
22. Mode of service when not personal 15
23. Persons under legal disability….....15
24. Prisoner or detainee… 16
25. Partners….....16
26. Corporation or company 16
27. Foreign corporation or company 16
28. Local agent of principal who is out of jurisdiction… 16
29. Substituted Service…..... 17
30. Where violence is threatened..... 17
31. Proof of service generally… 18
32. Expenses of service….....18
33. Time of service 18
34. Service of advance copies via email… 18
35. Service of hearing notice via email….....18
36. Recording of Service… 18

ORDER 8

SERVICE OUT OF NIGERIA AND SERVICE OF FOREIGN PROCESS

9. Cases where service of originating process, etc,
are allowed out of Nigeria… 20
10. Agreement as to service… 21
11. Service abroad by letter of request.....21
12. Where leave is granted or not required….....22
13. Service of foreign processes….....23
14. Inapplicability of Rule 4… 24

15. Service on behalf of foreign tribunals… 24
16. Substituted service of foreign process….....24

ORDER 9

APPEARANCE

11. Mode of entry of appearance: Civil Form 12….....25
12. Defendants appearing in person or represented….....25
13. Fictitious address.....25
14. Defendants appearing through same legal practitioner.....25
15. Late appearance….....25
16. Intervener in probate matters… 26
17. Recovery of land… 26
18. Landlord appearing… 26
19. Person under legal disability appearing… 26
20. Tenant… 26

ORDER 10

DEFAULT OF APPEARANCE

14. Default of Appearance by person under legal disability… 27
15. Default of appearance.....27
16. Liquidate demand.....27
17. Liquidated demand several defendants….....27
18. Judgment in default of appearance….....27
19. Several defendants… 27
20. Detention of goods damage and liquidated demand… 28
21. Recovery of land… 28
22. Mesne Profit….....28
23. Judgment for costs upon payment….....28
24. Setting aside of Judgment… 28
25. Default of appearance in actions not specially provided for….....28
26. Compulsory Service….....28

ORDER 11

SUMMARY JUDGMENT

8. Where claimant believes there is no defence… 29
9. Delivery of extra copies….....29
10. Service… 29

11. Where defendant intends to defend…. 29
12. Where defendant has good defence, or has no good defence or has good defence of part of the claim…. 29
13. Where there are several defendants… 30
14. Oral submission on written brief… 30

ORDER 12

APPLICATION FOR ACCOUNT

9. Order for account… 31
10. Application how made… 31
11. Account may be taken by a Judge or Referee… 31
12. Account to be made verified, etc…. 31
13. Erroneous account… 31
14. Allowance…. 32
15. Delay in Prosecution of account, etc…. 32
16. Distribution of fund before all entitled Persons are ascertained…. 32

ORDER 13

PARTIES GENERALLY

36. Persons claiming jointly or severally…. 33
37. Action in the name of wrong claimant… 33
38. Misjoinder and counter-claim 33
39. Any person may be joined as defendant 33
40. Action in the name of wrong defendant… 33
41. Defendants need not be interested in all the reliefs sought…. 33
42. Joinder of persons severally liable…. 34
43. Person against whom redress is to be sought… 34
44. Persons unknown…. 34
45. Substitution of Mesne… 34
46. Persons under legal disability…. 34
47. Guardian…. 34
48. Trustees, Executors sued as representing the estate…. 34
49. Numerous persons… 35
50. Representation of persons or classes of persons in certain proceedings…. 35
51. Power to approve compromise… 36
52. Where there is no Personal Representative… 36
53. Proceedings not defeated by misjoinder or non-joinder… 36

54. Application to add or strike out… 37
55. Where defendant is added…. 37
56. Third parties may be joined by any of the parties… 37
57. Appearance by third party…. 38
58. Default by third party…. 38
59. Subsequent third party…. 38
60. Claim against co-defendant… 38
61. Actions by and against firms…. 38
62. Disclosure of partner names… 38
63. Appearance of Partners. 39
64. Application of Rules to action between co-partners… 39
65. Persons trading as firm… 39
66. Action not abated where cause of action survives. 39
67. Order to carry on Proceedings…. 39
68. In case of assignment creation or devolution of estate or title… 40
69. Application to discharge order by person under disability having a guardian. 40
70. By persons under disability having no guardian…. 40

ORDER 14

JOINDER OF CAUSE OF ACTION

5. All causes of action may be joined… 41
6. Recovery of land… 41
7. Executor and Administrator…. 41
8. Claims by Joint-claimants… 41

ORDER 15

PLEADINGS

20. Filing of pleadings…. 42
21. Pleadings to state material facts and not evidence…. 42
22. Particulars to be given where necessary… 43
23. Further and better statement or particulars… 43
24. Denial…. 43
25. Conditions precedent…. 43
26. Defence, certain facts surprise to be specifically pleaded…. 43
27. Pleadings to be consistent… 43
28. Joinder of Issues 44
29. Effect of (documents to be stated… 44
30. Notice. 44

31. Implied contract or relationship… 44
32. Presumption of law… 44
33. Stated or settled account…..... 44
34. Technical objection…..... 44
35. Striking out of pleadings… 44
36. Defamation..... 45
37. Where pleadings disclose no reasonable cause of action…..... 45
38. Close of pleadings…..... 45

ORDER 16

STATEMENT OF CLAIM

3. Statement of claim… 47
4. Claim beyond endorsement…..... 47

ORDER 17

STATEMENT OF DEFENCE AND COUNTER-CLAIM

16. Statement of defence…..... 48
17. Evasive denial…..... 48
18. Denial generally…..... 48
19. Persons in representative capacity…..... 48
20. Pleading to damages… 48
21. Set-off and counter-claim… 48
22. Title of counter-claim…..... 48
23. Claim against persons not partys (Civil Form 13)… 49
24. Appearance…..... 49
25. Reply to counter-claim…..... 49
26. Discontinuance: the claimant's claim…..... 49
27. Judgment balance… 49
28. Ground of defence after action brought…..... 49
29. Further defence or reply… 49
30. Concession to defendant (Civil Form 14)… 49
16 . Defence to originating summons… 50

ORDER 18

REPLY

3. Filing of reply… 51
4. Reply to counter-claim …..... 51

ORDER 19

ADMISSIONS

6. Notice of admission of facts…..... 52
7. Notice to admit document…..... 52
8. Notice to admit facts… 52
9. Judgment or Order upon admission of facts… 52
10. Cost of notice where documents are unnecessary… 53

ORDER 20

DEFAULT OF PLEADINGS

14. Claim for debt or liquidated demand… 54
15. Several defendants: default of one… 54
16. Damages and detention of goods… 54
17. Default of one or more defendants… 54
18. Debt or damages and detention of goods… 54
19. Recovery of land… 55
20. Claim for mesne-profits, arrears or damages…..... 55
21. Defence to part of Claim only… 55
22. Defendant in default… 55
23. One of several defendants in default… 56
24. Default of third party… 56
25. Default of defence to counter-claim…..... 56
26. Setting aside judgment by default… 56

ORDER 21

PAYMENT INTO AND OUT OF COURT

8. Payment into and out of court… 57
Civil Form 15. 57
9. Claimant may take out money: (Civil Form 16)… 57
10. Money remainingin Court…… 58
11. Several defendants.. …… 58
Form 17…..... 58
Civil Form 18……... 58
12. Counter-claims…… 58
13. Personsunder legal disability…… 59
14. Payment into and withdrawal of money from court…… 59

ORDER 22

PROCEEDINGS IN LIEU OF DEMURRER

8. Demurrer abolished…… 60
9. Points of law may be raised by pleadings…….. 60
10. Dismissal of action……. 60
11. Striking out pleadings where no reasonable cause of action is disclosed…… 60
12. Declaratory judgment……. 61

ORDER 23
NOTICE OF DISCONTINUANCE

3. Claimant may discontinue before defence..... 62
4. Withdrawal by consent…… 62

ORDER 24
AMENDMENT

9. Amendment of originating process and pleadings……. 63
10. Application……. 63
11. Amendment of originating process…… 63
12. Failureto amend after order…… 63
13. Filing and service of amended process…….. 63
14. Date of order and amendment to be displayed…… 63
15. Clerical mistakes and accidental omissions…… 63
16. General power to amend…… 63

ORDER 25
TRIAL CONFERENCES AND SCHEDULING

5. Period for settlement…… 64
6. Formulation of issues for determination…… 64
7. Party may apply for issue to be tried…… 64
8. Court may amend or frame additional issues ……. 64
5. Formulation of issues by Court..... 64

ORDER 26
ALTERNATIVE DISPUTE RESOLUTION
A-REFERENCE TO ADR

1. Judge to encourage Adr…… 65
2. Cosent cases to be referred to ESMDC Civil form 18 time within which to report settlement ……. 65
3. ADR Directives and sanctions……. 65
4. Cost…… 66
5. Extension of time to report settlement…… 66

6. Where settlementhas broken down…… 66
7. Consent judgment within application for consent judgment 66
8. Chief Judge designate ADR judge…… 66
9. Settlement week…..... 66
10. Sifter Committee…… 66
11. Arbitration… 66
12. Arbitration Proceedings…… 67
13. Enforcement of Arbitral Awards…… 68
14. Registration of Foreign arbitration award…… 68

ORDER 27
DISCOVERY AND INSPECTION

15. Discovery by Interrogatories……..... 69
16. Civil Form 17……. 69
17. Corporation or Companies …… 69
18. Objection to interrogatories by answer…… 69
19. Affidavit in answer: filing of……. 69
20. Form of affidavit in answer or answer: Civil Form 18……... 69
21. Order to answer or answer further. …… 69
22. Application for discovery of documents: Civil Form 19..... 69
23. Verification of business books..... …… 70
24. Committal of party after service on him…….. 70
25. Liability of legal practitioner…… 70
26. Using answer to interrogatories at trial……... 70
27. Discovery against sheriff…….. 70
28. Order to apply to person under legal disability…….. 71

ORDER 28
ISSUES, INQUIRIES, ACCOUNTS AND REFERENCE TO REFEREES

14. Issues of facts..... 72
15. Referenceto referee…… 72
16. Instructions to referee..... …… 72
17. General powers of referee.. ……... 72
18. Evidence..... 72
19. Report made in pursuance of reference under order…….. 73
20. Special directions as to mode of taking account …….. 73
21. Accounts to be verified by affidavit, numbered and left in the registry…. 74
22. Mode of vouching accounts……. 74
23. Surcharge…… 74
24. Accounts and inquiries to be numbered: Civil Form 22…….. 74
25. Just allowance…… 74
26. Expediting proceedings in case of undue delay. …… 74

ORDER 29
SPECIAL CASE

2. Special case by consent……. 75

2. Special case by order before trial……. 75
3. Special case to be signed…….. 75
4. Application to set down where a person under disability is a party……. 75
5. Agreement to payment of money and cost……..... 75
13. Direction…… 75
14. Application of order ……. 75

ORDER 30
PROCEEDINGS AT TRIAL

21. Attendance by proxy…… 76
22. Non-appearance: both parties……. 76
23. Default of appearance by defendant at trial…… 76
24. Default of appearance by claimant …….. 76
25. Judgment by default may be set aside on terms…… 76
26. Adjournment of trial ……. 76
27. Times of commencement and termination of trial…… 76
28. Penalty for filling motion to delay trial…… 76
29. Burden of proof by party to begin …….. 77
30. Documentary evidence…… 77
31. Additional witness…….. 77
32. Close of case of parties…….. 77
33. Exhibits during trial ……... 77
34. Written address by party beginning…….. 77
35. Written address by the other party ……. 77
36. Written address of party beginning……... 78
37. Right of reply…….. 78
38. Custody of exhibit after trial……... 78
39. Office copy of list of exhibits……. 78
40. Indolent prosecution…… 78

ORDER 31
FILING OF WRITTEN ADDRESS

5. Application and final address…….. 79
6. Application……... 79
7. Summation of address…….. 79
8. Oral argument…… 79

ORDER 32
EVIDENCE GENERALLY

32. Recording of evidence…… 80
33. Facts how proved…… 80
34. Particular facts…… 80
35. Limitation of medical and expert evidence……. 80
36. Limitation on use of documentary evidence…….. 80
37. Revocation variation..... 80
38. Office copies admissible in evidence……. 81
39. Examination of witnesses abroad..... 81
Civil Form 23……. 81

Civil Form 24……. 81
40. Form of order for examination of witnesses abroad: Civil Form 25…… 81
41. Order for attendance of person to produce document…….. 81
42. Disobedience to order for attendance……. 81
43. Expenses of persons ordered to attend……. 81
44. Contempt of witnesses abroad……... 81
45. Examination of witnesses……... 82
46. Depositions not to be given in evidence without consent or by leave of a judge……... 82
47. Oaths…….. 82
48. Attendance of witness under a *sub poena*…….. 82
49. Practice as to taking of evidence at any stage of cause or matter……... 82
50. Special directions to taking evidence……. 82
51. Evidence in proceedings subsequent to trial…… 82
52. Form of praecipe of a *subpoena:* Civil Form 26 …….. 82
53. Form of *subpoena* Civil Forms 27,28,29 …… 83
54. *Subpoena* attendance of witness in chambers…….. 83
55. Correction of errors in *subpoena*……. 83
56. Personal service of *subpoena* …….. 83
57. Duration of *subpoena* …….. 83
58. Action to perpetuate testimony…….. 83
59. Examination of witnesses to perpetuate testimony…… 83
60. Such action not to be set down for trial…….. 83
61. Recall of witness…….. 83
62. Evidence of Protected witness…… 83

ORDER 33
AFFIDAVITS

10. Evidence on motions, etc……. 84
11. Title of affidavit…… 84
12. Use of defective affidavit……. 84
13. Special time for filing affidavits……... 84
14. Affidavit in support of *ex-parte* application…… 84
15. Notice of intention to use affidavit …… 84
16. Alterations in accounts to be initiated ……. 84
17. Exhibits……. 84
18. Certificate of exhibit…… 84

ORDER 35
COMMITTAL FOR CONTEMPT OF COURT

1. Committal for contempt of court… 88
2. Application to court… 88
3. Saving for power to commit without application for the purpose… 88
4. Provision as to hearing… 88
5. Contempt in face of court: saving for… 89
6. Power to suspend execution of committal

order… 89

7. Discharge of person committed… 89

8. Saving for other power… 89

9. Return… 89

ORDER 36
GARNISHEE PROCEEDINGS

8. Application…… 90
9. How Application is made…….. 90
10. Service of Garnishee order……. 90
11. Garnishee absolute……. 90
12. Determination of issue by the Court……. 91
13. Where a third person makes claim…… 91
14. Compliance as discharge of liability…… 91

ORDER 37
DRAWING UP OF ORDERS

4. Date of order when drawn……. 92
5. What orders need not be drawn up…… 92
6. Form of order……. 92

ORDER 38
TRANSFER AND CONSOLIDATION

Transfer

11. Order transferring proceedings to High Court Cap.97…… 93
12. Payment of filing fees…… 93
13. Duties of Registrar……. 93
14. Directions…… 93
15. Party failing to attend……. 93
16. Construction……... 94
17. Transfer of cause or matter……. 94
18. Re-assignment of cause or matter…… 94
19. Action by the Chief Judge on transfer…….. 94
20. Consolidation…… 94

ORDER 39
INTERLOCUTORY AND OTHER ORDERS

17. Preservation or interim custody of subject matter of disputed contract… 95
18. Early trial of cause or inspection……. 95
19. Order for Sale of perishable good…….. 95
20. Detention, Preservation of Property……... 95
21. Sale of property in possession of court……. 95
22. Recovery of property other than land subject to lien…….. 96
23. Allowance of income property pendente lite…….. 96
24. Injuction against repetitan of wrongful act for breach of contract…….. 96
25. Appointment of a receiver by way of equitable execution …….. 96

26. Receivers security and remuneration…… . 96
27. Where receiver appointed in court: adjournment to give security…… 97
28. Fixing of days for receivers to leave and pay their accounts…… 97
29. Form of Receivers accounts, Civil Form 32…… 97
30. Leaving account or the Registry Civil Form 33…….. 97
31. Consequences of default by receiver…… 97
32. Passing of Guardian accounts…… 97

ORDER 40
INTERLOCUTORY APPLICATIONS

34. Time to apply…… 98
35. Application by motion……. 98
36. Affidavit to be served with motion…….. 98
37. Adjournment……. 98
38. When notice of motion should be given……... 98
39. Affidavit in support of *ex-parte* motion……. 99
40. Arguments on motion…… 99
41. Orders on *ex-parte* motions …… 99
42. Court may vary or discharge order …….. 99
43. Motion on arbitral award……. 99
44. Service of motion with originating process…….. 100
45. Account by legal Practitioner……. 100
46. Interim Certificate……..…….. 100
47. Return day to be specified …….. 100
48. Counter evidence…… 100
49. Further service in cases……. 100
50. Appearance or proof service…… 100
51. General power as to order……..……..…… 100
52. Service of notice…… 100
53. Service of motion……..…….. 100
54. Service on solicitor……. 100
55. Copy of affidavit to be served with notice …….. 100
56. Order for service …… 101
57. Service with writ of summons……. 101
58. Oral evidence 101
59. Evidence in addition to or in lieu of affidavit…… 101
60. Notice to parties and interested persons……. 101
61. Evidence: how taken…… 101
62. Affidavit not filed with motion paper…….. 102
63. Registrar to have power of a Judge……. 102
64. Only legally qualified Registrar to hear application…….. 102
65. Application……. 102
66. Persons dissatisfied with ruling of Registrar may apply to the Court or a Judge in chambers……. 102

ORDER 41
APPLICATION FOR JUDICIAL REVIEW

9. Cases appropriate for application for judicial review..... 103

10. Joinder of claims for relief. …… 103
11. Grant of leave to apply for judicial review…… 103
12. Delay in applying for relief…… 104
13. Mode of applying for judicial review…… 104
14. Statement and affidavits……. 105
15. Claim for damages……. 105
16. Interlocutory Application……. 105

ORDER 42
JURISDICTION OF CHIEF REGISTRAR

13. Chief Registrar…….. 107
14. Business to be transacted by Chief Registrar…… 107
15. Chief Registrar may refer matters to the Chief Judge…….. 107
16. Appeal from order of Chief Registrar…….. 107
17. Chief Registrar's list…….. 107
18. Legal practitioner may represent party……. 107
19. Certificate……. 107
20. Reference to judgment, etc …… . 108
21. Form of certificate……. 108
Civil Form 234……. 108
22. When certificate becomes binding …….. 108
23. Bill of costs…….. 108
24. Discharge or variation of certificate after lapse of any time…… 108

ORDER 43
HABEAS CORPUS, ATTACHMENT FOR CONTEMPT

14. Application: how made…… 109
15. Power to issue order of release immediately…… 109
16. Service of notice…….. 109
17. Copies of affidavit ……. 109
18. Service of order to release …… 109
19. Statement and verifying affidavit …….. 110
20. Procedure at hearing …… 110
21. Bringing up prisoner to give evidence, etc……. 110
Civil Forms 29,30 and 31…… 110
22. Form of writ …… 110
23. Procedure for attachment…… 111
24. Procedure on disobedience to Court…… 111
25. Response…….. 111
26. Return …… 111

ORDER 44
INTERPLEADER

11. When relief by interpleader granted…….. 112
12. Matter to be provided by application……. 112
13. Adverse title of claimants……... 112
14. When application is to be made by a defendant … … … … … … … … … . . 112
15. Summons by applicant…….. 112
16.

Stay of action…….. 112
17. Order upon summons...…….....…….. 112
18. Questions of law…….. 112
19. Failure of claimant to appear, or neglect to obey summons ……..... 113
20. Costs., etc…….…..…. 113

ORDER 45
COMPUTATION OF TIME

5. Rules for Computation of time.....……..... 114
6. Holidays…… 114
7. Time of service……....….... 114
8. Court may extend time …… 114

ORDER 46
SITTING OF THE COURT AND VACATION

16. Days of sitting…….…….....……...……. 115
17. Public or private sitting of Court.....……..... 115
18. Office hours …….……..……..... 115
19. Days of sitting and long vacation……...……. 115
20. Vacation Court…….. …. 115
21. Vacation not reckoned in time for pleading…… 115
22. Chambers…….…….…... 115
23. What orders to be made…….…....….. 115
24. Recovery of penalties and costs…….. 115
25. Notices…….…….….. 116
26. Filing……...…… 116
27. How processes are addressed……..... 116
28. No fees where proceedings by Government department……..... 116
29. Regulation.……..... 116
30. Saving……...……..... 116

ORDER 47
ARREST OF ABSCONDING DEFENDANT

8. Application…….……..... 117
9. Defendant leaving Nigeria……... 117
10. Warrant to arrest…….....…. 117
Civil Form 38…….....….... 117
11. Bail for appearance or satisfaction……. 117
12. Deposit in lieu of bail……. 117
13. Committal in default……... 117
14. Cost of subsistence of person arrested ……..... 118

ORDER 48
PROCEEDINGS IN FORMA PAUPERIS

10. Application……. 119
11. Who may sue or defend in forma pauperis……..... 119
12. Conditions to be fulfilled……..... 119
13. Fees and costs……..... 119
14. Procedure to be followed……..... 119

15. Revocation of order, discontinuance, etc……..... 119
16. Payment to legal practitioner……..... 120
17. Duty of legal practitioner ……..... 120
18. Appeals……..…….…. 120

ORDER 49
CHANGE OF LEGAL PRACTITIONER

4. Legal practitioner to conduct cause or matter to final judgment…….... 121
5. Application for change of legal practitioner or withdrawal……..... 121
6. Service of application by legal practitioner…… 121

ORDER 50
COSTS

29. Principle to be observed in fixing costs…… 122
30. Rejection of offer of settlement costs……....…... 122
31. Security for costs…….…… 122
32. Security for costs by claimant temporarily within Jurisdiction …….. 122
33. Acten founded on judgment or bill of exchange…… 122
34. Bond as security for cost……..…… 122
35. Costs at discretion of court ……. 123
36. Costs out of fun or property……...… 123
37. Stay of proceeding at which costs to be dealt with …….……. 123
38. Stage of proceeding at which costs to be dealt with ……....……. 123
39. When costs follows events……. 123
40. Matter to be taken into account in exercising discretion…….…….. 123
41. Cost arising from misconduct or neglect……... 123
42. Personalliabilityof legal Practitionerfor costs…… 124
43. Taxation of Costs……. 124
44. Notice to other party…….. 124
45. Power of taxing other…….. 124
46. Supplementary power of taxing officer…… 125
47. Extension of time… 125
48. Power of taxing officer where party liable to be paid and to pay costs…… 125
49. Mode of beginning proceeding for taxation…….. 125
50. Provisions as to bills costs…….. 125
51. Provisions as to taxation proceedings… … … … … … … … … … . 126
52. Scale of costs……. 126
53. Certificate of taxation officer…… 126
54. Fees on taxation……. 126
55. Application for review…… 126
56. Application by summonss……. 126

ORDER 51
APPLICATION AND PROCEEDINGS IN CHAMBERS

5. Representation in chambers……..…… 128
6. Matter to be disposed of in chambers…….....….. 128
7. Evidence upon application for appointment of guardians and for maintenance..... 128
8. Further consideration of matter originating in Chambers…… 128

ORDER 52
FORECLOSURE AND REDEMPTION

4. Originating summons for foreclosure……. 129
5. Civil Forms 39,40 and 41 ……..…... 129
6. Service and execution of judgment…… 129

ORDER 53
SUMMONS TO PROCEED

8. Bringing in judgment, etc ……..… 130
9. Summons to proceed with accounts and inquiries: directions……... 130
10. Settling deed where parties differ……. 130
11. Where service of notice of judgment or order dispensed with……... 130
12. Stoppage of proceedings where all necessary parties have not been served with notice of judgment or order……. 130
13. Documents, copies for use……... 131
14. Entry in summons to proceed book……. 131

ORDER 54
SUMMARY PROCEEDINGS FOR POSSESSION OF LANDED PROPERTY OCCUPIED BY SQUATTERS OR WITHOUT THE OWNER'S CONSENT

9. Application of this order……..... 132
10. Proceedings to be brought by originating summons: Form 42……. 132
11. Affidavit in support……... 132
12. Service of originating summons…… 132
13. Application by occupier to be made a party……. 133
14. Order for possession: Form 43……... 133
15. Writ of possession1……... 133
16. Setting aside of order……. 133

ORDER 55
STAY OF EXECUTION PENDING APPEAL TO THE COURT OF APPEAL

4. Stay of execution pending appeal……... 134
5. Court may grant or refuse order for stay…….…... 134
6. Formal order to be drawn up……..… 134

ORDER 56
PROCEEDINGS IN REVENUE MATTERS

1. Application…… 135
2. Revenue Court……. 135
3. Commencement form 40 ……. 135
4. Further information…… 135
5. Payment into Court…… 135
6. Filing of the Answer…… 135
7. Reply……. 135
8. Hearing…… 136
9. Order of hearing…… 136
10. Duration…….. 136
11. Default of Answer…… 136
12. Non-appearance of parties…… 136
13. Proceedings of parties……. 136
14. Interpretation…… 136

ORDER 57
FAST TRACK CASES

17. Fast track Judges…….. 137
18. Pre-trial conference…… 137
19. Co-ordination, fast track Division…….. 137
20. Jurisdiction of fast track Division, Form 45…… 137
21. Assignment of cases…….. 138
22. Procedure for filing cases…….. 138
23. Accounts for fees, Civil from 49…… 138
24. Service of process…….. 138
25. Hearing dates…… 138
26. Adjournment …… 138
27. Absence of counsel…… 139
28. Time table for taking steps…… 139
29. Compliance with time table…….. 139
30. Absence of parties……. 139
31. Form of addresses, Objections and application…….. 140
32. Application of Transcript, Civil form 50……. 140

ORDER 58
PROBATE AND ADMINISTRATION
GRANT OF PROBATE OR ADMINISTRATION IN GENERAL

45. Petition to be made to probate registrar……..... 141
46. Preservation of property……..... 141
47. Unauthorised persons intermeddling with property…….. 141
48. Production of testamentary papers ……..…. 141
49. Court may order production…… 142
50. Examination respecting papers……... 142
51. Notice to executor to come in and prove……. 142
52. Liability of executor neglecting to apply for probate……. 142

53. Identity……..…….…….. 142
54. Court may refuse grant until all persons interested are given due notice…….. 142
55. Value of property……..... 143
56. Answers required before grant……..…….. 143
57. Notice to prohibit grant……..…. 143
58. Effect of notice……..…….. 143
59. Form of suits ……..……. 143
60. Testator may deposit will……... 143
61. Custody of wills of which probate granted……. 143
62. Will not given out without order of court ……. 144
63. Examination of will as to its execution…….. 144
64. Proof of execution where attestation clause is defective ……. 144
65. Where will was not executed according to law……. 144
66. Evidence on failure of attesting witnesses…… 144
67. Will of blind or illiterate testator…… 144
68. Interlineations, erasures, obliterations…… 145
69. Documents referred to in a will: or annexed or attached ……...… 145
70. Executor dying without proving or not appearing……. 145
71. Marking of will or copy sworn to…… 145
72. Viva voce examination of persons making affidavits……..... 146
73. Form of administration not with will annexed……... 146
74. Administration bond ……..….. 146
75. Assignment of bond……..….... 146
76. Administration summons……... 146
77. Order for administration…… 146
78. Orders relating to property……. 147
79. Administration may be granted to off…… 147
80. Officer to act under direction of court…… 147
81. Court may appoint persons to be administrator…….. 147
82. Remuneration of administrator……... 147
83. Securingand collectionof estate…… 148
84. Application by consular officer or person authorized by him to administer estate……..... 148
85. Accounts to be filed ……... 148
86. Duties and powers to be performed and exercised by probate registrar…… 149
87. Court may refuse application……. 149
88. Grant to be signed by probate registrar…….. 149

ORDER 59
PROBATE (NON-CONTENTIOUS) PROCEDURE

5. Production of testamentary papers 150
6. Court may order production……... 150
7. Examination respecting paper…… 150
8. Notice to executor to come in and prove……

150
5. Liability of executor to come in and prove…… 150
6. Petition to be made to probate registrar……. 150
7. Application for grants through legal practitioners……. 151
10. Personal applications……..…. 151
11. Duty of registrar on receiving application for grant…….
151
10. Oath in support of grant……..…. 151
11. Grant in additional name…… 152
12. Marking of Wills…… 152
13. Engrossment for purposes of record…….. 152
14. Evidence as to due execution of Will…… 152
15. Execution of Will of blind or illiterate testator…….. 153
16. Evidence as to terms, conditions and date of execution of Will … … … … … …
153
17. Attempted revocation of Will…… 153
18. Affidavit as to due execution, terms, etc, of Will ……. 153
19. Wills of persons on military service and seamen …….. 153

22. Evidence of foreign law……. 154
23. Order of priority for grant where deceased left a Will..... 154

22. Grant to attesting witnesses, etc……. 154
23. Value of property……... 154
24. Answers required before grant……... 155
25. Notice to prohibit grant…….. 155
26. Effect of notice…….. 155
27. Form of suits…….. 155
28. Testator may deposit Will……..... 155
29. Custody of wills of which probate is granted……..... 155
30. Will not given out without order of court…….. 155
31. Examination of Will as to its execution……. 156
32. Proof of execution where attestation clause is defective …….. 156
33. Where Will not executed according to law……..... 156
34. Evidence on failure of attesting witnesses……..…... 156
35. Will of blind or illiterate testator……..…. 156
36. Interlineations, erasures, obliterations……... 156
37. Documents referred to in a Will……..... 157
38. Executor dying without proving or not appearing……. 157
39. Marking of Will or copy sworn to Codicils……... 157
40. Vivo, vocc examination of persons making affidavits..... 157
41. Right of assignee to a grant :…… …….. 157
42. Joinder of administrator…… 158
43. Additional personal representatives……... 158
44. Grants where two or more persons entitled in same degree…….
158
45. Exceptions to rules as to priority……... 159
46. Grants where two or more persons entitled in same degree……... 159
47. Where the deceased died domiciled outside the State..... 159
48. Grants to attorneys…….. 159

50. Grants where infant is co-executor… … … … … … … … … … … …
160
51. Grants in case of mental or physical incapacity……. 161
52. Renunciation of probate and administration…….. 161
55. Notice to State of intended application for grant …….. 161
56. Guarantee …….. 162
Civil Form 51……..… 162
55. Resealing…… 163
Civil Form 52……. 163
56. Amendment and revocation of grant…….. 163
57. Caveats……... 163
Civil Form 53……. 164
Civil Form 54……. 164
Civil Form 55……..… 164
58. Citations……..… 165
Civil Form 55……..…… 165
59. Citation to accept or refuse to take a grant……
166

62. Citation to propound a Will …… 167
63. Address for service…… 167

62. Application for order to bring in a Will or to attend for examination……
167
63. Limited grants……. 167
64. Grants of administration *ad colligenda bona*……. 167
65. Application for leave to swear to death……. 168
66. Grants in respect of codicils and copies of Wills…….
168
67. Grants *durante a*…… 168
68. Notice of election by surviving spouse to redeem life interest … … … … … …
168
Civil Form 56…… 168
69. Issues of copies of original Wills and other documents……
168
70. Taxation of costs…… 169
71. Power to require application to be made by summons or motion ……
169
72. Exercise of powers of a judge…… 169
73. Appeals from registrars……. 169
74. Service of notice of motion and summons…… 169
75. Notices, etc…… 169
76. Affidavits……... 170
77. Time……... 170
78. Application to pending proceedings……..…. 170
79. Contentious probate: form of suit ……..….. 170
80. Interpretation …… 170
81. Probate actions……..…... 171
82. Service of writ of summons…….. 171
83. Pleadings and further actions……. 171

49. Grants on behalf of infants……. 160

84. Where claimant disputes defendant's interest……... 171

95. Notice of opposition to Will…….….. 171
96. Inquiry as to outstanding personal estate …….…… 171
97. Discretion to order costs……. 171
98. Originating summons relating to deceased person…… 171
99. Order for administration of estate of deceased and of trust …….. 172
100. Persons to be served ……... 172
101. Judge not bound to order administration…… 173
102. Order which may be made on application for administration or execution of trusts, where no account or insufficient accounts have been rendered ……. 173
103. Interference with discretion of trustee……... 173
104. Application by summons… … … … … … … … … … … … … 173

ORDER 60
APPEAL FROM MAGISTRATE'S COURT, ETC.

17. Notice of appeal…….. 174
18. Contents, etc, of notice of appeal……... 174
Civil Form 57……
19. Copies of proceedings…… 174
20. Appeal to Judge of High Court…….. 174
21. Respondent to be supplied with copy of proceedings…… 174
22. Proceedings time…… 175
23. Where time expires… . 175
24. Constitution of court hearing appeals……. 175
25. Time and place for hearing… … … … … … … … … … … … … … … … … . 175
26. Where appellant fails to appear…….. 175
27. Where appellant appears…… 175
28. Appeal limited to grounds given in notice……. 175
29. Request to confirm judgment on other grounds……. 176
30. Counter appeal……. 176
31. Objections to form of grounds of appeal…… 176
32. Defects in proceedings under appeal…… 176
30. Additional evidence……. 177
31. Mode of taking evidence… … … … … … … … … … … … … … … … . 177
32. Fees
2nd Schedule……. 177
33. Allowance to witnesses
3rd Schedule…….. 177
34. Stay of execution…….. 177
35. Costs…….. 178
36. Security for costs…… 178
37. Orders of High Court to be certified to Magistrate's Court…….. 179
38. Enforcing of judgment……. 179

39. Enforcing of orders…….. 179
40. High court may enlarge time…… 179
41. Interpretation…… 179

ORDER 61
APPEALS OF THE HIGH COURT FROM DECISION OF AUDITORS

9. Application…… 180
10. Method of appeal ……. 180
11. Evidence …….. 180
12. Service …….. 180
13. Contents of notice, data of hearing …….. 180
14. Reasons for appeal to be filed ……... 180
15. Copy of affidavits to be served on the parties…… 180
16. Service on auditors other than the auditor who gave the decision…… 181

ORDER 62
FEES AND ALLOWANCES

3. Fees … 182
4. Regulations … … … … … … … … … … … … … … … … … … 182
Fees and allowances
3. Fees Appendix 1 …….. 182
4. Regulations Appendix 3 …….. 182
Miscellaneous Provisions
8. Order to be made ……... 183
9. Other procedure rules …… 183
10. Recovery of penalties and cost… … … … … … … … . . . 183
11. Notice ……. 183
12. Filing …….. 183
13. Fees: Appendix 4…… 183
14. Where no rules exist…….....… 183

ORDER 63
POWERS OF THE CHIEF JUDGE TO AMEND RULES AND ISSUE PRACTICE DIRECTIONS

5. Power of Chief Judge over new rules …….. 184
6. Publication of new rules …….. 184
7. Chief Judge's powers to issue practice directions, etc… 184
8. Practice direction, etc., to be published …….. 184

APPENDIX

LIST OF FORMS

TITLE

FORM NO:

40. General form of Writ of summons, etc.
41. Writ for service out of Nigeria
42. General form of originating summons
43. Origination summons
44. Form of *ex-parte* originating summons
45. Certificate of pre-action counseling
46. Form of memorandum for renewed originating process
47. Request to Minister of Foreign Affairs to transmit writ to foreign government
48. Request for Service Abroad
49. Letter forwarding request for substituted service
50. Memorandum of the Acceptance
51. Memorandum of appearance
52. Notice of counter-claim
53. Concession of defense
54. Notice of payment into court
55. Acceptance of sum paid into court
56. Acceptance of sum paid into court by one of several defendants.
57. Acceptance of sum paid into Court
58. Interrogatories
59. Answer to Interrogatories
60. Affidavit as to documents
61. Form of Order for Accounts and Inquiries
62. Legal Practitioners Undertaking as to Expenses
63. Letter of Request to take Evidence Abroad
64. Order for Appointment of the Nigerian Diplomatic Agent as special Examiner
Special Examiner (in convention country)
65. Forms of Praecipe
66. *Subpoena ad Testificandum*
67. *Habeas Corpus Ad Testificandum*
68. *Subpoena Duces Tecum*
69. Form of Guarantee for the Default of a Receiver
70. Receiver's Security by undertaking
71. Receiver's Account
72. Affidavit verifying Receiver's Account
73. Certificate of the Chief Registrar
74. Writ of *Habeas Corpus ad Subjiciendum*
75. Notice to be served with Writ of *Habeas Corpus ad Sujiciendum*
76. Writ of Habeas Courpus ad Testification
77. Warrant to Arrest Absconding Defendant
78. Order for payment of Principal Money or interest secured by
Mortgage or charge

58. Order for Possession of Property forming a security for payment to the
Claimant of any Principal Money or Interest
59. Order for payment of Principal Money or interest secured by mortgage or charge
and for possession of property comprised therein
60. Originating summons for possession
61. Order for possession

62. Petition
63. Application to place matter on fast Track
64. General form of writ of summons (Fast Track)
65. Notice of acceptance to place case on fast Track Division
66. Non-Acceptance to place case on Fast Track Division
67. Daily Record of cases Heard and summary of orders
68. Application for copies of proceeding (Transcript)
69. Surety's Guarantee
70. Surety's Guarantee on application for resealing
71. Caveat
72. Warning of Caveator
73. Appearance to warning or Citation
74. Notice of Election to Redeem Life Interest
75. Notice of Appeal

EDO STATE
HIGH COURT
(CIVIL PROCEDURE) RULES, 2018
COMMENCEMENT

ORDER 1

APPLICATION AND INTERPRETATION

3. APPLICATION

(1) These Rules shall apply to all proceedings including all part-heard causes and matters in respect of steps to be further taken in such causes and matters. The court shall give such directions, as may be necessary or expedient to ensure conformity with the requirement of the Rules.

(2) Application of these Rules shall be directed towards the achievement of a just, efficient and speedy dispensation of justice. Parties and counsel shall assist the court to further the overriding objectives of these Rules.

(3) The Chief Judge may give practice directions generally or in respect of a particular case, for carrying out any of the provisions in these Rules.

4. INTERPRETATION OF TERMS

(1) These Rules shall be interpreted in accordance with the Interpretation Law, Cap. 76 Laws of Bendel State, 1976 applicable in Edo State or any re-enactment thereof.

(2) Where in these Rules depositions and affidavits are required to be made, if the deponent does not understand English Language, such deposition or affidavit may be made in a language she understands and shall be accompanied by interpretation thereof in English Language.

(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.

"ADR" means Alternative Dispute Resolution;

related matters;

"EMDC" means the Edo Multi-Door Court House;

"Attorney-General" means the Attorney-General of Edo State;

"Chief Judge" means the Chief Judge of Edo State;

"Claimant" is a person who institutes all actions in Court and shall include a claimant in a counter-claim.

"ADR Judge" means a Judge of the High Court designated by the Chief Judge to handle ADR

"Court" means the High Court of Edo State;

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

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

"Defendant" is a person against whom an action is instituted and shall include a defendant to a counter-claim;

"Guardian" means any person who is for the time being, in 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. 65, Laws of Bendel State, 1976, applicable in Edo State or any re-enactment thereof;

"Judge" means Judge of the High Court of Edo State;

"Legal Practitioner" means a Law Officer, a State Counsel or a Legal Practitioner entitled to practice before the Court;

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

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

"**Person(s) Under Legal Disability"** means person(s) who lack capacity to institute or defend any proceedings by reason of age, insanity, unsoundness of mind or otherwise;

"**Probate Action"** means an action for the grant of probate of a Will, or Letter 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;

"Process Server" means any person or electronic means authorized to serve a court process under any enactment, regulation or rule of court;

"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 Edo State in the appropriate judicial division;

"Return Date" means the day endorsed on a court process for the appearance of the parties before the Court or any other day the Court may appoint or direct;

"State" means Edo State;

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

"Walk-in Cases" means dispute filed directly at EMDC with the objective of resolving same through any of the court house Multi-Doors to the exclusion of Arbitration;

ORDER 2

PLACE OF INSTITUTING AND TRIAL OF SUITS

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

10. Suits relating to land and personal property distrained or seized

All suits relating to land or any mortgage or charge on or any interest in land, or any inquiry or damage to land and actions relating to personal property distrained or seized for any cause or matters of inheritance shall first be taken before the ESMDC resolution failing which shall be commenced and determined in the Judicial Division in which the land is situate or where the seizure took place or where the inheritance matter arose.

11. Suits for recovery of penalties, forfeitures and against public officers

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.

12. Suits upon contract

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.

13. Other suits

(1) All other suits may be commenced and determined in the Judicial Division in which the defendant resides or carries on business or where the cause of action arose.

(2) Where there are several defendants who reside or carry on business in different Judicial Divisions, the suit may be commenced in any one of these 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.

14. Suit commenced in wrong divisions

In case any suit shall be commenced in any other Judicial Division than that in which it ought to have been commenced, the same may, notwithstanding, be tried in the Judicial Division in which it shall

have been so commenced, unless the Court shall otherwise direct, or the defendant shall plead specially in objection to the jurisdiction before or at the time when he is required to state his answer or to plead in such cause.

15. Transfer of proceedings

No proceedings which may have been taken previously to such plea in objection shall in any way be affected thereby; but the Judge shall order that the cause be transferred to the Judicial Division to which it may be proved to his satisfaction to belong, or failing such proof, that it be retained and proceeded within the Court in which it has been commenced, and such order shall not be subject to appeal.

16. Transfer of suits to Magistrate Court

The Chief Judge or Judge may in any cause or matter, transfer or cause to be transferred to the Magistrate Court for hearing and determination, any cause or matter within the civil jurisdiction of the Magistrates' Court.

17. Power to transfer suits where court has no jurisdiction

Where a court has no jurisdiction in a cause or matter, the Judge may by order transfer the cause or matter to a court with competent jurisdiction.

18. Electronic service

Suits and interlocutory applications may be filed and served by counsel via electronic means. The Chief Judge shall issue practice directions for the modalities and operation of electronically filed processes.

ORDER 3

FORM AND COMMENCEMENT OF ACTION

19. Form and Commencement of Action

Subject to the provisions of any enactment, civil proceedings may be commenced by writ, originating summons, originating motion or petition or by any other method required by these Rules of Court governing a particular subject matter.

20. Proceedings which must be commenced by writ

Subject to the provisions of these Rules or any applicable law requiring any proceedings to be commenced 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 property.

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

(c) Where an interested person claims a declaration.

21. Mode of beginning civil proceedings

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, except witnesses on subpoena;
(d) List and copies of every document to be relied upon at the trial;
(e) Certificate of pre-action counseling as in Form 6.

22. The claimant shall provide as many copies of the processes listed in (a)-(e) above for the use of the Court and as there are defendants to be served.

23. Where a claimant fails to comply with Rules (2) and (3) above, his originating process shall not

be accepted for filing by the Registrar.

24. If pleadings are amended

It shall not be necessary to file fresh sets of the processes mentioned in Rule 3 of this Order if pleadings are amended.

25. Form of writ: Civil Form 1

Except in cases in which different Forms are provided in these Rules, the writ of summons shall be as in Form 1 with such modifications or variations as circumstances may require as in Form 45 (Fast Track).

26. Form of writ for service outside Nigeria

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

27. Proceedings which may commenced by originating summons

Any person claiming to be interested under a Deed, Will, Enactment or other written law 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.

28. Any person claiming legal or equitable rights which depend upon questions of construction of an enactment

Any person claiming any legal or equitable rights in a cause or matter where the determination of the question whether he is entitled to the rights 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.

29. Discretion of the Judge

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

30. Forms of Originating Summons: Civil Forms 3, 4, 5

(5) An originating summons shall be as in Forms 3, 4 0r 5 to these Rules with such variation as circumstances may require. It shall be prepared by the claimant 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.

(6) An originating summons shall be accompanied by:

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

(b) all the exhibits to be relied upon; and

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

(d) certificate of pre-action counseling; as in Form 6.

(7) 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.

(8) Where the claimant fails to comply with sub-rules (2) and (3) above, his originating process shall not be accepted for filing by the Registrar.

31. Service outside Edo; Edo State 1990 L.F.N.

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 Edo 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 Edo State of Nigeria and in the.....State."

32. Originating process to be tested by its date

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

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

33. Consolidation of causes

Causes or matters pending in the same Court may by order of the Court be consolidated and the court shall give directions as may be necessary with respect to the hearing of the causes or matters so consolidated.

34. Screening for ADR

All originating processes shall upon acceptance for filing by the Registry be screened for suitability for ADR and referred to the Edo State Multi-Door Court House or other appropriate ADR institutions or Practitioners in accordance with the Practice Directions that shall from time to time be issued by the Chief Judge of Edo State.

35. Certificate of pre-action counseling

A certificate of pre-action counseling signed by counsel and the litigant shall be filed along with

the originating processes where proceedings are initiated by counsel, showing that the parties have been appropriately advised as to the relative strength or weakness of their respective cases, and the counsel shall be personally liable to pay the costs of the proceedings where it turns out to be frivolous, as in Form 6.

36. Affixing of NBA seal by counsel on court processes

All processes filed at the Registry, shall bear the seal of the counsel filing the suit as provided by the Nigerian Bar Association, showing that the counsel is fully enrolled as a legal practitioner and qualified to practice in Nigeria.

ORDER 4
ENDORSEMENT OF CLAIM AND ADDRESS

10. Endorsement

Every originating process shall contain the claim, the relief or remedy sought and the full name and address of the claimant and the defendant(s).

11. Endorsement to show representative capacity

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.

12. Probate actions

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.

13. Endorsement where the claim is liquidated

(1) Where the claim is for debt or liquidated money 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 or his legal practitioner within the time allowed for appearance and that upon such payment the proceedings shall terminate.

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

14. Ordinary account

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

15. Endorsement of address by claimant or his legal practitioner

(1) A claimant suing in person shall state on the originating process his residential or business address as his address for service and shall include his telephone numbers and e-mail address. If he lives and carries on business outside the jurisdiction, he shall state an address within the jurisdiction as his address for service; and shall also include his telephone numbers and e-mail address.

(2) *Endorsement of address*

Where a claimant sues through a legal practitioner, the legal practitioner shall state on the originating process, his chambers' address, as the address for service and shall include his telephone

numbers and e-mail address. If the legal practitioner is based outside the jurisdiction, he shall state a chambers' address within the jurisdiction as his address for service and shall include his telephone numbers and e-mail address.

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

17. Every originating process shall contain an endorsement by the Registrar that parties maintain status quo until otherwise ordered by the Court.

18. Originating process without an address or with fictitious address

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

ORDER 5
EFFECT OF NON-COMPLIANCE

4. Non-compliance with Rules

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

5. Judge to give direction to regularize such steps

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

6. Application to set aside for irregularity

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

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

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

ORDER 6
ISSUANCE OF ORIGINATING PROCESS

11. Preparing originating process

Originating process shall be prepared by a claimant or his legal practitioner, and shall be clearly printed on Opaque A4 paper of good quality.

12. Signing and sealing of originating process

(1) The Registrar shall sign and 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 signing and 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.

(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.

13. What is to be done after signing and sealing

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

14. Copies to be served

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

15. Probate actions: affidavit with originating process

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

16. Renewal of originating process: (Civil Form 7)

(1) The lifespan of every originating process shall be six (6) months.

(2) If a Judge is satisfied that it has proved impossible to serve an originating process on any defendant within its lifespan and a claimant applies before its expiration for renewal of the

process, the Judge may renew the original or concurrent process for three (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.

17. Endorsement renewal

A Judge may order two renewals in each case strictly for good cause shown and upon prompt application, provided that no originating process shall be in force for longer than a total of 12 months. The Registrar shall state the fact, date, and duration of renewal on every renewed originating process.

18. Loss of originating process

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

19. Concurrent originating process

A claimant may at the issuance of an originating process or at any time during its lifespan, 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.

20. Concurrent originating process for service within and out of jurisdiction

An originating process for service within jurisdiction may be issued and marked as a concurrent originating process with one for service out of jurisdiction, and an originating process for service out of jurisdiction may be issued and marked as a concurrent originating process with one for service within jurisdiction.

ORDER 7
SERVICE OF PROCESS

19. Persons to serve originating process

(1) Service of originating process shall be made by a Sheriff, Deputy Sheriff, Bailiff, Special Marshal or other officer of the court. The Chief Judge may also appoint and register any law chambers, courier companies or any other person or by electronic means mutually agreed to serve court processes.

(2) Any person or corporate body serving a process pursuant to sub rule 1 above shall have the privileges and liabilities of an officer of the Court. The expenses of such special service shall be defrayed by the party on whose application he is appointed unless the Court in any case sees reason to vary this rule.

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

20. How to effect service

An officer of court or process server shall serve an originating process by delivering to the party to be served a copy of the process duly certified as provided by Order 6 Rule 2(3).

21. Service on legal practitioner

No personal service of an originating process shall be required where the defendant has authorized his legal practitioner in writing to accept service and such legal practitioner enters appearance.

22. Mode of service when not personal

All processes for which personal service is not expressly required by these rules or any applicable law either on an individual, company or business shall be sufficiently served if left with an adult person resident or employed at the address for service given under Order 4 Rule 6 or if served by any other means as the court may order.

23. Person under legal disability

(1) Where a person under legal disability is a defendant, service on his guardian shall be deemed good and sufficient personal service, unless the court 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 court may order that personal service on a person under legal disability shall be deemed good and sufficient.

24. Prisoner or detainee

Where a detainee or prisoner is a defendant, service on the head or other officer in charge of the station, facility or prison where the defendant is, or 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.

25. Partners

(1) Where persons are sued as partners in the name of their firm, the originating process shall be served upon any one or more of the partners at the place of business within the jurisdiction or upon any person having control or management of the firm.

(2) The service of the originating process shall be deemed good service upon the firm whether any of the members are out of the jurisdiction or not and no leave to serve an originating process against them shall be necessary:

(3) Where a firm has been dissolved to the knowledge of the claimant before the commencement of the action, the originating process shall be served upon every person within the jurisdiction sought to be made liable.

26. Corporation or company

Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process requiring personal service may be served on a registered company, corporation or body corporate, by delivery at the head office or any other place or business of the organization within the jurisdiction of the Court.

27. Foreign corporation or company

(1) Where the suit is against a foreign corporation or company within the meaning of section 54 of the Companies and Allied Matter Act having an office and carrying on business within the jurisdiction, and such suit is limited to a cause of action which arose within the jurisdiction, the originating process or other documents requiring personal service may be served on the principal officer or representative; or by leaving it at the place of business of such foreign corporation or company within the jurisdiction:

(2) Where a foreign corporation or company has complied with the provisions of Chapter 3 of the Companies and Allied Matters Act, personal service shall be effected on one of the persons authorized to accept service on behalf of the said company.

28. Legal agent of principal who is out of jurisdiction

Where a contract has been entered into within the jurisdiction by or through an agent residing or

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

29. Substituted service

(1) Where service of an originating process is required by this Rules or any other enactment and the court is satisfied that prompt service cannot be effected, the court may upon application by the claimant make such order for substituted service as may seem just.

(2) Every application to the court for substituted or other 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.

Where it appears to the court (either after or without an attempt at service) that for any reason prompt service cannot be conveniently effected, the court may order that service be effected either by:

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

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

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

(d) notice put up at the principal court house, or some other place or public resort in the judicial division where the proceeding in respect of which the service is made is instituted, or at the usual or last known place of abode, or of business, of the person to be served.

(e) **Substituted service by e-mail**

(i) E-mail or any other scientific device now known or later developed and courier service or any other means convenient to the Court.

(ii) Provided service by e-mail is contemplated by parties in a written agreement or subsequently agreed by Counsel in the course of proceedings.

30. Where violence is threatened

Where a person to be served, alone or in concert with others, resists service or applies or threatens

violence to the process server, the process server may leave the process within the reach of person to be served, and this shall be deemed good and sufficient service.

31. Proof of service generally

(1) The process server shall after serving any process promptly depose to and file an affidavit setting out the fact, date, time, place and mode of service, describing the process served and shall exhibit the acknowledgment of service

(2) Proof of service by email shall be evidenced by an affidavit with a printout of an email notifier attached thereto.

(3) The affidavit shall be prima facie proof of service.

32. Expenses of service

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

(2) The costs and expenses for service shall be as directed by the Chief Judge in Practice Directions from time to time.

33. Time of service on certain days

(1) Service of originating and other processes, shall be effected between the hours of 6am and 6pm provided that where service is effected after 6pm, such service will be deemed to have been effected on the next service day.

(2) Service shall not be effected on a Sunday or on a public holiday save in exceptional circumstances as may be authorized by the Court.

34. Service of advance copies via email

Where parties are represented by counsel, advance copies of processes other than originating process may be served by email.

35. Service of hearing notices via email

The court may serve hearing notices via email and/or SMS except as otherwise directed by the Judge.

36. Recording of service

(1) The Registrar shall keep a register in such form as the Chief Judge may direct for recording service of processes by any process server. The Registrar shall record the names of the claimant and defendant, the method of service, and the manner used to ascertain that the right person was served.

(2) Where any process was not served, the cause of failure shall be recorded in the register.

Every entry in the register or certified copy shall be prima facie evidence of such matters.

(3) Such service shall be supported by a written (notify) report, a copy of which shall be kept in the court register referred to rule 18(1).

ORDER 8

SERVICE OUT OF NIGERIA AND SERVICE OF FOREIGN PROCESS

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

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

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

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

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

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

(e) the claim is brought against the defendant to enforce, rescind, dissolve, annul or otherwise affect a contract or to recover damages or other relief for or in respect of a contract:

(i) made within jurisdiction, or

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

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

(f) The claim is founded on a tort committed within jurisdiction, or

(g) An injunction is sought as to anything to be done within jurisdiction, or any nuisance within jurisdiction is sought to be prevented or removed, or

(h) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within jurisdiction, or

(i) The claim is by a mortgagee or mortgagor in relation to a mortgage of property situate within jurisdiction and seeks relief of the nature or kind following, that is sale, foreclosure, delivery of possession by the mortgagor; redemption, reconveyance, delivery of possession by the mortgagee; but does not seek (unless and except so far as permissible under paragraph (e) of this Rule) any judgment or order for payment of any monies due under the mortgage, or

(j) The proceedings relate to a person under legal disability, or

(k) The proceedings relate to probate matters, or

(l) Where any proceedings under any law or rule of court has been instituted by any originating process.

10. Agreement as to service

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.

11. Service abroad by letter of request

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

(a) Civil Form 8

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.

(b) Civil Form 9

a party wishing to serve a process under this rule shall file a praecipe in Form 9 with such modifications of variations as circumstances may require.

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

(d) Civil Form 10

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 notwithstanding the foregoing provision, a claimant may with leave of a Judge serve any originating process by courier.

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

12. Where leave is granted or not required

(3) Where leave is granted or is not required in a civil suit and it is desired to serve any process in a foreign country with which a Convention in that behalf has been made, the following procedures 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 a Nigerian diplomatic agent to the Court establishing the fact and the date of the service of the document shall be deemed to be sufficient proof of service within the requirements of these Rules.

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

13. Service of foreign processes

Where in any Civil or Commercial matter pending before a Court or Tribunal of a foreign country, a letter of request from such Court or Tribunal for service of any person or citation in such matter is transmitted to the Court by the Edo State Attorney-General with intimation that it is desirable that effect be given to the same, the following procedures 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 Judge 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.

14. Inapplicability of Rule 4

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

15. Service on behalf of foreign tribunals

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 or 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 procedures shall, subject to any special provisions in the convention, be adopted:

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

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

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

16. Substituted service of foreign process

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

ORDER 9
APPEARANCE

11. Mode of entry of appearance: Civil Form 12

(1) A defendant served with an originating process shall, within the period prescribed in the process for appearance, file in the registry the original and copy of a duly completed and signed memorandum of appearance as in Form 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 showing the date he received it and return the copy to the person making the appearance.

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

12. Defendants appearing in person or represented

(1) A defendant appearing in person shall state in the memorandum of appearance an address for service which shall be within Edo 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 Edo 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.

13. Fictitious address

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.

14. Defendants appearing through same legal practitioner

Where 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.

15. Late appearance

(iii) Where a defendant is out of time in filing a memorandum of appearance, no leave of court is required. Where a defendant files a memorandum of appearance after the time prescribed in the originating process, he shall pay to the court at the time of filing an additional fee of N100.00 (One Hundred Naira) for each day of default. If the defendant files a memorandum of appearance out of time but within the time prescribed for filing his defence, he shall file his defence within that time.

(iv) Where service is to be effected by persons under Order 7 Rule 1(i) and Order 7 Rule 1(3), failure to serve the memorandum of appearance within the time prescribed in Rule 1(3) of this Order shall attract a penalty of N100.00 (One Hundred Naira) for each day of default.

16. Intervener in probate matters

In probate matters, any person not named in the originating process may intervene and appear in the matter on filing a motion supported by an affidavit showing his interest(s) in the estate of the deceased.

17. Recovery of land

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 a motion showing that he is in possession of the land either by himself or through his tenant.

18. Landlord appearing

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.

19. Person under legal disability appearing

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

20. Tenant

In this Order, the word “Tenant” includes a sub-tenant or any person occupying any premises whether on payment of rent or otherwise.

ORDER 10
DEFAULT OF APPEARANCE

14. Default of appearance by person under legal disability

Where an appearance has not been entered for a person under legal disability, a claimant shall apply to the court for an order that a 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 and notice of the application shall be served on the person intended to be appointed the guardian of the defendant.

15. Default of appearance

Where any defendant fails to appear, a claimant may proceed upon proof of service of the originating process under the appropriate provisions of these Rules.

16. Liquidated demand

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

17. Liquidated demand several defendants

Where the claim in the originating process is a liquidated demand and there are several defendants of whom one or more appear to the process and another or others fail to appear, a claimant may apply to the court 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.

18. Judgment in default of appearance

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 any of the defendants fail to appear, a claimant may apply to the court 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 the court may direct before judgment for that part of the claim.

19. Several defendants

Where the claim in the originating process is as provided in Rule 5 of this Order and there are several defendants, judgment may be entered against the defendant in default of appearance. The value of the goods and the damages only as the case may be shall be ascertained in such manner and subject to filing such particulars as the court may direct before judgment for that part of the claim.

20. Detention of goods damages and liquidated demand

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

21. Recovery of land

If an appearance is not entered within the time prescribed in the originating process in a claim for recovery or if appearance is entered but the defence is limited to part only, a claimant may apply to the court 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.

22. Mesne profit

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

23. Judgment for costs upon payments

In any case to which Rules 3-8 of this Order do not apply and the defendant or any of the defendants fails 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 the court for judgment for costs; but such application shall be filed and served in the manner in which service of the originating process was effected or in such manner as the court shall direct.

24. Setting aside judgment

Where judgment is entered under any of the preceding Rules of this Order, the court may on an application by the defendant set aside or vary such judgment on terms. The application shall be made within a reasonable time, showing evidence of payment of penalty, a good defence to the claim and a reasonable cause for the default.

25. Default of appearance in actions not specifically provided for

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

26. Compulsory service

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

ORDER 11
SUMMARY JUDGMENT

8. Where claimant believes there is no defence

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

9. Delivery of extra copies

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

10. Service

Service of all the processes and documents referred to in Rule 1 of this Order shall be effected in the manner provided under Order 7.

11. Where defendant intends to defend

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

(a) statement of defence;

(b) depositions of his witnesses;

(c) exhibits to be used in his defence; and

(d) written brief in reply to the application for summary judgment.

12. Where defendant has good defence, or has no good defence or has good defence to part of the claim

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

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

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

13. Where there are several defendants

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

14. Oral submission on written brief

Where provision is made for written briefs under these Rules, each party shall be at liberty to advance before a Judge oral submission to expatiate his written brief.

ORDER 12
APPLICATION FOR ACCOUNT

9. Order for account

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

10. Application how made

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.

11. Account may be taken by a Judge or Referee

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

12. Account to be made verified, etc.

(1) Where an account has been ordered to be taken, the accounting party shall make out his account and unless the Court otherwise directs, verify it by an affidavit to which the account shall be exhibited.

(2) The items on each side of the account shall be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs, the accounting party shall lodge the account with the court and shall at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

13. Erroneous account

Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any item in his account is erroneous in respect of amount or any other respect shall give him notice

thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or to back as the case may be, the grounds for alleging that the item is erroneous.

14. Allowances

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

15. Delay in prosecution of account, etc.

(1) If it appears to the court that there is undue delay in the prosecution of any account or inquiry, or in any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or expediting them or for the conduct thereof and for costs as the circumstances require.

(2) The Court may direct any person or legal practitioner to take over the conduct of proceeding in question and to carry-out any directive made by an order under this rule and may make such orders as it thinks fit as to the payment of legal practitioner's costs.

16. Distribution of fund before all entitled persons are ascertained

Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons ascertained without reserving any part of the shares to meet the subsequent costs of ascertaining those other persons.

ORDER 13
PARTIES GENERALLY

36. Persons claiming jointly or severally

All persons may be joined in one action as claimant in whom any right to relief is alleged to exist whether jointly or severally, and judgment may be given for such claimant as may be found to be entitled to relief and for such relief as he or they may be entitled to, without any amendment.

37. Action in the name of wrong claimant

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

38. Misjoinder and counter-claim

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

39. Any person may be joined as defendant

Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, judgment may be given against one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

40. Action in the name of wrong defendant

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

41. Defendants need not be interested in all the reliefs sought

(1) It shall not be necessary that every defendant shall be interested in all the reliefs prayed in any proceeding against him.

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

42. Joinder of persons severally liable

A claimant may at his option join as parties to the same action all or any of the persons severally or jointly and severally liable on any contract, including parties to bills of exchange and promissory notes.

43. Person against whom redress is to be sought

Where a claimant is in doubt as to the person against whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, with 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.

44. Persons unknown

Where in land matters a claimant is unable to identify the person against who he claims, he may subject to the Rules of this court describe such a person as a "person unknown".

45. Substitution of name

Such a defendant under this Rule may by leave of court apply for the substitution of his name as a defendant in lieu of the reference to him as a "person unknown".

46. Persons under legal disability

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

47. Guardian

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.

48. Trustees, Executors sued as representing the estate

Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons, but 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 proceedings to enforce a security by foreclosure or otherwise.

49. Numerous persons

(1) Where there are numerous persons 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 of or for the benefit of all persons so interested.

50. Representation of persons or classes of persons in certain proceedings

(1) Where in any proceedings concerning:

(a) the administration of an estate; or

(b) property subject to a trust; or

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

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

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

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

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

It is expedient for the purpose of efficient procedure that one or more persons be appointed to represent that person or class or member of the class, the Judge may make the appointment. The decision of the Judge in the proceedings shall be binding on the person or class or 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 proceedings mentioned in sub-rule 1 of this Rule, several persons having the same interest in relation to the matter to be determined attend the hearing by separate legal practitioners, then unless the Judge considers that the circumstances justify separate representation, not more than one set of costs of the hearing shall be allowed to these persons, and the judgment or order shall be framed accordingly.

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

51. Power to prove compromise

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

(iii) 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

(iv) 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.

52. Where there is no Personal Representative

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

(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 the application of either the deceased's Legal Practitioner or the opposing party order any person to take the place of the said deceased and proceed with the suit.

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

53. Proceedings not defeated by misjoinder or non-joinder

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

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

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

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

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

54. Application to add or strike out

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

(2) Where the application to add a claimant or a defendant is by a person not already a party, 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.

55. Where defendant is added

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.

56. Third parties may be joined by any of the parties

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

(2) The Order and existing processes shall be served on the third party within the time prescribed for delivering of the defence.

57. Appearance by third party

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

58. Default by third party

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

59. Subsequent third party

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

60. Claim against co-defendant

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

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

61. Actions by and against Firms

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.

62. Disclosure of Partner's names

(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 persons 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 proceedings 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 proceedings may continue in the name of the Firm.

63. Appearance of partners

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

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

64. Application of Rules to actions between Co-partners

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

65. Persons trading as firm

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

Change of parties by Death or Otherwise, etc.

66. Action not abated where cause of action survives

No proceedings shall abate by reason of death or bankruptcy of any of the parties, if the cause of action survives and shall not become defective by the assignment, creation or devolution of any estate or title pendente lite, and, whether the cause 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.

67. Order to carry on proceedings

(1) Where by reason of death or bankruptcy, or any other event occurring after the commencement of a proceeding and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the proceeding, it becomes

necessary or desirable that any person not already a party should be made a party or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party or parties may be obtained ex-parte upon an allegation of such change, or transmission of interest or liability or of any such person interested having come into existence.

(2) An Order obtained under this Rule shall be served upon the continuing party or parties, or their legal practitioner(s) and also upon such new party unless the person making the application is the new party.

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

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

68. In case of assignment, creation or devolution of estate or title

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.

69. Application to discharge Order by person under disability having a guardian

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

70. By persons under disability having no guardian

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

ORDER 14
JOINDER OF CAUSE OF ACTION

5. All causes of action may be joined

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

6. Recovery of land

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

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

7. Executor and Administrator

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

8. Claims by Joint-claimants

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

ORDER 15
PLEADINGS

21. Filing of Pleadings

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

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

A defendant shall file along with his statement of defence., set-off or counter-claim a list of the claimant's documents indicating:

(a) those to which he has no objection; and
(b) those to which he has objection.

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

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

(ii) A claimant shall within fourteen (14) days of service of the statement of defence and counter-claim, if any, file a list of the defendant's documents indicating:
(a) those to which he has no objection; and
(b) those to which he has objections.

22. Pleading to state material facts and not evidence

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

23. Particulars to be given where necessary

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

(2) In an action for libel or slander, if the claimant alleges that the words or matters complained 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.

24. Further and better statement or particulars

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 pleadings requiring particulars shall be made to a Judge at the trial. The Judge may grant such application upon such terms as may be just.

25. Denial

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

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

26. Conditions precedent

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

27. Defence, certain facts, surprise to be specifically pleaded

(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 proceedings to the pleadings, shall be specifically pleaded.

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

28. Pleadings to be consistent

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

29. Joinder of Issues

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

30. Effect of documents to be stated

Wherever the contents of any documents are material, it shall be sufficient in any pleadings 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.

31. Notice

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

32. Implied contract or relationship

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

33. Presumption of Law

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

34. Stated or settled account

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

35. Technical objection

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

36. Striking out of pleadings

A Judge may, at the trial in any proceedings, order to be struck out or amended, any matter in any

endorsement or pleadings, 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.

37. Defamation

(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 a defendant alleges that in so far as the words complained of consist of statement of fact, that 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.

38. Where pleadings disclose no reasonable cause of action

(1) the Judge, may at any stage of the proceedings, order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, 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 paragraph (1) (a).

(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 pleadings.

39. Close of pleadings

(1) Where pleadings subsequent to reply is not ordered, then, at the expiration of 7 days from

the service of the defence or reply (if a reply has been file) pleadings shall be deemed closed.

(2) Where pleadings subsequent to reply is ordered, and the party who has been ordered or given leave to file 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 counter-claim and unless the claimant files a defence to counter-claim, the statements of fact contained in such counter-claim 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 counter-claim.

ORDER 16
STATEMENT OF CLAIM

3. Statement of claim

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

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

4. Claim beyond endorsement

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

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

ORDER 17
STATEMENT OF DEFENCE AND COUNTER-CLAIM

17. Statement of defence

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

18. Evasive denial

When a party in any pleadings denies an allegation of fact in the previous pleadings of the opposite party, he shall not do so evasively, but answer the point of substance. If an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

19. Denial generally

(1) In an action for debt or liquidated money demand, 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.

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

20. Persons in representative capacity

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.

21. Pleading to damages

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

22. Set-off and counter-claim

Where any defendant seeks to rely upon any ground as supporting a right of set-off or counter claim, he shall in his defence state specifically that he does so by way of supporting a right of set off or counter claim.

23. Title of counter claim

Where a defendant by his defence sets up any counter claim 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 counter claim were to be enforced by cross action, would be defendants to

such cross action, and shall deliver his defence to such number of them as are parties to the action within the period which he is required to deliver it to the claimant.

24. Claim against persons not Party (Civil Form 13)

Where any such person as in rule 7 of this Order is not a party to the action, he shall be summoned to appear by being served with a copy of the defence and counter claim, and such service shall be regulated by the same rules as those governing the service of the originating process and every defence and counter claim so served shall be endorsed in Form 13 with such modifications or variations as circumstances may require.

25. Appearance

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

26. Reply to counter claim

Any person not already a party to the action, who is named in a defence as a party to a counter claim 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.

27. Discontinuance: the claimant's claim

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

28. Judgment balance

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

29. Ground of defence after action brought

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

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

30. Further defence or reply

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

31. Concession to defendant (Civil Form 14)

Whenever any defendant in his defence or in any further defence pursuant to rule 14 of this Order alleges any ground of defence which has arisen after the commencement of the action, the claimant may concede to such defence (which concession may be in Form 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.

32. Defence to originating summons

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

ORDER 18

REPLY

2. Filing of reply

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

4. Reply to counter-claim

Where there is a counter-claim, a reply thereto is called a defence to counter-claim and shall be subject to the rules applicable to defences.

ORDER 19

ADMISSIONS

3. Notice of admission of facts

Any party to a proceedings may give notice by his pleadings or otherwise in writing, that he admits the truth of the whole facts or any part of the case of the other party.

6. Notice to admit document

(1) Either party may not later than 7 days before trial by notice in writing filed and served, require any other party to admit any document and the party so served shall not later than 4 days after service give notice of admission or non-admission of the document, failing which he shall be deemed to have admitted it unless a Judge otherwise orders.

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

(3) Where a party gives notice of non-admission and the document is proved at the trial, the cost of proving the document, which shall not be less than a sum of five thousand naira (N5,000.00) shall be paid by the party who has challenged it, unless at the trial or hearing, the Judge shall certify that there were reasonable grounds for not admitting the authenticity of the document.

7. Notice to admit facts

(1) Either party may not later than 7 days before trial, by notice in writing filed and served, require any other party to admit any specific fact or facts mentioned in the notice, and the party so served shall not later than 4 days after service give notice of admission or non-admission of the fact or facts failing which he shall be deemed to have admitted it unless a Judge otherwise orders.

(2) Where there is a refusal or neglect to admit the same within 4 days after service of such notice or within such further time as may be allowed by the Judge, the cost of proving such fact or facts which shall not be less than a sum of five thousand naira (N5,000.00), shall be paid by the party so refusing or neglecting whatever the result of the proceedings, unless the Judge certifies that the refusal to admit was reasonable or unless the Judge at any time otherwise orders or direct.

(3) Where there is a refusal or neglect to admit the same within four (4) days after the service of such notice or within such further time as may be allowed by the Judge, the cost of proving such fact or facts which shall not be less than a sum of five thousand naira (5,000.00) shall be paid by the party so refusing or neglecting whatever the result of the proceedings, unless the Judge certifies that the refusal to admit was reasonable or unless the Judge at any time otherwise orders or directs.

8. Judgment or Order upon admission of facts

The Judge may, on application, at trial or at any other stage of the proceedings where admissions of facts have been made, either on the pleadings or otherwise, make such orders or

give such judgment as upon such admissions a party may be entitled to, without waiting for the determination of any other question between the parties.

9. Cost of notice where documents are unnecessary

Where a notice to admit or produce comprises documents that are not necessary, the costs occasioned thereby which shall not be less than five thousand naira (N5,000.00) shall be borne by the party giving such notice.

ORDER 20

DEFAULT OF PLEADINGS

14. Claim for debt or liquidated demand

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

15. Several defendants: default of one

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.

16. Damages and detention of goods

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 all the defendants, if more than one, make default as mentioned in rule 1 of this Order, the claimant may apply to a Judge for interlocutory judgment against the defendant or defendants and the value of the goods and the damages, or the damages only as the case may be, shall be ascertained in any way which the Judge may order.

17. Default of one or more defendants

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

18. Debt or damages and detention of goods

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

19. Recovery of land

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

20. Claim for *mesne*-profits, arrears or damages

Where the claimant has endorsed a claim for *mesne* profits or arrears of rent in respect of the premises claimed, or any part of profits or damages for breach of contract or wrong or injury to the premises claimed upon a writ for the recovery of land, if the defendant makes default as mentioned in rule 1, or if there be more than one defendant, some or one of the defendants 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.

21. Defence to part of claim only

If the Claimant's claim is for a debt or liquidated demand or for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, or for any such matters, or for the recovery of land, and the matters, or for the recovery of land, and the Defendant files a defence which purports to offer an answer to part only of the Claimant's alleged cause of action, the claimant may apply for judgment, final or interlocutory, as the case may be, for the part unanswered:

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 counter claim, execution on any such judgment as above mentioned in respect of the claimant's claim shall not issue without leave of the Judge.

22. Defendant in default

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

(2) Where there is no defence and the matter before the Court cannot be adjudged without the claimant adducing evidence to prove the case before the Court, the claimant shall make an application to set the matter down for trial before the Judge who shall upon consideration and grant of the application proceed to hear the matter.

23. One of several defendants in default

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

24. Default of third party

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

25. Default of defence to counter claim

A defendant who counter-claims against a claimant shall be treated for the purposes of rules 2 to 10, as if he were a claimant who had made a claim against a defendant and accordingly, where the claimant or any other person against whom the counter claim is made, fails to serve a defence to the counter claim, rules 2 to 10 shall apply as if:

(e) the counter claim were a statement of claim;
(f) the defence to the counter claim a defence;
(g) the parties making the counter claim and against whom it is made were claimants and defendants respectively; and
(h) references to the period fixed under these rules for service of the defence were references to the period so fixed for service of the defence to the counter claim.

26. Setting aside judgment by default

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

ORDER 21

PAYMENT INTO AND OUT OF COURT

8. Payment into and out of Court

(1) Where after service in any proceedings for debt or damages, a defendant evinces an intention to pay money into Court in respect of the proceedings, he shall notify the Chief Registrar, who will thereupon direct him to pay the money into an interest yielding account opened by the Chief Registrar 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 Registrar of an intention to increase the amount of any sum paid into Court.

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

(6) **Civil Form 15**
The notice shall be in Form 15 with such modifications or variations as circumstances may require. The receipt of the notice shall be acknowledged in writing by the claimant within 3 days. The notice may be modified or withdrawn or delivered in an amended form by leave of a Judge upon such terms as may be just.

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

9. Claimant may take out money: (Civil Form 16)

(1) Where money is paid into Court under rule 1, the claimant may within 14 days of the receipt of the notice of payment into Court, or where more than one payment into Court has been made, within 14 days of the receipt of the notice of the last payment into Court, accept the whole sum or any one or more of the specific sum in satisfaction of the cause or causes of action to which the specified sum or sums relate, by giving notice to the defendant in Form 16 with such modifications or variations as circumstances may require and thereupon shall be entitled to receive payment of the accepted sum or sums in satisfaction as aforesaid.

(2) Payment shall be made to the claimant or on his written authority to his legal practitioner and thereupon proceedings in the action or in respect of the specified cause or causes of

action (as the case may be) shall abate.

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

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

10. Money remaining in Court

If the whole of the money in Court is not taken out under rule 2, the money remaining in Court shall not be paid out except in satisfaction of the claim or specified cause or causes o f 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.

11. (1) **Several defendants**
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.

(6) **Form 17**
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 17 with such modifications or variations as circumstances may require to each defendant and thereupon all further proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall abate.

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

(8) **Civil Form 16**
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 16 with such modifications or variations as circumstances may require. The claimant may tax his costs against the defendant who has made such payment in accordance with Rule 2(3) of this Order and the action shall abate against the defendant.

(9) 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.

12. Counter claims

A person made a defendant to a counter claim may pay money into Court in accordance with the foregoing rules, with necessary modification.

13. Persons under legal disability

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

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

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

14. Payment into and withdrawal of money from Court

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

ORDER 22

PROCEEDINGS IN LIEU OF DEMURRER

6. Demurrer abolished

No demurrer shall be allowed.

7. Points of law may be raised by pleadings

Any party shall be entitled to raise by his pleadings any point of law and any points so raised shall be disposed of by the Judge who tries the cause at or after the trial:

Provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, it may be set down for hearing and disposed of at any time before the trial.

8. Dismissal of action

(1) If, in the opinion of the Court or a Judge; the decision of the point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter claim, or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.

(2) This provision shall be without prejudice to the Arbitration Act or any other Law under which a Defendant must apply for stay of proceedings before filing a Statement of Defence or other Statement of Case on the merits.

9. Striking out pleadings where no reasonable cause of action is disclosed

(1) The Judge may at any stage of the proceedings 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 an application under Rule 18(1)(a).

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

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

10. Declaration judgment

No action or proceedings shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not.

ORDER 23

NOTICE OF DISCONTINUANCE

4. Claimant may discontinue before defence

(1) The claimant may at any time before receipt of the defence or after the receipt thereof, before taking any other proceedings 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 and served the claimant may with the leave of a Judge discontinue the proceedings or any part thereof on such terms and conditions as the Judge may order.

(4) Where proceedings have been stayed or struck out upon a claimant's withdrawal or discontinuance under this Order, no subsequent claim shall be heard 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 counter claim to be withdrawn or struck out.

5. Withdrawal by consent

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

ORDER 24

AMENDMENT

9. Amendment of originating process and pleadings

A party may amend his originating process and pleadings at any time before the settlement of issue and not more than twice during the trial but before the close of the case, provided the Court may grant more than two amendments in exceptional circumstances.

10. Application

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

11. Amendment of originating process

Where any originating process and or pleadings 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.

12. Failure to amend after order

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 N500.00 (Five Hundred Naira) only for each day of default, without the need for another application for extension of time provided he files within fourteen days thereafter.

13. Filing and service of amended process

Whenever any originating process or pleadings 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.

14. Date of order and amendment to be displayed

Whenever any endorsement or pleadings is amended, it shall be marked in the following manner;

"Amended _____day of _____
Pursuant to Order of (name of Judge) dated the _____day
Of _____."

15. Clerical mistakes and accidental omissions

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

16. General power to amend

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

ORDER 25

TRIAL CONFERENCES AND SCHEDULING

6. Period for settlement

(1) When a matter comes before the Court for the first time, the Judge shall in circumstances where it is appropriate, grant to the parties, time, not more than thirty days within which parties may explore possibilities for settlement of the dispute.

(2) Where parties fail to settle within thirty days or such other period as the court may grant, the case shall without more proceed to trial.

7. Formulation of issues for determination

(1) Where a matter is to proceed to trial, the parties shall within seven (7) days after close of pleadings file respectively, issues for determination at the trial. The issue may state questions of law or admitted facts or questions of disputed facts or questions partly of law, on the one part and partly of facts, on the other.

(2) Where a party fails to comply with Rule 1, the court may proceed to set down the matter for hearing upon the issues submitted by the other party.

(3) Where the parties have filed their respective issues for determination and the parties have not agreed on the issues for determination, or the Judge is of the opinion that the issues formulated by the parties do not adequately address the controversy between the parties, the judge may, inspite of the issues formulated by the parties, formulate appropriate issues for determination and such shall be the issues for determination at the trial of a matter.

8. Party may apply for issue to be tried

Notwithstanding the provisions of rule 2 of this Order, where a party believes that the issues for determination shall be determined by a hearing in open court, such party may do so by application on notice stating the question(s) or issue(s) sought to be tried.

9. Court may amend or frame additional issues

At any time before judgment, and where it appears necessary to the Court, for the purpose of determining the real question or controversy between the parties, the court may amend the issues or frame additional issues on such terms as it deems fit.

10. Formulation of issues by Court

Where the Court intends to formulate or amend issues for determination, it shall be done in open court and on notice to the parties to attend the hearing for the formulation of issues for determination.

ORDER 26

ALTERNATIVE DISPUTE RESOLUTION

A – Reference to ADR

15. Judge to encourage ADR

It shall be the duty of a court or a Judge to encourage settlement of matters either by:

(a) Arbitration
(b) Conciliation
(c) Mediation
(d) Or any other method of dispute resolution.

16. Consent Cases to be referred to ESMDC Civil Form 18 time within which to report settlement

(3) Where parties consent to settlement of disputes, the Court or Judge shall by an enrolment order as in Form 18, refer the case to the ESMDC for resolution within 30 days except otherwise ordered by the Court.

(4) Where a court makes a referral, the court or judge shall by an enrollment order as in form 18 refer the case to the ESMDC for resolution within 30 days except otherwise ordered by the court.

17. ADR Directives & Sanctions

(7) Where a case is deemed suitable for ADR under Order 3 Rule 16 or has by directives been referred to ADR under Rule (2)(2) above, the judge may consider and give appropriate directives to parties on the filing of statement of claim and other necessary issues.

(a) The claimant shall file his statement of claim within Seven (7) days of the Order of the judge.

(b) The defendant shall file his response within Seven (7) days of service of the claimant's statement of claim.

(8) The parties shall file a notice of compliance with Rule 3(1) above to the judge within fourteen (14) days of giving the Order.

(9) Failure to comply with filing the notice of compliance within time shall attract a sum of two hundred (N200) naira fine per day.

(10) A party applying for an extension of time to comply with Rule 3(1) above, shall upon filing such application attach thereto evidence of payment.

(11) Where a party fails to comply with the directives and/or orders of the ADR Judge or fails to participate in ADR proceedings, the Judge shall

(a) in the case of the claimant, dismiss the claim.

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

(12) Any judgment given under Rule 5 above may be set aside upon an application made within (7) days of the judgment or such other period as the Judge or ADR Judge may allow for good cause shown.

The application shall be accompanied by an under taking to participate effectively in the ADR proceedings.

18. Cost

The Court in making any order as to cost during or after a trial shall consider any directive made under this Order and the disposition of the parties thereto.

19. Extension of time to report settlement

Where parties are unable to complete the settlement process within the time specified in the order, the referring judge may extend the order whenever he considers it expedient having regard to the facts and circumstances of the case.

20. Where settlement has broken down

(3) The referring judge shall proceed to entertain a case where parties report that the settlement has broken down or it cannot be resolved through the ADR mechanism.
(4) Where a party refused to submit to ADR and loses the case in court, he shall pay a penalty as may be determined by the court.

21. Consent Judgment walk in application for consent judgment

(3) The court or judge shall, on the application of parties enroll the terms of settlement reached at the ESMDC as consent judgment, such terms shall thereupon have the same force and effect as judgment.

(4) Parties in a "walk in" ADR process may apply to an ADR judge by a Motion on Notice for an order to enroll the decision or terms of settlement at the ESMDC as a consent judgment.

22. Chief Judge to designate ADR Judges

The Chief Judge may by order under his hand and seal appoint and designate judges as ADR judges who shall have jurisdiction to handle ADR related matters.

23. Settlement Week

The Chief Judge may designate a week(s) during the course of the legal year for the resolution of disputes at the Multi-Door Courthouse. This week(s) shall be known as Settlement Week and the proceedings of the week shall be as directed by the Chief Judge in a Practice Direction.

24. Sifter Committee

The Chief Judge may set up a Sifter Committee to identify cases that may be effectively resolved during the settlement week or any time he deems fit.

B – Arbitration

25. Arbitration

(a) In any case in which a matter is referred to one or more arbitrators under these Rules, the Court shall by an order under its seal refer to the arbitrators the matters in dispute in the

suit which they may be required to determine and fix a time for the delivery of the award and the time so fixed shall be stated in the order.

(b) When the arbitrators are not able to complete the award within the period specified in the order for want of the necessary evidence or information or other good and sufficient cause, the Court may, from time to time, enlarge the period for delivering of the award, if it thinks fit.

(c) An award shall not be liable to be set aside only by the reason of its not having been completed within the period allowed by the Court, unless on proof that the delay in completing the award arose from misconduct of the arbitrators.

(d) Where in any case of reference to arbitration by an order of court, the arbitrator dies or refuse to act, the court shall appoint a new arbitrator in the place of the person dying, refusing or becoming incapable to act.

(e) The award shall contain a conclusive finding on all issues in the matter referred to arbitration.

(f) In any of the following cases, the court may remit the award or any of the matters referred to arbitration, for reconsideration by the arbitrator(s) upon such terms as it thinks proper:
(i) Where the award has left undermined some of the matters referred to arbitration;
(ii) where the award has determined matters not referred to the arbitration;
(iii) where the award is so indefinite as to be incapable of execution;
(iv) where an objection to the legality of the award is apparent on the face of the award.

(g) No award shall be liable to be set aside except on the misconduct of the arbitrator and provided that the application for setting aside the award is made within 15 days after the publication thereof.

(h) if no application is made to set aside the award or to remit it for reconsideration or where the court has refused any such application, either party may file the award in court and the award shall thereupon have the same force and effect for all purposes as a judgment.

(i) the Chief Judge may designate a judge as the arbitration judge whose court shall primarily be responsible for remitting and enforcement of award.

C – Arbitration Proceedings

26. Arbitration proceedings

Except to subpoena a witness to attend under Section 23 of the Arbitration and Conciliation Act which shall be by motion ex-parte, every application in this rule to the court under the Act:-

(a) to set aside an arbitration agreement under section 2 thereof:
(b) to appoint an arbitrator under section 7(3) thereof;
(c) to stay proceedings under section 5 thereof;
(d) to remove an arbitrator or umpire under section 30 thereof;
(e) to direct an arbitrator or umpire to state the reasons for an award under section 26 thereof;

(f) to apply that a case on trial which is the subject of an arbitration agreement be

referred to an arbitration under section 4 thereof;

(g) to set aside an award under section 29 thereof;

(h) for declaration that an award is not binding on a party to the award on the ground that it was made without jurisdiction or because the arbitrator misconducted himself or that the proceeding was arbitrary or that the award has been improperly procured under section 30 thereof;

(i) generally to determine any question of law arising in the course of or concerning any arbitration agreement or proceedings referred to the court;
Shall be made by motion.

D – Enforcement of Arbitration Awards

27. Enforcement of Arbitral Awards

(3) An application to enforce an award on an arbitration agreement in the same manner as a judgment or order may be made *ex-parte*, but the court hearing the application may order it to be made on notice.

(4) The supporting affidavit shall –
(a) exhibit the arbitration agreement and the original award or in either case certified copies of each;

(b) state the name, as usual or last known place of abode or business of the applicant and the person against whom it is sought to enforce the award;

(c) state as the case may require either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

E – Registration of Foreign Arbitration Award

28. Registration of Foreign arbitration award

When an award is made in proceedings on an arbitration in a foreign territory to which the Foreign Judgment (Reciprocal Enforcement) Act extends, if the award was in pursuance of the law in force in the place where it was made, it shall become enforceable in the same manner as a judgment given by a court in that place and the proceeding of the Foreign Judgments (Reciprocal Enforcement) Act shall apply in relation to the award as it applies in relation to a judgment given by that court.

ORDER 27

DISCOVERY AND INSPECTION

15. Discovery by Interrogatories

In any cause or matter, the claimant or defendant may deliver interrogatories in writing for the examination of the opposite 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 proceedings of settlement of issues.

16. Civil Form 19

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

17. Corporation or Companies

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

18. Objection to interrogatories by answer

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 by way of motion.

19. Affidavit in answer: filing of

Interrogatories shall be answered by affidavit to be filed within 7 days, or within such other time as the Judge may allow. Two copies of the affidavit in answer shall be supplied to the Registrar and a copy thereof served on the party that delivered the interrogatories.

20. Form of affidavit in answer or answer: Civil Form 20

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

21. Order to answer or answer further

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

22. Application for discovery of documents

(1) Any party may in writing, request any 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 or within such period as the Court or Judge may direct and shall form part of the proceedings. The party on whom such a request is served shall answer on oath completely and truthfully within 7 days of the request or within such other time as the Judge may allow.

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

(3) **Civil Form 21**

The affidavit to be made by any 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 21 with such modifications or variations as circumstances may require.

(4) On the hearing of the application, the Court or Judge in chambers may either refuse or adjourn the hearing, if satisfied that the discovery is not necessary or make such order, either generally or limited to certain classes of documents, as may, in its or his discretion, be thought fit.

(5) Discovery shall not be ordered when and so far as the Court or Judge in chambers is of the opinion that it is not necessary either for disposing fairly of the action or for saving costs.

23. Verification of business books

(1) Where any document required to be attached to any process or produced under this or any other rule is a business book, a Judge may upon application, order a copy of any entry therein to be furnished and verified in any 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.

24. Committal of party after service on him

An order for interrogatories or discovery or inspection made against any party if served on the party, shall be sufficient to found an application for committal of a party for disobedience to the order.

25. Liability of legal practitioner

If the interrogatories or discovery or inspection is served on the legal practitioner for the party but neglects without reasonable excuse to give notice to his client, he shall be liable to pay the cost occasioned thereby.

26. Using answer to interrogatories at trial

Any party may, at the trial of a cause, matter or issues, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer.

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

27. Discovery against sheriff

In any action against or by a sheriff in respect of any mater 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 be made by the officer concerned.

28. Order to apply to person under legal disability

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

ORDER 28

ISSUES, INQUIRIES, ACCOUNTS AND REFERENCE TO REFEREES

32. Issues of facts

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

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

33. Reference to referee

In any legal proceedings, 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 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.

34. Instructions to referee

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

35. General powers of referee

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

36. Evidence

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

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

(3) Nothing in these rules shall authorize 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 commitment as he may consider necessary.

37. Report made in pursuance of reference under order

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

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

(3) On the receipt of a referee's report, the Judge may:
- (a) adopt the report in whole or in part;
- (b) vary the report;
- (c) require an explanation from him;
- (d) remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other referee.
- (e) decide the question or issue originally referred to him on the evidence taken before him, either with or without additional evidence.

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

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

38. Special directions as to mode of taking account

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.

39. Accounts to be verified by affidavit, numbered and left in the registry

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.

40. Mode of vouching accounts

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.

41. Surcharge

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

42. Accounts and inquiries to be numbered: Civil Form 22

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

43. Just allowance

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

44. Expediting proceedings in case of undue delay

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

ORDER 29

SPECIAL CASE

8. Special case by consent

At the trial, 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.

9. Special case by order before trial

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

10. Special case to be signed

Every special case agreed pursuant to rule 1 shall be signed by the several parties or their legal practitioners and shall be filed by the claimant or other party having conduct of the proceedings.

11. Application to set down where a person under disability is a party

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

12. Agreement to payment of money and cost

(1) The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that on the judgment of the Court being given in the affirmative or negative on the questions of law raised by the special case, a sum of money fixed by the parties or to be ascertained by the Court or in such manner as the Court may direct, shall be paid by one of the parties to the other, 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.

13. Direction

A Judge may give direction as he may deem fit on any issue arising from the trial or special case upon the application of the parties or *suo motu*.

14. Application of order

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

ORDER 30

PROCEEDINGS AT TRIAL

21. Attendance by proxy

(1) In every cause or matter pending before the Court, in case it appears to the satisfaction of the Court that any party who may not be represented by a legal practitioner is prevented by some good or sufficient cause from attending the Court in person, the Court may in its discretion permit any master, servant clerk or member of the family of such claimant or defendant, or officer of the claimant or defendant company, who shall satisfy the Court that he has authority in that behalf, to appear in Court for such party.

22. Non-appearance: both parties

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.

23. Default of appearance by defendant at trial

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

24. Default of appearance by claimant

When a cause is called for hearing, if the defendant appears and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such counter-claim, so far as the burden of proof lies upon him. Provided that if the defendant shall admit the cause of action to the full amount claimed, the Court may if it thinks fit, give judgment as if the claimant had appeared.

25. Judgment by default may be set aside on terms

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

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

(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 longer period as the Judge may allow for good cause shown.

26. Adjournment of trial

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.

27. Times of commencement and termination of trial

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

28. When a cause is called up for hearing, further hearing, defence or continuation of defence and either party files a motion or an application which by these Rules is not ripe for hearing, the party filing the motion or application shall at the time of filing, pay to the Court a fee of N20,000.00

(Twenty Thousand Naira) only.

29. Burden of proof by party to begin

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

30. Documentary evidence

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

31. Additional witness

(1) A party who desires to call any witness not being witness whose deposition on oath accompanied his pleading shall apply to the Judge for leave to call such witness.

(2) An application for leave in sub-rule 1 above shall be accompanied by the deposition on oath of such witness.

32. Close of case of parties

(1) A party shall close his case when he has concluded his evidence. Either the claimant or defendant may make oral application to have the case closed.

(2) Notwithstanding the provisions of sub-rule 1 above, the Judge may *suo motu* where he considers that either party fails to conclude his case after two consecutive adjournments or within a reasonable time, close the case for the party.

(3) Application to re-open a case foreclosed by the Court shall attract a fee of N20,000 and shall be filed within six (6) days of the Order of foreclosure. The application shall be accompanied by an under taking to conclude his case upon the re-opening of the case.

33. Exhibits during trial

(1) The Registrar shall take charge of every document or object put in as an exhibit during the trial of an action, and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in (or where more convenient, the witness by whom the exhibit is proved) and with a number, so that all exhibits put in by a party (or proved by a witness) are numbered in one consecutive series.
(2) The Registrar shall cause a list of all the exhibits in the action to be made.
(3) The list of exhibits when completed shall form part of the record of the action.
(4) For the purpose of this rule, a bundle of documents may be treated and counted as one exhibit.
(5) In this rule, a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

34. Written address by party beginning

When the party beginning has concluded his evidence, the Judge shall ask the other party if he intends to call evidence. If the other party does not intend to call evidence, the party beginning shall within 21 days after close of evidence file a written address. Upon being served with the written address, the other party shall within 21 days file his own written address.

35. Written address by the other party

Where the other party calls evidence, he shall within 21 days after the close of evidence file a written address.

36. Written address of party beginning

Upon being served with other party's written address, the party beginning shall within 21 days file his own written address.

37. Right of reply

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

38. Custody of exhibit after trial

(1) An exhibit shall not be released after the trial to the party who has tendered it unless the period during which notice of appeal may be given has elapsed without such notice having been given, and then only if the trial Judge (or in his absence, another Judge) grants leave to release such exhibit on being satisfied:

(a) that the exhibit will be kept duly marked and labelled 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.

39. Office copy of list of exhibits

(1) Any party may apply for and on payment of the prescribed fee, obtain an office copy of the list and certified true copies 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.

40. Indolent prosecution

A Judge may, *suo motu* or on application strike out any proceedings not being prosecuted diligently. Any matter struck out by the Judge shall only be relisted upon payment of N10,000 fee.

ORDER 31

FILING OF WRITTEN ADDRESS

5. Application and final address

This Order shall apply to all applications and final addresses.

6. Application

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

Content of written address

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

7. Summation of address

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

8. Oral argument

(3) Oral argument of not more than twenty minutes may be allowed for each party to adopt and emphasise and clarify the written address already filed and on matters not contained in their written addresses provided such matter came to the knowledge of the party after he had filed his written address.

(4) Where the parties have filed their written addresses and come up for adoption and either of the parties is absent, the court shall either on its own motion or upon oral application by the counsel for the party present, order that the addresses be deemed adopted if the court is satisfied that all the parties had notice of the date for adoption.

ORDER 32

EVIDENCE GENERALLY

14. Recording of evidence

Subject to the provisions of the Evidence Act, evidence in any proceedings may be recorded in writing or by mechanical, electronic, or any other scientific means.

15. Facts how proved

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

(2) All agreed documents or other exhibits may be tendered from the bar or by the party where he is not represented by a legal practitioner.

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

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

16. Particular facts

(1) A Judge may, at or before the trial of an action, order or direct that evidence of any particular fact be given at the trial in such manner as may be specified by the order or direction. Provided that a Judge may allow a witness on subpoena to lead oral evidence in examination-in-chief without having sworn a written statement in appropriate cases.

(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.

17. Limitation of medical and expert evidence

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.

18. Limitation on use of documentary evidence

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 which has not been filed along with the pleadings of the parties under these Rules.

19. Revocation variation

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

20. Office copies admissible in evidence

Office or certified true 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.

21. Examination of witnesses abroad

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 procedures shall be adopted:

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

(d) Such undertaking shall be accompanied by;

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

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

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

22. Form of order for examination of witnesses abroad: Civil Form 25

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

23. Order for attendance of person to produce document

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

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

24. Disobedience to order for attendance

Any person willfully 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.

25. Expenses of persons ordered to attend

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 is attendance.

26. Contempt of witnesses abroad

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

45. Examination of witnesses

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.

46. Depositions not to be given in evidence without consent or by leave of a Judge

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.

47. Oaths

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

48. Attendance of witness under a *subpoena*

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

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

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

50. Special directions to taking evidence

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.

51. Evidence in proceedings subsequent to trial

Subject to the provisions of section 34 of the Evidence Act, all evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.

52. Form of praecipe of a subpoena: Civil Form 26

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

53. Form of subpoena: Civil Forms 27, 28, 29

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

54. Subpoena attendance of witness in chambers

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

55. Correction of errors in subpoena

In the interval between the issue and service of any subpoena, the legal practitioner issuing it may make any correction and may have the writ resealed upon leaving a corrected copy of the subpoena marked with the words “altered and resealed”, with the signature, name and address of the legal practitioner.

56. Personal service of subpoena

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

.

57. Duration of subpoena

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

58. Action to perpetuate testimony

Any person who would under the circumstances alleged by him to exist, become entitled, upon the happening of any future event to any honour, title, dignity or office, or to any estate or interest in any property, real or persona, the right 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.

59. Examination of witnesses to perpetuate testimony

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

60. Such action not to be set down for trial

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

61. Recall of witness

Upon application of either party to a suit, the Court may recall any witness where it deems fit in the interest of justice.

62. Evidence of protected witness

Subject to the provision of the Evidence Act, a Judge sitting at trial may admit evidence of a witness through video conference or any other electronic device capable of recording live (as if he is personally in attendance in court) wherever the Judge considers it expedient to do so particularly a protected witness.

ORDER 33

AFFIDAVITS

12. Evidence on motions, etc

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

13. Title of affidavit

Every affidavit shall bear the title in the cause or matter 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.

14. Use of defective affidavit

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.

15. Special time for filing affidavits

Where time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of Court or Judges in chambers.

16. Affidavit in support of *ex-parte* application

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

17. Notice of intention to use affidavit

Save for *ex-parte* application, a party intending to use any affidavit in support of any application made by him shall give notice to the other parties concerned.

18. Alterations in accounts to be initialed

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

19. Exhibits

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

20. Certificate of exhibit

Every certificate on an exhibit referred to in an affidavit signed by the Commissioner before whom the affidavit is sworn, shall be marked with the short title of the cause or matter.

21. Application of Evidence Act L.F.N. Cap. E14

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

22. Affidavit taken in commonwealth country admissible without proof of seal, etc.

A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a Court, Judge, Notary Public or person having authority to administer oath in any part of the commonwealth outside Nigeria in testimony of an affidavit being taken before it or him in that part shall be admitted in evidence without proof of the seal or signature of that Court, Judge, Notary Public or person.

ORDER 34

JUDGMENT, ENTRY OF JUDGMENT

9. Delivery of judgment at or after trial

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

10. Date of judgment pronounced in Court

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.

11. Date of judgment directed to be entered

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.

12. Judge may direct time for payment, performance and interest

The Judge at the time of making any judgment or order or at any time afterwards, may direct the time within which the payment is to be made or other act is to be done, reckoned from the date of the judgment or order, or from some other point of time, as the Judge deems fit and may order interest at a rate not more than 20% per annum to be paid upon any judgment.

13. Time to be stated for doing any act

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

Memorandum to be endorsed

"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"

14. Judgment by consent where defendant appears by a legal practitioner

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

15. Judgment by consent where defendant has no legal practitioner

Where the defendant has no legal practitioner, such order shall not be made unless the defendant gives his consent in person in open court.

16. Payment by installments

(1) When any judgment or order directs the payment of money, the Court may, for any sufficient reason, order that the amount shall be paid by installments, with or without interest.

(2) Such order may be made at the time of giving judgment or at any time afterwards, and may be rescinded upon sufficient cause and at any time.

ORDER 35

COMMITAL FOR CONTEMPT OF COURT

Committal for contempt of Court

10. (1) The power of a Court to punish for contempt may be exercised by an Order of committal.

(2) An Order of committal may be made –

(a) in connection with –

(i) any proceedings before the Court;

(ii) criminal proceedings;

(iii) proceedings in an inferior court; or

(b) in the face of the Court or consists of disobedience to an Order of the Court or a breach of an undertaking to the Court.

11. Application to Court

(3) An application for an Order of committal shall be made to the Court by motion on notice supported by an affidavit and shall state the grounds of the application.

(4) The notice of motion, affidavit and grounds shall be served personally on the person sought to be committed but the Court may dispense with personal service where the justice of the case so demands.

12. Saving for power to commit without application for the purpose.

Nothing in Rules 1 and 2 shall be taken as affecting the power of the Court to make an Order of committal of its own motion against a person guilty of contempt of Court.

13. Provision as to hearing

(5) Subject to sub rule (2), a Court hearing an application for an Order of committal may sit in private in the following cases, that is to say where –

(a) the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody maintenance or upbringing of an infant or right of access to an infant;

(b) the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder;

(c) the application arises out of proceedings in which a secret process, discovery or invention was in issue;

(d) it appears to the Court that in the interest of the administration of justice or for reasons of national security the application should be heard in private, but in all other cases the application shall be heard in open court.

(6) Where a Court hearing an application in private by virtue of sub rule (1) decides to make an Order of committal against a person sought to be committed, it shall in open court state –

(a) the name of that person;

(b) in general terms the nature of the contempt or court in respect of which the order of committal is being made; and

(c) if he is being committed for a fixed period, the length of that period.

(7) Except with the leave of a Court hearing an application for an Order of committal, no grounds shall be relied on at the hearing except the grounds set out in the statement under Rule 2.

(8) Where at the hearing of an application, the person sought to be committed expresses a wish to give oral evidence on his own behalf he shall be entitled to do so.

14. Contempt in face of Court: saving for

The preceding provisions are without limitation to the powers of the Court to commit for contempt committed in the face of the Court.

15. Power to suspend execution of committal Order

(3) Where a Court makes an Order of committal, it may direct that the execution of the Order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(4) Where the execution of an Order of committal is suspended by an Order under sub rule (1), the applicant for the Order of committal shall, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the Order under that paragraph.

16. Discharge of person committed

(3) A Court may, on the application of any person committed to prison for any contempt of court, discharge him.

(4) Where a person has been committed for falling to comply with a judgment or order requiring him to deliver anything to some other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or Order, then, if the thing is in the custody or power of the person committed, the sheriff may take possession of it as if it were the property of that person and, without limitation to the generality of sub rule (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the Sheriff as it thinks fit.

17. Saving for other powers

Nothing in the preceding provisions of this Order shall be taken as affecting the power of a Court to make an Order requiring a person guilty of contempt of court, or a person punishable by virtue of an enactment, as if he had been guilty of contempt of court to pay a fine or to give security for his good behavior, and those provisions, where applicable, and with necessary modifications, shall apply in relation to an application for such an Order as they apply in relation to an application for an Order of committal.

18. Return

Every writ of attachment issued in a case to which this Order applies shall be made returnable before the Court; and if a return of *non est inventus* is made, one or more writs may be issued on the return of the previous writ.

ORDER 36

GARNISHEE PROCEEDINGS

8. Application

(1) Where a person (in this Order referred to as "The Judgment Creditor") has obtained a judgment or order for the payment by some other person (in this Order referred to as "The Judgment Debtor") of the sum of money and any other person within the jurisdiction (in this Order referred to as "The Garnishee") is indebted to the judgment debtor, the court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment debtor from the garnishee or as much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

(2) An Order under this Rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and the mean time attaching such debt as is mentioned in sub rule (1) or so much thereof as may be specified in the Order and the costs of the garnishee proceedings

.

(3) An order under this rule, shall not require a payment which would reduce below N1,000.00 the amount standing in the name of the judgment debtor in an account with a bank.

9. How application is made

An application for an order under rule (1), shall be made *ex-parte* supported by an affidavit;

(e) stating the name and last known address of the judgment debtor;

(f) identifying the judgment or order to be enforced and stating the amount of the judgment or the amount unpaid under it at the time of the application;

(g) stating that to the best of the information or belief of the deponent, the garnishee is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information or grounds for his belief; and

(h) stating, where the garnishee is a bank having more than one place of business, the name and address of the branch at which the judgment debtor's account is believed to be held and the number of that account or if it be the case, that all or part of this information is not known to the deponent.

10. Service of garnishee order

Unless the court otherwise directs, an Order under rule (1) to show cause shall be served;

(c) on the garnishee personally, at least 15 days before the appointed day before the consideration of the matter;

(d) on the judgment debtor, at least 7 days after the order has been served on the garnishee and at least 7 days before the day appointed for the further consideration of the matter.

11. Garnishee absolute

(1) Where on the further consideration of the matter, the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the court may make an order absolute under rule (1), against the garnishee.

(2) An order absolute under rule (1) against the garnishee may be enforced in the same manner as any other order for the payment of money.

12. Determination of issue by the Court

Where on the further consideration of the matter, the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the court may summarily determine the question in issue or order that any question necessary for determining the liability of the garnishee be tried, without the need for any consent by the parties.

13. Where a third person makes claim

Where in garnishee proceedings, it is brought to the notice of the court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has claims to have a charge upon it, the court may order that person to attend before the court and state the nature of his claim with particulars thereof.

14. Compliance as discharge of liability

Any payment made by a garnishee in compliance with an order absolute under this Order and any execution levied against him in pursuant of such order shall be a valid discharge of liability to the judgment debtor to the extent of the amount paid or levied not withstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which the arose is reserved.

ORDER 37

DRAWING UP OF ORDERS

4. Date of order when drawn

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

5. What orders need not be drawn up

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

(a) the issue of any writ other than a writ of attachment;
(b) the amendment of any writ or pleadings;
(c) the filing of any document; or
(d) any act to be done by any officer of the Court other than a legal practitioner, it shall not be necessary to draw up such order unless the Judge otherwise directs; but the production of a note or memorandum of such order signed by a Judge shall be sufficient authority for such enlargement of time, issue, amendment, filing or other act.

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

6. Form of order

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

ORDER 38

TANSFER AND CONSOLIDATION

11. Order transferring proceedings to High Court, Cap. 97

Where a Judge has in exercise of any powers conferred on him by any relevant law, ordered the transfer of any action or matter from a lower Court to the 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 law and other necessary documents and processes.

12. Payment of filing fees

(1) 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 shall attend 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.

13. Duties of Registrar

(1) The Registrar shall on payment of the prescribed fees, in any case not later than 7 days;
- (a) file the documents received from the lower Court;
- (b) make an entry of the filing in the Cause Book; and
- (c) transmit the documents to the Chief Judge or such other Judge appointed by the Chief Judge.

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

14. Directions

(1) The 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 practitioner;
- (b) take cognizance of the documents 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.

15. Party failing to attend

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

(2) If the defendant fails or all of several defendants fail to attend in compliance with a notice given under sub-rule 2 of rule 3, the claimant may obtain judgment with costs or obtain the order prayed for in the transferred proceedings by an application in the open Court.

16. Construction

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

17. Transfer of cause or matter

A cause or matter may, before evidence is taken, and at the request of either party to the suit, be transferred by a Judge before whom the cause or matter is pending, to another Court of the same division.

18. Re-assignment of cause or matter

A cause or matter may at any stage of the proceedings upon application by either party, be re-assigned to another Judge of the same division or of any other division by the Chief Judge whether or not the cause or matter is being heard before him.

19. Action by the Chief Judge on transfer

If for any reason, a Judge hearing a cause or matter, and who has taken any step in the proceedings, considers it necessary, either in his own opinion or upon application of any party to the proceedings, to have the cause or matter transferred to another Judicial Division, the Judge shall refer the cause or matter to the Chief Judge who may direct that the matter be transferred to the appropriate Judicial Division, in accordance with these Rules.

20. Consolidation

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

(2) 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, different defendants or between different claimants and the same defendant or between different claimants and different defendants.

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

(3) 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.

(4) 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.

ORDER 39

INTERLOCUTORY AND OTHER ORDERS

17. Preservation or Interim custody of subject matter of disputed contract

(1) Whereby in 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, the court may make an order for the preservation or interim custody of the subject matter of the litigation or 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 appears from the pleadings.

18. Early trial of cause

When an application is made before trial for an injunction or other order and at any time before or during the hearing, it appears to the court 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 merits on affidavit or other evidence for the purpose of the application, it shall make an order for such trial and such other order as the justice of the case may require.

19. Order for sale of perishable goods

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

20. Detention, preservation or inspection of property

(1) The court may upon the application of any party to an action or matter and upon terms as may be just, 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 purpose authorize any person 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 authorize any samples to be taken or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

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

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

21. Sale of property in possession of court

(1) Where any property is in possession of the court before or after judgment and it has

remained so for a period of 12 months, the court may *suo motu* make an order for the sale of that property and the proceeds to be paid into an interest yielding account in a commercial bank directed by the court for the benefit of the person that succeeds at the trial or on appeal.

(2) 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.

22. Recovery of property other than land subject to lien

Where an action or counterclaim is filed to recover specific property and the party from whom such recovery is sought does not dispute title but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the court 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 on which the lien or security is claimed and such further sum, if any, for interest and costs as the court may direct and that upon such payment into court being made, the property claimed be given up to the party claiming it.

23. Allowance of income of property pendent lite

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

24. Injunction against repetition of wrongful act for breach of contract

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

25. Appointment of a receiver by way of equitable execution

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

26. Receiver's Security and Remuneration

Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be approved by the court, duly to account for what he shall receive as such receiver, and to pay it as the court shall direct; and the person to be appointed shall, unless otherwise ordered to be allowed a proper salary or allowance. The security to be given shall be by guarantee or by undertaking as in Forms 30 and 31 with such variation 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.

27. Where receiver appointed in court: adjournment to give security

Where any judgment or order is pronounced or made in court appointing a named person to be a

receiver, the court may adjourn the proceedings then pending, so that the named person may give security as in the last preceding rule, and may direct such judgment or order to be drawn up.

28. Fixing days for receivers to leave and pass their accounts and pay in balances and neglect of payment

When a receiver is appointed with a direction that he shall pass accounts, the court 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. Any such receiver who neglects to leave and pass his accounts and pay the balances at the time fixed for the purpose, the court 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 25% per annum upon the balances so neglected to be paid by him during the time it appears to have remained in his custody.

29. Form of Receivers accounts. Civil Form 32

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

30. Leaving account at the Registry. Civil Form 33

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

31. Consequences of default by receiver

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

32. Passing of guardian's accounts

The accounts of guardians shall be passed and verified in the same manner as provided in this Order for receiver's accounts.

ORDER 40

INTERLOCUTORY APPLICATIONS

Motions Generally

34. Time to apply

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

35. Application by motion

(1) Where by these Rules, any application is authorized to be made to the Court or a Judge in chambers or a Registrar, such application may be made by motion which may be supported by affidavit and shall state under what Rule of Court or Law the application is brought.

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

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

(4) Every application shall be served within five days of filing. Failure to serve the application by persons under order 7 Rule 1 (3) within the stipulated period shall attract a penalty of N500.00 for each day of default.

36. Affidavit to be served with motion

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

37. Adjournment

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

Ex-parte Motion

38. When Notice of Motion should be given

(1) Except where an application *ex-parte* is required or permitted under any Law or Rules, every motion shall be on notice to the other party.

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

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

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

39. Affidavit in support of *ex-parte* motion

(1) A motion *ex-parte* shall be supported by affidavit, which shall state sufficient grounds why delay in granting the order sought would entail irreparable damage or serious mischief to the party moving.

(2) The Court, if satisfied that to delay the motion till after notice is given to the parties affected would entail irreparable damage or serious mischief to the party moving or it is impossible to serve the parties affected within seven days, may hear an application *ex-parte* and make an order accordingly upon such terms as to cost or otherwise and subject to such reasonable undertaking, as the justice of the case demands.

40. Arguments on motion

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

41. Orders on *ex-parte* motions

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

42. Court may vary or discharge order

(1) Where an order is made on a motion *ex-parte*, any party affected by it may within seven days after service of it, or within such further time as the Court shall allow, apply to the Court by motion to vary or discharge it, and the Court, on notice to the party obtaining the order, either may refuse to vary or discharge with or without imposing terms as to costs or security, or otherwise, as seems just.

(2) The hearing and determination of either the motion to vary or discharge or the motion on notice, must be within a maximum period of sixty days.

(3) Unless the Court gives special leave to the contrary, there shall be at least two clear days between the service of any affidavit including counter affidavit or a notice of a motion and the day fixed for hearing of the motion.

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

43. Motion on arbitral award

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

(2) The party relying on an award, on applying for its enforcement shall supply:
(a) the duly authenticated original award or a duly certified copy thereof;
(b) the original arbitration agreement or a duly certified copy thereof.

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

(4) An application to set aside or remit any award may be made at any time within six (6) weeks after such award has been made, and published to the parties:
Provided that a Judge may by order extend the said time either before or after the same has elapsed.

44. Service of motion with originating process

A Claimant may file any application along with an Originating Process and may serve both on any Defendant simultaneously.

45. Account by Legal Practitioner

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 of security thereof or the protection of the Respondent's lien (if any) as he may deem fit.

46. Interim Certificate

If during the taxation of any bill of costs or 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.

3 – Orders to show cause

47. Return – day to be specified

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

48. Counter-evidence

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

49. Further service in certain cases

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

50. Appearance or proof of service

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

51. General powers as to orders

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

52. Service of notice

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

53. Serving of motion

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

54. Service on solicitor

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

55. Copy of affidavit to be served with notice

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

56. Order for service

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

57. Service with writ of summons

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

5 – Evidence in Interlocutory Proceedings

58. Oral Evidence

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

59. Evidence in addition to or in lieu of affidavits

In addition to or in lieu of affidavits, the Court may if it thinks it expedient, examine any witness *viva voce*, or receive documents in evidence, and may summon any person to attend to produce documents before it, or to be examined or cross-examined before it in like manner as at the hearing of a suit.

60. Notice to parties and interested persons

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

61. Evidence: how taken

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

62. Affidavit not filed with motion paper

Upon the hearing of any motion, the Court may, on such terms as to cost and adjournment as it may think fit, allow any additional affidavit to be used, after such affidavit has been duly filed and served on the opposite side.

63. Registrar to have powers of a Judge

A registrar hearing any application by virtue of the provisions of these Rules, shall have and exercise all the powers conferred by these Rules on the Court or a Judge when dealing with such applications.

64. Only legally qualified Registrar to hear application

No Registrar other than one who is also a qualified legal practitioner shall have the power to hear and determine any application which by these rules is conferred upon a Registrar.

65. Application

In any Judicial Division where there is no legally qualified Registrar, any application which by these rules is authorized to be determined by a Registrar, shall be made to a Judge who in his absolute discretion may take such application in Court or in chambers.

66. Persons dissatisfied with ruling of Registrar may apply to the Court or a Judge in chambers

(1) Upon the determination of any application by a Registrar, any party dissatisfied with the ruling or decision of the Registrar in the matter, may within fourteen (14) days of the decision or ruling, apply to the Court or to a Judge in chambers for a redress in the following manner and circumstances:

(a) Where the aggrieved party is the mover of the application before the Registrar, he shall renew his application before the Court or a Judge:

(b) Where the aggrieved party is the respondent to the application before the Registrar, he shall apply to the Court or a Judge for an order setting aside the order of the Registrar, about which he is dissatisfied.

(2) (a) Any application under paragraph (a) or (b) of sub-rule (1) of this rule shall be supported by affidavit showing the grounds upon which redress is sought.

(b) There shall be attached to the application, a copy of the ruling or decision of the Registrar with which the party is dissatisfied and copies of all affidavits and documents used in support of the application before the Registrar.

ORDER 41

APPLICATION FOR JUDICIAL REVIEW

12. Cases Appropriate for Application for Judicial Review

(1) An Application for:

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

(b) an injunction restraining a person from acting in any office in which he is not entitled to act; shall be made by way of an application for Judicial Review in accordance with the provisions of this Order.

(2) An application for a declaration or an injunction (not being an injunction mentioned in paragraph (b) of sub-rule (1) may be made by way of an application for Judicial Review and on such an application, the Court may grant the declaration or injunction claimed if it considers that having regard to:

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

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

(c) all the circumstances of the case.

It would be just and convenient for the declaration or injunction to be granted on an application for Judicial Review.

13. Joinder of claims for relief

On an application for Judicial Review, any relief mentioned, in rule (1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned, if it arises out of or relates to or is connected with the same matter.

14. Grant of leave to apply for judicial review

(1) No application for Judicial Review shall be made unless the leave of the Court has been obtained in accordance with this rule.

(2) An application for leave shall be made *ex-parte* to the Court, except during vacation when it may be made to a Judge in chambers, and shall be supported by:

(a) a statement, setting out the name and description of the applicant, the relief sought and the grounds on which it is sought;

(b) an affidavit, to be filed with the application, verifying the facts relied on; and

(c) a written address in support of application for leave.

(3) The applicant shall file the application not later than the day before the motion is heard and shall at the same time lodge copies of the statement and every affidavit in support.

(4) The court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise on such terms, if any, as it thinks fit.

(5) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

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

(7) Where an application for leave is refused by a Judge the applicant may make a fresh application to another Judge.

(8) An application to a Judge under sub-rule (8) shall be made within 10 days after the Judge's refusal to give leave.

(9) Where leave to apply for judicial review is granted, then:

(a) if the relief sought is an order of prohibition or *certiorari* and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders.

(b) if any relief is sought, the Court may at any time in the proceedings grant such interim relief as could be granted in an action begun by writ.

(c) if the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

15. Delay in applying for relief

(1) Subject to the provisions of this rule, where in any case the Court considers that there has been undue delay in making an application for judicial review or, in a case to which sub-rule (2) applies, the application for leave under rule 3 is made after the relevant period has expired, the Court may refuse to grant:

(a) leave for the making of the application; or

(b) any relief sought on the application; if in the opinion of the Court the granting of the relief sought is likely to cause substantial hardship to, or substantially prejudice the rights of any person or would be detrimental to the administration of justice.

(2) In the case of an application for an order of *certiorari* to remove any judgment, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of sub-rule (1) is three months after the date of the proceedings.

(3) Sub-rule (1) is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

16. Mode of Applying for Judicial Review

(1) Subject to sub-rule (2), when leave has been granted to make an application for judicial review, the application shall be made by originating motion.

(2) Where leave has been granted and the Judge or Court so directs, the application may be made by motion to a Judge sitting in open court.

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

to be made, same shall be served on the Judge.

(4) Unless the Court granting leave has otherwise directed, there shall be at least 8 days between the service of the notice of motion and the day named therein for the hearing.

(5) A motion shall be entered for hearing within 14 days after the grant of leave.

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

(7) If on the hearing of the motion, the Court is of the opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice may be served on that person.

17. Statement and affidavits

(1) Copies of the statement in support of an application for leave under rule 3 shall be served with the notice of motion and, subject to sub-rule (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may on the hearing of the motion, allow the applicant to amend his statement whether by specifying different or additional grounds of relief or otherwise, on such terms if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

(4) Each party to the application shall supply to every other party on demand and on payment of the proper Court charges, copies of every affidavit which he proposes to use at the hearing including in the case of the applicant, the affidavit in support of the application for leave under rule 3.

18. Claim for damages

On an application for judicial review, the Court may, subject to sub-rule (2), award damages to the applicant if:

(c) he has included in the statement in support of his application for leave under rule 3, a claim for damages arising from any matter to which the application relates; and

(d) the Court is satisfied that if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

19. Interlocutory Application

Any interlocutory application in proceedings on an application for judicial review may be made to the Judge.

20. Hearing of the application for Judicial Review

(1) On the hearing of any Motion or summons under Rule 5, any person who desires to be heard on the Motion or Summons, and appears to the Judge to be a proper person to be heard, shall be heard notwithstanding that he has not been served with Notice of the Motion or the Summons.

(2) Where the relief sought is or includes an order of *certiorari* to remove any proceedings for the purpose of quashing them, the Applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record, unless before the hearing of the Motion or Summons he has filed a copy thereof verified by Affidavit or accounts for his failure to do so to the satisfaction of the 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), the Order shall, subject to sub-rule (4), direct that the proceedings 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 has 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 proceedings to continue as if they had been begun by Writ.

21. Person acting in obedience to an order of mandamus

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

22. Consolidation of applications

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 42

JURISDICTION OF CHIEF REGISTRAR

12. Chief Registrar

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

13. Business to be transacted by Chief Registrar

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) Application for the taxation and delivery of bills of costs and applications for the delivery by any legal practitioner of deeds, documents and papers;
(b) The taking of an account in any case where a Judge has ordered that the account be taken by the Chief Registrar;
(c) The taxation of bills of costs; and
(d) Applications leading to the issue of the grant of probate of the Wills or Letters of Administration of the estates of deceased persons in non-contentious or common form probate business.

14. Chief Registrar may refer matters to the Chief Judge

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

15. Appeal from order of Chief Registrar

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 times 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.

16. Chief Registrar's list

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

17. Legal practitioner may represent party

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

1 – Chief Registrar's certificate

18. Certificate

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

19. Reference to Judgment, etc

The certificate of Chief Registrar regarding accounts and inquiries shall not, unless the circumstances of the case renders it necessary, set out the judgment or order or any document 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.

20. Form of certificate

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

Civil Form 34

Form and contents of certificate in cases of Accounts and Inquiries

(4) In case of Accounts and Inquiries, the certificate of the Chief Registrar shall be in Form 34 with such variations as the circumstances may require. The certificate shall:
(a) state the result of the account and not set same out by way of schedule;
(b) refer to the account verified by the affidavit filed;
(c) specify by the numbers attached to the terms in the Account which (if any) or such items have been disallowed or varied;
(d) state what additions if any have been made by way of surcharge or otherwise;
(e) 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;
(f) the Accounts and transcripts (if any) referred to by certificates shall be filed therewith.

21. When certificate becomes binding

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

22. Bill of costs

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

13. Discharge or variation of certificate after lapse of any time

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 same has become binding on the parties.

ORDER 43

HABEAS CORPUS, ATTACHMENT FOR CONTEMPT

1 – Habeas Corpus

14. Application: how made

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

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

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

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

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

15. Power to issue order of release immediately

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

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

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

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

16. Service of notice

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

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

17. Copies of Affidavit

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

18. Service of order to release

(3) The order or notice of motion may be served personally or by courier on a jailer, where the

person is confined or restrained or on any other public official and copies of the order or motion may be served in like manner on each person connected with or having authority over the place of confinement or restraint.

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

19. Statement and verifying affidavit

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

20. Procedure at hearing

(3) Where the prisoner is brought up in accordance with the order, his legal practitioner shall be heard first, then the legal practitioner for the State and then the legal practitioner for the prisoner in reply.

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

21. Bringing up prisoner to give evidence, etc.

(3) An application for a writ of habeas corpus ad testificandum or of habeas corpus ad respondendum shall be made on affidavit.

(4) An application for an order to bring up a prisoner, otherwise than by writ of habeas corpus, to give evidence in any cause or matter, civil or criminal, before any Court or tribunal shall be on affidavit.

Civil Forms 35, 36 and 37

22. Form of writ

A writ of habeas corpus shall be in Forms 35, 36, or 37 in the appendix, whichever is appropriate.

11 – Attachment for Contempt

23. Procedure for attachment

(4) The procedure in applications for attachment for contempt of Court in cases to which this rule applies shall be the same as for applications for an order for judicial review under Order 38 so far as may be applicable.

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

(6) This rule applies to cases where the contempt is committed:

(a) in connection with proceedings to which the Order relates;

(b) in connection with criminal proceedings;

(c) subject to the provisions of the Sheriffs and Civil Process Act, and any proceedings in the High Court or where the contempt consists of disobedience to an order of the Court;

(d) in connection to the proceedings in an inferior Court:

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

24. Procedure on disobedience to Court

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, immediately endorse 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

25. Response

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

26. Return

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

ORDER 44

INTERPLEADER

11. When relief by interpleader granted

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

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

12. Matter to be provided by application

2(1) An applicant seeking relief by way of interpleader shall file an Interpleader Summons supported by an Affidavit calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

(2) The applicant must satisfy the Judge by affidavit or otherwise, that he:

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

13. Adverse title of claimants

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

14. When application is to be made by a defendant

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

15. Summons by applicant

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

16. Stay of action

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

17. Order upon summons

If the claimants appear in pursuance of the summons, the Judge may order either that any claimants 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 claimant is to be claimant and which is to be defendant.

18. Questions of law

Where the question is a question of law and the facts are not in dispute, the Judge may either decide the questions without directing the trial of an issue or order that a special case be stated for

the opinion of the Judge. If a special case is stated, Order 28 shall as far as applicable, apply thereto.

19. Failure of claimant to appear, or neglect to obey summons

If a claimant, having been duly served with a summons calling on him to appear to 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.

20. Costs, etc.

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

ORDER 45

COMPUTATION OF TIME

5. Rules for computation of time

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

(a) as excluding the day on which the Order is made or on which the event occurs:
(b) where the last day of the period is a holiday, the time shall continue until the end of the next day following which is not a public holiday:
(c) where the act is required to be done within a period which does not exceed six (6) days, holidays shall be left out of account in computing the period.

6. Holidays

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

7. Time of Service

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

8. Court may extend time

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

Provided that any party who defaults in performing an act within the time authorized by the Judge or under these Rules, shall pay to the Court a fee of Two Hundred Naira (N200.00) for each day of such default at the time of compliance.

ORDER 46

SITTING OF THE COURT AND VACATION

16. Days of sitting
Subject to the provisions of the High Court Law, the Court may at its discretion, appoint any day or days and any place or places from time to time for the hearing of actions as circumstances require.

17. Public or Private sitting of the Court
The sittings of the Judge for the hearing of causes shall ordinarily be public but subject to the provisions of the Constitution of Federal Republic of Nigeria, 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.

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

19. Days of sitting and long vacation
(a) on any public holiday;
(b) during the week beginning with Easter Monday;
(c) during the period beginning on Christmas Eve and ending on 2nd January next following.
(d) during the week designated as settlement week;
(e) during the annual vacation, effective from the last week of July and ending on a date not more than 6 weeks later as the Chief Judge may declare by notification in the Gazette or any other means he deems appropriate.
(f) during the week the Chief Judge may fix for the Judges of the State Judiciary to proceed on an annual retreat.

20. Vacation Court
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), (d) or (e) 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 a cause or matter.

21. Vacation not reckoned in time for pleadings
The time for filing and service of pleadings shall not run during the annual vacation unless otherwise directed by the Court or a Judge in chambers.

22. Chambers
No business shall be transacted in chambers on Sunday and public holidays.

23. What orders to be made
Subject to particular rules, the Court may in all causes and matters, make any order which it considers necessary to do substantial justice.

24. Recovery of penalties and costs
All fines, forfeiture, pecuniary penalties, and costs ordered to be paid may be levied by distress

seizure, and or sale of the movable and immoveable property of the person making default in payment.

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

26. Filing
A document shall not be filed unless it has endorsed on it, the name and number of the case, the date of filing and whether filed by claimant or defendant, and on being filed, such endorsement shall be initialed by the Registrar.

27. How processes are addressed
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 person by name or to a person named or to officers of Court generally or to a Local Government Authority.

28. No fees where proceedings by government department
No fees are to be taken in respect of any proceedings where such fees would be payable by any 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.

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

30. Saving
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 47

ARREST OF ABSCONDING DEFENDANT

8. Application
The following rules shall apply to proceedings under section 31 of the law.

9. Defendant leaving Nigeria
If in any action where 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 be taken for his appearance to answer and satisfy any judgment that may be passed against him in the suit.

10. Warrant to arrest
(1) If the Court after making such investigation as he may consider necessary shall be of the opinion that there is probable cause for believing that the defendant is about to leave Nigeria and by that 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 as in Form 38 to bring the defendant before him, that he may show cause why he should not give good and sufficient bail for his appearance.

(2) **Civil Form 38**
The defendant shall be brought to Court within 2 days of the execution of the warrant.

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

12. Deposit in lieu of bail
(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 same be paid into an interest yielding account in a bank.

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

13. Committal in default
(1) If the defendant fails to furnish security or offer a sufficient deposit, the Judge may commit him to 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.

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

ORDER 48

PROCEEDINGS IN FORMA PAUPERIS

10. Application

This Order shall apply to proceedings, in respect of which there is no statutory provision for legal aid.

11. Who may sue or defend in forma pauperis

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.

12. Conditions to be fulfilled

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

(2) If in the opinion of the Chief Judge, the application is worthy 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.

13. Fees and costs

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

14. Procedure to be followed

(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 to the action taken or defended thereunder.

(2) If the applicant pays or agrees to pay any money to any person whosoever, 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.

15. Revocation of order, discontinuance, etc.

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

(2) Neither the applicant nor the legal practitioner assigned to him shall discontinue, settle or compromise the action without the leave of a Judge.

16. Payment to legal practitioner

The Judge may order payment to be made to the legal practitioner out of any money recovered by the applicant or may charge in favour of the legal practitioner, who shall take care that no application or notice is made or given without reasonable cause.

17. Duty of legal practitioner

Every order, notice or application on behalf of the applicant, except an application for the discharge of his legal practitioner, shall be signed by his legal practitioner, who shall take care that no application or notice is made or given without reasonable cause.

18. Appeals

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

ORDER 49

CHANGE OF LEGAL PRACTITIONER

4. Legal practitioner to conduct cause or matter to final judgment
Every legal practitioner who shall be 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.

5. Application for change of legal practitioner or withdrawal
An application for a change of legal practitioner or withdrawal may be made by the claimant or defendant or the legal practitioner as the case may be, not less than 3 clear days before the date fixed for hearing.

6. Service of application by legal practitioner
Where the application is made by a legal practitioner, it shall be served on all parties to the cause or matter and where applicable, also on the outgoing legal practitioner if he is not the applicant.

ORDER 50

COSTS

1. (I) Principle to be observed in fixing costs
In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been necessarily put in the course of proceedings, as well as compensated for his time and effort in coming to Court. Such expenses shall include:

(a) the cost of legal representation and assistance of the successful party to the extent that the Judge determines that the amount of such cost is reasonable;
(b) the travel and other expenses of parties and witnesses to the extent that the Judge determines that the amount of such expenses is reasonable, and such other expenses that the Judge determines ought to be recovered, having regard to the circumstances of the case.

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

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

2. Rejection of offer of settlement: Cost
Where an offer of settlement made in the course of Case management or ADR is rejected by a party and the said party eventually succeeds at trial but is awarded orders not in excess of the offer of settlement earlier made, the winning party shall pay the costs of the losing party from the time of the offer of settlement up to judgment.

3. Security for costs
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.

4. Security for costs by claimant temporarily within jurisdiction
A claimant ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction.

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

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

7. Costs at discretion of court

Subject to the provisions of any applicable law and these Rules, the costs of and incidental to all proceedings 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.

8. Costs out of fund or property

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

9. Stay of proceedings at which costs to be dealt with

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

10. Stage of proceedings at which costs to be dealt with

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

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

11. When costs follow events

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.

12. Matters to be taken into account in exercising discretion

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

13. Cost arising from misconduct or neglect

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

(5) Without prejudice to the generality of sub-rule (1) of the 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 proceedings.

(6) The Judge may, instead of giving a direction under sub-rule (1) of this Rule in relation to anything done or any omission made, direct the Taxing Officer to inquire into it and if it

appears to him that such a direction as aforesaid should have been given in relation to it, to act as if the appropriate direction had been given.

14. Personal liability of Legal Practitioner for costs

(5) Subject to the following provisions of this Rule, where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Judge may make against any Legal practitioner whom he considers to be responsible, whether personally or through a servant or agent, an order:
(a) disallowing the costs as between the Legal Practitioner and his client; and
(b) directing the Legal Practitioner to pay to his client costs which the client has been ordered to pay to other parties to the proceedings; or
(c) directing the Legal Practitioner personally to indemnify such other parties against costs payable by them.

(6) The provisions of Rule 13 sub-rule (1) shall apply where proceedings in Court cannot conveniently proceed or fails or are adjourned without useful progress being made:
(a) because of the failure of the Legal Practitioner to attend in person or by a proper representative; or
(b) because of the failure of the Legal Practitioner to deliver any document for the use of the Court which ought to have been delivered or to be prepared with any proper evidence or account or otherwise to proceed.

(7) 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.

(8) The Judge may direct that notice of any proceedings or order against a Legal Practitioner under this Rule shall be given to his client in such manner as may be specified in the direction.(5) If, on the taxation of costs to be paid out of a fund, one sixth or more of the amount of the bill for those costs is taxed off, the Legal Practitioner whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.

15. Taxation of Costs

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

16. Notice to other party

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

17. Power of Taxing Officer

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

18. Supplementary powers of taxing officers

ATaxing Officer may, in the discharge of his functions with respect to the taxation of costs:

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

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

(c) examine any witness in those proceedings;

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

19. Extension of time

(4) ATaxing Officer may:

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

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

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

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

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.

21. Mode of beginning proceedings for taxation

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

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

22. Provisions as to bills of costs

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

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

(a) the name or firm and business address, e-mail and telephone number 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, e-mail and telephone number of that other Legal Practitioner.

23. Provisions as to taxation proceedings

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

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

24. Scale of costs

(3) Subject to Rule 21, and the following provisions of this Rule, the scale of costs contained in the High Court of Lagos State (Fees) Law for the time being in force together with the notes and general provisions contained therein, shall apply to the taxation of all costs incurred in relation to contentious business done after the commencement of these Rules.

(4) 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 conveyance or in respect of any other non-contentious business is regulated, in the absence of agreement to the contrary, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything in the scale contained in the High Court of Lagos State (Fees) law.

25. Certificates of Taxing Officer

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

26. Fees on Taxation

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.

27. Application for review

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

28. Application by summons

(4) An application under the preceding Rule shall be made by Summons at any time within fourteen (14) days after the Taxing Officer's certificate.

(5) Unless the Judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on taxation but, save as aforesaid, on the hearing of any such application the Judge may exercise all such powers and discretion as are vested in the Taxing Officer in relation to the subject matter of the application.

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

ORDER 51

APPLICATIONS AND PROCEEDINGS IN CHAMBERS

5. Representation in Chambers

In any proceedings before a Judge in chambers, any party may, if he so desires, be represented by a legal practitioner.

6. Matter to be disposed of in chambers

Unless the opposite party or his counsel objects, the Judge may on application, conduct any proceedings, except actual trial, in chambers and may also on application, adjourn any such proceedings from Court to chambers and *vice versa*

II. Proceedings Relating to Persons under Legal Disability

7. Evidence upon application for appointment of guardians and for maintenance

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

(a) the ages of the infants;
(b) the nature and amount of the infants' fortunes and incomes; and
(c) what relations the infants have

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

8. Further consideration of matters originating in chambers

Where any matter originating in Chambers shall, at the original or any subsequent hearing have been adjourned for further consideration in chambers, such matter may, after the expiration of 8 days and within 14 days from the date of the adjournment, 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 Hon. Justice …… made on the …… day of …….. 20……. May be further considered," and shall be served seven (7) clear days before the return:

Provided that this Rule shall not apply to any matter, the further consideration whereof shall, at the original or any subsequent hearing, have been adjourned in Court.

ORDER 52

FORECLOSURE AND REDEMPTION

4. Originating summons for foreclosure

Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out any originating summons, for such relief of the nature or kind as may by the summons be specified, and as the circumstances of the case may require, that is:

(a) Payment of money secured by the mortgage or charge:
(b) Sales;
(c) Foreclosure;
(d) Delivery of possession, whether before or after foreclosure to the mortgagee or person entitled to the charge, by the mortgagor or person having the property subject to the charge, or by any other person in, or alleged to be in possession of the property;
(e) Redemption;
(f) Reconveyance; and
(g) Delivery of possession by the mortgagee.

5. Civil Forms 39, 40 and 41

Orders for payment and for possession shall be in Form 39, 40 and 41 of these Rules, with such variations as the circumstances of the case may require, and the like Forms shall be used under corresponding circumstances in actions for the relief commenced by writ.

6. Service and execution of judgment

The Judge may give any special directions concerning the execution of the judgment, or the service thereof upon persons not parties to the cause or matter, as he deems fit.

ORDER 53

SUMMONS TO PROCEED

8. Bringing in judgment, etc

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

9. Summons to proceed with accounts and inquiries: directions

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 the:

(i) manner in which each of the accounts and inquiries is to be prosecuted;
(ii) evidence to be adduced in support thereof;
(iii) parties who are to attend on the several accounts and inquiries; and
(iv) time within which each proceedings 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.

10. Settling deed where parties differ

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

11. Where service of notice of judgment or order dispensed with

Where, upon the hearing of the summons to proceed, it appears to the Judge that by reason of absence, or for any other notice of 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.

12. Stoppage of proceedings where all necessary parties have not been served with notice of judgment or order

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 notice of the parties to be served, until all necessary parties shall have been served and until directions shall have been given as to

the parties who are to attend the proceedings.

13. Documents, copies for use

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

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

11 Summons to Proceed Book

14. Entry in summons to proceed book

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

ORDER 54

SUMMARY PROCEEDINGS FOR POSSESSION OF LANDED PROPERTY OCCUPIED BY SQUATTERS OR WITHOUT THE OWNER'S CONSENT

9. Application of this Order

(1) This Order shall not apply where the person in occupation of land is:
- (a) a tenant; or
- (b) a tenant holding over after termination of his tenancy; or
- (c) a licensee of the owner or person entitled to possession; or
- (d) a person who had the consent of the predecessor-in-title of the person who is entitled to possession.

(2) Where a person claims possession of land which he alleges is occupied solely by persons other than those listed in sub-rule 1, proceedings may be brought by originating summons in accordance with the provisions of this Order.

10. Proceedings to be brought by originating summons: Form 42

The originating summons shall be in Form 42 and no acknowledgement of service shall be required.

11. Affidavit in support.

The claimant shall file in support of the originating summons, an affidavit stating:
- (d) his interest in the land;
- (e) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and
- (f) that he does not know the name of any person occupying the land who is not named in the summons.

12. Service of originating summons

(1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit shall be served on him:
- (a) Personally or in accordance with Order 7 rule 1 sub-rule 2; or
- (b) by leaving a copy of the summons and of the affidavit, or sending them to him at the premises; or
- (c) in such other manner as the Judge may direct.

(2) The summons shall, in addition to being served on the named defendants, if any, in accordance with sub-rule 1 of this rule be served, unless the Judge

otherwise directs, by:

(a) affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises; and

(b) if practicable, inserting through the letter box at the premises, a copy of the summons and a copy of the affidavit enclosed in a sealed envelope addressed to "the occupiers".

(c) placing stakes in the ground at conspicuous parts of the occupiers land, to each of which shall be affixed a sealed transparent envelope addressed to "the occupiers" and containing a copy of the summons and a copy of the Affidavit.

6. Every 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.

13. Application by occupier to be made a party

Without prejudice to rule 16 of Order 13, any person not named as a defendant who is in occupation of the land and wishes to be heard in the question whether an order for possession should be made, may apply at any stage of the proceedings to be joined as a defendant.

14. Order for possession

(1) An order for possession in proceedings under this Order shall be in Form 43 with such variations as circumstances may require.

Form 43

(2) The Judge may forthwith, order a writ of possession to be issued.

(3) Nothing in this Order shall prevent the Judge from ordering possession to be given on a specified date, in the exercise of any power which could have been exercised, if possession had been claimed in an action begun by writ.

15. Writ of Possession

(1) No writ of possession to enforce an order for possession under this Order, shall be issued after the expiration of 3 months from the date of the order without the leave of the Judge.

(2) The application for leave may be made *ex-parte* unless the Judge otherwise directs.

16. Setting aside of order

(1) The Judge may, on such terms as he deems fit, set aside or vary any order made in the proceedings under this Order.

(2) In this Order, "landed property" means land with or without building thereon.

ORDER 55

STAY OF EXECUTION PENDING APPEAL TO THE COURT OF APPEAL

4. Stay of execution pending appeal

Where any application is made to the Court for a stay of execution or of proceedings under any judgment or decision, appeal from such application shall be made by notice of motion supported by affidavit setting forth the grounds upon which a stay of execution or of proceedings is sought.

5. Court may grant or refuse order for stay

(1) An order for stay may be made subject to such conditions as shall appear just, including the deposit in Court, of any money adjudged due to any party in the judgment appealed from.

(2) Where a Judge has struck out an application for stay, no further application for stay of execution shall be made in the same matter.

(3) Where parties in an application referred to in rule 1 above have exchanged written briefs and the Judge has set the application down for hearing, no request for adjournment by any of the parties shall be entertained. When the application is called and the parties have been duly served with the notice of hearing, but if any party or any legal practitioner appearing for him does not appear to present oral argument even though briefs have been filed by all the parties concerned in the application, the application will be treated as having been duly argued.

6. Formal order to be drawn up

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

ORDER 56

PROCEEDINGS IN REVENUE MATTERS

15. Application

This Order shall apply to the practice and procedure in all cases and proceedings relating to the revenue of the State Government in which the Government or any of its departments, agencies or parastatals is suing or is being sued.

16. Revenue Court

The Chief Judge shall designate such number of Courts as may be sufficient as "Revenue Courts" in each Division of the High Court of Edo State for the purpose of hearing all cases brought under this Order.

17. Commencement Form 40

(1) An action under this Order shall be commenced by filing a Petition which shall be in Form 40 with such modifications and variations as the circumstances may require, setting out the name and description of the Petitioner(s) and the Respondent(s).

(2) The Petition shall be accompanied by an Affidavit verifying the facts deposed to by the Petitioner(s), together with the Exhibits and a Written Address.

18. Further Information

(1) A Petition under this Order shall refer to the enactment under which the payment, account, information or the production of books is claimed or required.

(2) Where information is required, the Petitioner shall show sufficient particulars of the information required.

19. Payment into Court

(1) Where the Respondent is a tax payer and does not dispute the reliefs in the Petition, he shall, within fourteen (14) days of the service of the Petition on him, pay into Court, the amount alleged to be due from him as revenue to the Government.

(2) Upon payment into Court as stated in sub-rule (1) of this Rule, the proceedings against the Respondent shall be discontinued.

20. Filing of the Answer

(1) Where the Respondent disputes the reliefs in the Petition, he shall file his Answer within twenty-one (21) days of the service of the Petition on him.

(2) The Answer referred to in sub-rule (1) of this Rule shall be by way of an Affidavit deposed to by the Respondent, setting out the facts relied upon in opposition to the Petition and accompanied by Exhibits and a Written Address.

21. Reply

Upon being served with the Answer, the Petitioner may, within seven (7) days of such service on him, file a Further Affidavit together with his Written Reply and same shall be served on the Respondent not later than five (5) days of filing.

22. Hearing

(1) A Petition shall be heard within seven (7) days after the expiration of the time limited for filing and service of the Reply under this Order.

(2) Where there is conflict in the Affidavits of the parties, the Court may either decide the matter upon the Affidavits or may direct that the matter be decided by oral evidence in Court.

23. Orders of Hearing

The Court hearing a Petition under this Order may give directions for:-

(d) service of further particulars;
(e) discovery of documents; and
(f) service of interrogations and answer thereto.

24. Duration

The hearing of a Petition shall as far as practicable be held from day to day.

25. Default of Answer

Where the Respondent fails to file his Answer within the time provided for doing so in this Order, the Petitioner shall apply that Judgment be entered against the Respondent on such terms as the Court may deem fit in the circumstances.

26. Non-appearance of parties

When a Petition is called for hearing and the parties have been duly served with the Notice of Hearing, if any party or his Legal Practitioner does not appear, the Court shall proceed as it deems fit.

27. Proceeding under other provision

Nothing in this Order shall preclude any person from proceeding under any provision of these Rules or any law as may be appropriate.

28. Interpretation

In this Order, unless the context otherwise requires;
"Government" means the Government of Edo State or of a Local Government Council or any person who exercises power on its behalf.
"Revenue" means any sum due or alleged due to the Government in form of levy, charge, tax, rate or dues under any law in force.

ORDER 57

FAST TRACK CASES

17. Fast Track Judges

(1) The Chief Judge shall designate such number of Fast Tack Judges as he thinks fit, who may act as Motion Fast Track Judges and/or Trial Fast Track Judges.

18. Pre-trial Conference

A Fast Track Judge may conduct settlement of issues in compliance with Order 27 as he considers expedient in the circumstances.

19. Coordinator, Fast Track Division

(1) The Chief Judge shall appoint an officer as coordinator for the Fast Track Division.

(2) The Coordinator shall:

(a) Process Fast Track cases;
(b) Monitor the performance of the Fast Track Division and submit weekly and monthly performance appraisal report to the Chief Judge;
(c) Make recommendations on how to improve the operation of the Fast Track Division.
(d) Publish the weekly Cause List every Friday or on an earlier day if Friday is a public holiday;
(e) Manage, coordinate and supervise the operation of the Fast Track Division; and
(f) Perform any other function that may be assigned to him by the Chief Judge.

20. Jurisdiction of Fast Track Division, Form 45

Where any of the parties specifically requests to proceed by way of Fast Track as in Form 45, the Fast Track Court shall have jurisdiction to hear and determine that case and any other case requiring exceptional urgency including but not limited to the following:

(h) Banker/customer disputes;
(i) Commerce and Industry;
(j) Landlord and tenant;
(k) Edo State or Local Government Council Revenue;
(l) Where any of the parties specifically requests to proceed by way of Fast Track as in Form 45.
(m) Provided that the monetary claim in paragraphs (a) and (b) above is not less than Fifty Million Naira; and
(n) any other case which the Chief Judge may approve.

21. Assignment of Cases

A Fast Track Judge may not be assigned more than three cases a week.

22. Procedure for filing of cases

(1) The claimant or counterclaimant shall present his originating process prepared by him or his legal practitioner accompanied by:

(a) Statement of claim
(b) List of witnesses to be called at the trial
(c) Written statement on oath of the witnesses
(d) Copies of every document or exhibit to be relied on at the trial,
(e) Certificate of pre-action counseling, and
(f) A duly completed application form as in Form 46 obtained from the Division to place the cause or matter on the Fast Track Division.

(2) The Coordinator shall upon receipt of the processes in (1) above issue an acknowledgement and forward the cause or matter to the Chief Judge for approval or otherwise as in Form 47 or 48.

(3) Where a matter is placed on the Fast Track, a filing fee of N100,000 (One Hundred Thousand Naira) shall be paid by the Applicant.

23. Accounts for fees, Civil Form 49

The coordinator shall render monthly account of the monies received by the revenue officer for filing processes, forms or notices as in Form 49.

24. Service of process

(1) The bailiff shall serve all processes or notices filed within 24 hours of filing and file a proof of service.

(2) Where a bailiff is unable to effect service, a certificate of non-service shall be filed.

(3) Any court official who receives or dispatches a file or process relating to a Fast Track case shall state the date and time of receipt or dispatch.

(4) Service of process may be effected on parties or counsel in the court.

(5) All proofs of service must be filed within 24 hours.

25. Hearing dates

Trial shall be conducted on daily basis and parties are bound by hearing dates fixed in advance.

26. Adjournment

(1) A Judge may not grant an application for an adjournment, unless it is for cogent and compelling reasons.

(2) Where an application for adjournment is granted, the order shall not exceed

three days from the date of the order.

(3) Where a matter is adjourned at the instance of a party, he shall pay cost of not less than ten thousand (N10,000.00) naira per day for every day of the adjournment to each other party.

27. Absence of counsel

(1) Where a party or his counsel will be absent from court, the party or his counsel shall promptly inform the court.

(2) Where a trial has commenced, the court will hold counsel responsible to his commitment to continuous trial. The court shall proceed, notwithstanding the absence of counsel, parties or witnesses.

28. Timetable for taking steps

The timetable for steps in Fast Track action is as follows:

(j) Administrative action by the Chief Jude after filing of process, form or notice – within 24 hours;
(k) Service of process – within 3 days;
(l) Memorandum of appearance, defence and accompanying documents – within 7 days, and 30 days outside jurisdiction;
(m) Reply to defence – within 7 days;
(n) Trial and scheduling, motions and other applications within 7 days of close of pleadings.
(o) Commencement to conclusion of trial – within 30 days;
(p) Filing and adoption of final address – within 14 days;
(q) Judgment – within 30 days; and
(r) Issuance of certified true copy of Judgment – within 4 days.

29. Compliance with timetable

(1) Where service has been duly effected and there is proof of service, an extension of the time provided under the timetable for taking steps, shall not be allowed, unless for cogent and compelling reasons.

(2) A party who fails to comply with the period prescribed in the timetable shall not be heard on an interlocutory application, except on an application for extension of time.

30. Absence of parties

(1) Where trial cannot commence on a date fixed for hearing due to the absence of the claimant, the case shall be struck out.

(2) Where the trial cannot commence on a date fixed for trial due to the absence of the defendant, hearing shall continue and may be concluded without further notice to the defendant.

(3) Where a case is struck out under paragraph (1) above, the claimant may apply to relist within 7 days.

(4) Where a case is relisted pursuant to sub-rule (3) above, the claimant shall pay a cost as shall be determined by the court.

31. Form of Addressee, Objections and Application

(1) Addresses, objections and applications, except those arising extempore, shall be in writing and served on the other party.

(2) Final addresses shall be deemed adopted in the absence of parties.

32. Application of Transcript, Civil Form 50

(1) The registrar shall prepare record of proceedings within three days of the conclusion of sittings.

(2) Parties may apply for the record of proceedings upon payment of fees, to be issued within three days of the application as in Form 50.

ORDER 58

PROBATE AND ADMINISTRATION

GRANT OF PROBATE OR

ADMINISTRATION IN GENERAL

45. Petition to be made to Probate Registrar

(1) Subject to the provisions of rules 39 and 40, when any person subject to the jurisdiction of the Court dies, all petitions for the granting of any letters of administration of the estate of the deceased person, with or without a Will attached, and all applications on other matters connected therewith, shall be made to the Probate Registrar of the Court at Benin City.

(2) In regard to any such application, the Chief Judge shall have power to request the Court of any Judicial Division to take measures and make such orders as may appear necessary or expedient for the interim preservation of the property of the deceased within such Judicial Division, for the discovery or preservation of the Will of the deceased or for any other purpose 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 be issued within seven days of the death of the deceased; and no grant of administration (not with the Will annexed) shall be issued within fourteen days of such death.

46. Preservation of property

The Court shall, when the circumstances of the case appear to require forthwith on the death of a person, or as soon after, appoint and authorize 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.

47. Unauthorised persons intermeddling with property

If any person, other than the person named executor or administrator, or an officer of the Court or person authorized by the Court, 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 such fine not exceeding N50,000.00 (fifty thousand naira) as the Court, having regard to the condition of the person so interfering with the property and the other circumstances of the case, may think fit to impose.

48. Production of testamentary papers

(1) 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.

(2) If any person fails to do so for fourteen days after having had knowledge of the death of

the deceased, he shall be liable to such fine not exceeding N50,000.00 (fifty thousand naira) as the Court having regard to the condition of such person so in default and the other circumstances of the case, thinks fit to impose.

49. Court may order production

Where it appears that any paper of the deceased, being or purporting to be testamentary, is in the possession of, or under the control of any person, the Court may in a summary way, whether a suit or proceedings respecting probate or administration is pending or not, order him to produce the paper and bring it into Court.

50. Examination respecting papers

Where it appears that there are reasonable grounds for believing that any person has knowledge of any paper being or purporting to be testamentary, (although it is not shown that the paper is in his possession or under his control), the Court may in summary way, whether a suit or proceedings respecting probate or administration is pending or not, order that he may be examined in respect of same in Court, or on interrogatories, and that he attends for that purpose, and after examination, that he produces the paper and brings it into Court.

51. Notice to executor to come in and prove

The Court may of its own motion, or on the application of any person claiming an interest under a Will, give notice to the executors (if any) therein named, to come in and prove the Will, or to renounce probate, and they, or some or one of them, shall, within (21) twenty-one days after notice, come in and prove or renounce accordingly.

52. Liability of executor neglecting to apply for probate

If any person named executor in the Will of the deceased, takes possession and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within one month after the death, or after the termination of any suit or dispute respecting probate or administration, he may independently of any other liability, be deemed guilty of a contempt of Court, and shall be liable to such fine, not exceeding N50,000.00 (fifty thousand naira), as the Court thinks fit to impose.

53. Identity

The Court shall require evidence, in addition to that offered by the applicant, where additional evidence in that behalf seems to the Court 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 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 Court relevant to the question whether the applicant is the proper person to whom the grant should be made:

Provided that the Court may refuse the grant unless the applicant produces the required evidence on these points or any of them as required by the Court

54. Court may refuse grant until all persons interested are given due notice

Where it appears to the Court that some person or persons other than the applicant may have at least an equal right with the applicant to the grant sought, the Court 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 Court may in its 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.

55. Value of property

Every applicant for a grant of letters of administration shall file in the Court, a true declaration of all personal property of the deceased and the value thereof:

Provided that for the purpose of the fees payable on letters of administration, the value of the property in respect of which the grant is made shall be deemed not to include:

(c) any gratuity payable by the Government of the Federation of Nigeria, or the Government of a State, to the property in respect of which the grant is made;

(d) any sum of money payable to an estate from a Provident Fund established under the provisions of any written law.

56. Answers required before grant

(1) In no case shall the Court issue letters of administration until all inquiries which the Court deems fit to institute have been answered to its satisfaction.

(2) 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.

57. Notice to prohibit grant

A notice to prohibit a grant of administration may be filed in the Court.

58. Effect of notice

(1) The notice shall remain in force three months only from the day of filing, but it may be renewed from time to time.

(2) The notice shall not affect a grant made on the day on which the notice is filed.

(3) The person filing the notice shall be warned in writing delivered at the place mentioned in the notice as his address.

(4) Notices in the nature of citation shall be given in such manner as the Court directs.

59. Form of suits

Suits respecting administration shall be instituted and carried on as nearly as may be in the like manner and subject to the same rules of procedure as suits in respect of ordinary claims.

Custody of Wills

60. Testator may deposit Will

Any person may, in his lifetime, deposit for safe custody in the Court at Benin City, his own will, sealed up under his own seal and the seal of the Court.

61. Custody of Wills of which probate granted

(1) Every original Will, of which probate or administration with Will annexed is granted, shall be filed and kept in the Probate Registry, in such manner as to secure at once the due preservation and convenient inspection of same.

(2) A copy of every such Will, and of the probate or administration, shall be preserved in a book kept for the purpose in the Registry.

62. Will not given out without order of court

(1) No original Will shall be delivered out for any purpose without the direction in writing of the Court where the Will is filed.

(2) A certified transcript, under the seal of the Court of the probate or administration with the Will annexed, may be obtained from the Court.

Probate or Administration with Will Annexed

63. Examination of Will as to its execution

(1) On receiving an application for administration with Will annexed, the Court shall inspect the Will, and see whether it appears to be signed by the testator, or by some other person in his presence, and by his direction, and to be subscribed by two witnesses according to the enactments relative thereto, and shall not proceed further if the Will does not appear to be so signed and subscribed.

(2) If the Will appears to be so signed and subscribed, the Court shall then refer to the attestation clause (if any), and consider whether the wording thereof states the Will to have been, in fact, executed in accordance with those enactments.

64. Proof of execution where attestation clause is defective

(1) If there is no attestation clause, or if the attestation clause is insufficient, the Court shall require an affidavit from at least one of the subscribing witnesses, if either of them is living, to prove that the Will was, in fact executed in accordance with those enactments

(2) The affidavit shall be engrossed and form part of the probate, so that the probate may be a complete document on the face of it.

65. Where Will was not executed according to law

If on perusal of the affidavit, it appears that the Will was not, in fact, executed in accordance with those enactments, the Court shall refuse probate.

66. Evidence on failure of attesting witnesses

If both the subscribing witnesses are dead, or if from other circumstances, such an affidavit cannot be obtained from either of them, resort for such an affidavit shall be had to other persons (if any) present at the execution of the Will; but if no such affidavit can be obtained, proof shall be required of that fact, and of the 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.

67. Will of blind or illiterate testator

Where the testator is 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 the time knowledge of its contents.

68. Interlineations, erasures, obliterations

(1) The Court, on being satisfied that the Will was duly executed, shall carefully inspect it to see whether there are any interlineations or alterations, or erasures, if 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 invalid by the re-execution of the Will, or by the subsequent execution of some codicil thereto.

(3) Where interlineations, alterations, erasures, or obliterations appear in the Will (unless duly executed or recited in or otherwise identified by the attestation clause), an affidavit in proof of their having existed in the Will before its execution, shall be filed.

(4) If so, satisfactory evidence is adduced respecting the time when an erasure or obliteration was made, and the words erased or obliterated are not entirely defaced, and can, on inspection of the Will, be ascertained, they shall form part of the probate.

(5) Where any words have been erased which might have been of importance, an affidavit shall be required.

69. Documents referred to in a Will: or annexed or attached

(1) Where a Will contains a reference to any document of such a nature as to raise the questions 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.

(2) A document cannot form part of a Will unless it was in existence at the time when the Will was executed.

(3) If there are vestiges of sealing wax or wafers, or other marks on the Will, leading to the inference that some documents have been at sometime annexed or attached thereto, a satisfactory account of them shall be proved, or the production of the document shall be required, and if it is not produced, a satisfactory account of its non-production shall be proved.

70. Executor dying without proving or not appearing

Where a person appointed executor in a Will survives the testator, but either dies without having taken probate, or having been called on by the Court to take probate, does not appear, his right in respect of the executorship wholly ceases; and without further renunciation, the representation to the testator and the administration of his property may go and be committed as if that person had not been appointed executor.

71. Marking of Will or copy sworn to

(1) Every Will or copy of a Will to which an administrator with the Will annexed is worn, shall be marked by the executor or administrator and by the person before whom he is sworn.

(2) Codicils

The provisions respecting Wills apply equally to codicils.

72. Viva voce examination of persons making affidavits

(1) In every case where evidence is directed or allowed to be given by affidavit, the Court may require the personal attendance of the deponent, if within the jurisdiction, before the Court, to be examined viva voce respecting the matter of his affidavit.

(2) The examination may take place before any affidavit has been sworn or prepared, if the Court thinks fit.

Administration (not with Will)

73. Form of administration not with Will annexed

(1) The Court in granting letters of administration shall proceed as far as may be as in cases of probate.

(2) The Court shall ascertain the time and place of the deceased's death, and the value of the property to be covered by the administration.

74. Administration bond

(1) The person to whom administration is granted shall give a bond, with two or more responsible sureties, to the Probate Registrar of the Court, conditioned for duly collecting, getting in and administering the personal property of the deceased, such sureties to be to the satisfaction of the Probate Registrar.

(2) The Court may, if it thinks fit, take one surety only.

(3) The bond shall be in a penalty of double the amount under which the personal estate of the deceased is sworn, unless the Court, in any case, thinks it expedient to reduce the amount.

(4) The Court may also in any case, direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the Court thinks reasonable.

75. Assignment of bond

The Probate Registrar may, on being satisfied that the condition of the bond has been broken, assign the same to some person, and that person may thereupon sue on the bond in his own name as if it had been originally given to him instead of the Probate Registrar, and may recover thereon, as trustee for persons interested, the full amount recoverable in respect of any breach of the bond.

Administration of Property

76. Administration summons

Any person claiming to be a creditor or legatee, or the next-of-kin, or one of the next-of-kin of a deceased, may apply for and obtain a summons from the Court requiring the executor or administrator (as the case may be) of the deceased to attend before the Court, and show cause why an order for the administration of the property of the deceased should not be made.

77. Order for administration

(1) On proof of service of the summons or on appearance of the executor or administrator, and on proof of all such other things (if any) as the Court may direct, the Court may, if it

thinks fit, make an order for the administration of the property of the deceased.

(2) The Court shall have discretionary power to make or refuse any such order or to give any special directions respecting the carriage or execution of it, and in the case of applications for such an order by two or more different persons or classes of persons, to grant same to such one or more of the claimants or classes of claimants, as the Court thinks fit.

(3) If the Court thinks fit, the carriage of the order may subsequently be given to such person, and on such terms, as the Court thinks fit.

78. Orders relating to property

On making such an order, or at any time afterwards, the Court may, if it thinks 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.

79. Administration may be granted to officer

In a case of intestacy, where the special circumstances of the case appear to the Court so to require, the Court may, if it thinks fit, on the application of any person having interest in the estate of the deceased, or of its own motion, grant letters of administration to an officer of the Court, to a consular officer, or to a person in the service of the government.

80. Officer to act under direction of court

(1) The officer or person so appointed, shall act under the direction of the Court, and shall be indemnified thereby.

(2) The Court shall require and compel him to file in the Court, his accounts of his administration at intervals not exceeding three months.

81. Court may appoint persons to be administrator

Where a person has died intestate as to his personal estate or leaving a Will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person, be resident out of the jurisdiction, and it shall appear to the Court to be necessary or convenient in any such case to appoint some person to be administrator of the personal estate of the deceased or of any part thereof, the Court may appoint such person as it shall think fit, to be such administrator upon his giving such security, if any, as the Court shall direct, and every such administrator may be limited as the Court shall think it.

82. Remuneration of administrator

The Court may direct that any administrator, (with or without the Will annexed), shall receive out of the personal and real estate of the deceased, such reasonable remuneration as the Court shall think fit, not exceeding a fee of N50,000.00 (fifty thousand naira) and in addition thereto, a sum not exceeding five per centum-on the amount of the realized property, or when not converted into money, on the value of the property duly administered and accounted for by him: *Provided that where the Court shall be satisfied that by reason of exceptional circumstances, the administration of the property has required an extraordinary amount of labour to be bestowed on it, the Court may allow, in respect of such property, a higher rate of remuneration.*

Administration of Estate of Foreign Citizen

83. Securing and collection of estate

(1) Where any citizen of any country other than Nigeria, dies within the jurisdiction without leaving within the jurisdiction, a widow or next-of-kin, then, if any such person dies within a Government station or had his usual place of residence therein, the Magistrate having jurisdiction within such station, or if he does not die within a Government station, or had not his usual place of residence therein, then the Local Government Secretary in charge of the station in which he died, shall collect and secure all monies and other property belonging to the deceased, and shall then request the Secretary to the Government to inform the nearest consular officer of such country, of the death of the deceased, and transmit to him a list of the money and property of the deceased.

(2) In the case last mentioned in which it is declared that a Local Government Secretary shall collect and secure all money and other property of the deceased, such Local Government Security may appoint any administrative officer attached to his local government or, with his consent, any magistrate or any administrative officer attached to any other Local Government to act in his place.

84. Application by consular officer or person authorized by him to administer estate

Application may be made to the Court by any such consular officer, or by any person authorized by him in writing and under the consular seal, for leave to administer the estate of the deceased, and the Court may make such order as to security for payment of debts and the method of administration as the Court shall think fit, and vary such order when and so often as is expedient.

Administration Generally

85. Accounts to be filed

(1) Every person to whom a grant of probate or letters of administration shall have been made, and every administrator appointed by the Court shall, if called upon by the Court so to do, file in Court the accounts of his administration, and shall thereafter file such further periodic accounts as the Court may direct until the completion of the administration.

(2) Any such executor or administrator who fails within any such period to file his accounts as aforesaid, shall be liable to such penalty not exceeding N1,000.00 (one thousand naira) as the Court may think fit to impose. Every such fine shall, on non-payment be enforceable by distress, and failing sufficient distress, by imprisonment for a term not exceeding six months.

(3) When an account is filed in Court under this rule, the Court shall scrutinize such account and if it appears to the Court that by reason of improper unvouched or unjustifiable entries or otherwise, such account is not a full and proper account, the Court may give written notice to the person filing the account, to remedy such defects as there may be within such time as the Court may seem reasonable for the purpose; and on failure to remedy such defects within such time, the person who filed such defective account shall be deemed to have failed to file an account within the meaning of this rule and proceedings may be taken against such person accordingly.

(4) The Court may, on the motion of any party interested, or of its own motion, summon any executor or administrator failing as aforesaid, to show cause why he should not be punished.

(5) The Court may for good cause shown, extend the time for such filing or accounts.

(6) Any executor or administrator who has been granted an extension of time to file such accounts, and who fails within such extended time to file such accounts, shall be liable to the penalty set out above, and the procedure for bringing him before the Court shall be as set out above.

(7) It is the duty of the Probate Registrar to bring to the notice of the Court, the fact that any executor or administrator has failed to file his accounts as required by this rule.

(8) Such accounts shall be open free of charge to the inspection of all persons satisfying the Probate Registrar that they are interested in the administration.

(9) In this rule, the word "accounts" shall mean and include an inventory, an account of the administration, the vouchers in the hands of the executor or administrator relating thereto, and an affidavit in verification.

86. Duties and powers to be performed and exercised by Probate Registrar

The duties imposed and powers conferred upon the Court by rules 5, 6, 7, 9, 10, 11, 12, 14, 17, 18, 19, 20, 21, 22, 28, 31, 38, 40 and 4(1), (3), (5), (7) and (8) shall be performed and exercised by the Probate Registrar on behalf of the Court, subject to any directions which the Chief Judge may give, restricting or enlarging this delegation to the Probate Registrar of the duties and powers of the Court under this Order:

Provided always that the Court shall have power, either of its own motion, or on the application of any person interested, to review any exercise by the Probate Registrar of the powers delegated to him. On such review, the Court shall have power to cancel anything which may have been done by the Probate Registrar in such exercise of his delegated powers or otherwise, and make such order on the premise as the Court may deem just.

87. Court may refuse application

The Court may refuse to entertain any application under the last preceding rule, if it considers that there has been unreasonable delay by the applicant in making his application.

88. Grant to be signed by Probate Registrar

The grant of letters of administration under this Order shall be signed by the Probate Registrar on behalf of the Court.

ORDER 59

PROBATE (NON-CONTENTIOUS) PROCEDURE

76. Production of testamentary papers

Any person having in his possession or under his control, any paper or writing of any deceased person, being or purporting to be testamentary shall forthwith deliver the original to the Probate Registrar of the Court. If any person fails to do so for fourteen days after having had knowledge of the death of the deceased, he shall be liable to such fine not exceeding N50,000.00 (fifty thousand naira) as the Court, having regard to the condition of such person so in default and the other circumstances of the case, thinks fit to impose.

77. Court may order production

Where it appears that any paper of the deceased, being or purporting to be testamentary, is in the possession, or under the control of any person, the Court may in a summary way, whether a suit or proceedings respecting probate or administration is pending or not, order him to produce the paper and bring it into Court.

78. Examination respecting paper

Where it appears that there are reasonable grounds for believing that any person has knowledge of any paper being or purporting to be testamentary (although it is not shown that the paper is in his possession or under his control), the Court may in a summary way, whether a suit or proceedings for probate or administration is pending or not, order that he may be examined in respect of same in Court, or on interrogatories, and that he attends for that purpose, and after examination that he produces the paper and brings it into Court.

79. Notice to executor to come in and prove

The Court may of its own motion, or on the application of any person claiming an interest under a Will, give notice to the executors (if any) therein named, to come in and prove the Will, or to renounce probate, and they, or one of them shall, within fourteen days after notice come in and prove or renounce accordingly.

80. Liability of executor to come in and prove

If any person named executor in the Will of the deceased takes possession and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within one month after the death, or after the termination of any suit or dispute respecting probate or administration, he may, independently of any other liability, be deemed guilty of a contempt of Court, and shall be liable to such fine, not exceeding N50,000.00 (fifty thousand naira), as the Court thinks fit to impose.

81. Petition to be made to Probate Registrar

(1) When any person subject to the jurisdiction of the Court dies, all petitions for the grant of probate of his Will and all applications on other matters connected with it, shall be made to the Probate Registrar of the Court at Benin City.

(2) In regard to any such application, the Chief Judge shall have power to request the Court of any Judicial Division, to take measures and make such order as may appear necessary or expedient for the interim preservation of the property of the deceased within such Judicial

Division, for the discovery or preservation of the Will of the deceased or for any other purposes connected with the duties of the Court under this Order, and every Court shall carry out any such request as far as practicable and report to the Chief Judge.

82. Application for grants through legal practitioners

(1) A person applying for a grant through a legal practitioner may apply otherwise than by post at the Probate Registry.

(2) Every legal practitioner through whom an application for a grant is made, shall give the address of his place of business within jurisdiction.

83. Personal applications

(1) A personal applicant may apply for a grant otherwise than by post at the Probate Registry.

(2) A personal applicant may not apply through an agent, whether paid or unpaid, and may not be attended by any person acting or appearing to act as his adviser.

(3) No personal application shall be received or proceeded with if:
- (a) it becomes necessary to bring the matter before the Court on motion or by action.
- (b) an application has already been made by a legal practitioner on behalf of the applicant and has not been withdrawn.
- (c) the Registrar otherwise directs.

(4) After a Will has been deposited in the Registry by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the Registrar so directs.

(5) A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as the Registrar may 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 authorized officer.

84. Duty of Registrar on receiving application for grant

(1) The Registrar shall not allow any grant to be issued 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 that contained in the oath.

(3) No grant of probate or of administration with the Will annexed shall be issued within seven days of the death of the deceased.

85. Oath in support of grant

(1) Every application for a grant shall be supported by an oath in the form applicable to the

circumstances of the case, which shall be contained in any affidavit sworn by the applicant and by such other persons as the Registrar may require.

(2) Unless otherwise directed by the Registrar, the oath shall state where the deceased died domiciled.

86. Grant in additional name

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.

87. Marking of Wills

Every Will in respect of which an application for a grant is made, shall be marked by the signatures of the applicants and the person before whom the oath is sworn and shall be exhibited to any affidavit which may be required under this Order as to the validity, terms, condition or date of execution of the Will.

Provided that where the Registrar is satisfied that compliance with this rule might result in the loss of the Will, he may allow a Photostat copy thereof to be marked or exhibited in lieu of the original document.

88. Engrossment for purposes of record

(1) Where the Registrar considers that in any particular case, a photostat copy of the original Will would not be satisfactory for purposes of record, he may require an engrossment suitable for photostat reproduction to be lodged.

(2) Where a Will contains alterations which are not admissible to proof, there shall be lodged an engrossment of the Will in the form in which it is to be proved.

(3) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the Will and, if it is one to which sub-rule (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 there shall be underlined in red ink those portions which appear in pencil in the original.

89. Evidence as to due execution of Will

(1) Where a Will contains no attestation clause or the attestation clause is insufficient or where it appears to the Registrar that there is some doubt about the due execution of the Will, he shall before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the Will was executed.

(2) If no affidavit can be obtained in accordance with the last foregoing paragraph, the Registrar may, if he thinks fit, having regard to the desirability of protecting the interest of any person who may be prejudiced by the Will, accept evidence on affidavit from any person he may think fit, to show that the signature on the Will is the 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 on motion.

90. Execution of Will of blind or illiterate testator

Before admitting to proof, a Will which appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason gives rise to doubt as to the testator having had knowledge of the contents of the Will at the time of its execution, the Registrar shall satisfy himself that the testator had such knowledge.

91. Evidence as to terms, conditions and date of execution of Will

(1) Where there appears in a Will any obliteration, interlineations, or other alteration which is not authenticated in the manner prescribed by law, or by the re-execution of the Will or by the execution of a codicil, the Registrar shall require evidence to show whether the alteration was present at the time the Will was executed and shall give directions as to the form in which the Will is to be proved:

Provided that this 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 think fit.

(3) Where there is doubt as to the date on which a Will was executed, the Registrar may require such evidence as he thinks necessary to establish the date.

92. Attempted revocation of Will

Any appearance of attempted revocation of a Will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for, to the Registrar's satisfaction.

93. Affidavit as to due execution, terms, etc, of Will

The Registrar may require an affidavit from any person he may think fit, for the purpose of satisfying himself as to any of the matters referred to in rules 15, 16, and 17 and in any such affidavit sworn by an attesting witness or other person present at the time of the execution of a Will, the deponent shall depose to the manner in which the Will was executed.

94. Wills of persons on military service and seamen

If it appears to the Registrar that there is *prima facie* evidence that a Will is one to which Section 9 of the Wills Act, 1837, or any provision of the equivalent enactment in force in the State applies, the Will may be admitted to proof if the Registrar is satisfied that it was made by the

testator in accordance with the provisions of that section or enactment, as the case may be.

95. Evidence of foreign law

Where evidence as to law of any country or territory outside the State is required on any application for a grant, the Registrar may accept an affidavit from any person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably qualified to give expert evidence of the law in question.

96. Order of priority for grant where deceased left a Will

Where the deceased died after the commencement of this Order, the person or persons entitled to a grant of probate or administration with the Will annexed shall be determined in accordance with the following order of priority.

(1) The executor;
(2) Any residuary legatee or devisee holding in trust for any other person;
(3) Any residuary legatee or devisee for life;
(4) The ultimate residuary legatee or devisee, including one entitled on the happening of any contingency, or where the residue is not wholly disposed of by the Will, any person entitled to share in the residue not so disposed of, or the personal representative of any such person.

Provided that

(c) 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

(d) where the residue is not in terms wholly disposed of, the Registrar may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made (subject however to rule 53) to any legatee or devisee entitled to, or to a share in the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the Will;

(5) Any specific legatee or devisee or any creditor or subject to sub-rule (3) of rule 44, the personal representative of any such person or, where the estate is not wholly disposed of by Will, any person who, not withstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion thereto;

(6) Any specific legatee or devisee entitled on the happening of any contingency, or any person having no interest under the Will of the deceased who would have been entitled to a grant if the deceased had died wholly intestate.

97. Grant to attesting witnesses, etc.

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.

98. Value of property

Every applicant for a grant of probate or letter of administration with the Will attached,

shall file in the Court a true declaration of all the personal property of the deceased and the value thereof:

Provided that for the purpose of the fees payable on probate and such letters of administration, the value of the property in respect of which the grant is made shall be deemed not to include-

(c) any gratuity payable by the Government of the Federation of Nigeria, or the Government of a State to the estate of any person formerly employed by either of such Government or by a Statutory Corporation; and

(d) any sum of money payable to an estate from a provident fund established under the provisions of any written law.

99. Answers required before grant

In no case, shall the Court issue probate or letters of administration with the Will attached until all inquiries which the Court deems fit to institute have been answered to its satisfaction. The Court shall, however, afford as great, a facility for the obtaining of probate or such letters of administration as is consistent with due regard to the prevention of error and fraud.

100. Notice to prohibit grant

A notice to prohibit a grant of probate or administration with the Will attached, may be filed in the Court.

101. Effect of notice

(1) The notice shall remain in force three months only from the day of filing, but it may be renewed from time to time. The notice shall not affect a grant made on the day on which the notice is filed. The person filing the notice shall be warned in writing, delivered at the place mentioned in the notice as his address.

(2) Citations

Notices in the nature of citations shall be given in such manner as the Court directs.

102. Form of suits

Suits respecting probate or administration shall be instituted and carried on as nearly as may be in the like manner and subject to the same rules of procedure as suits in respect of ordinary claims

Custody of Wills

103. Testator may deposit Will

Any person may, in his lifetime, deposit for safe custody in the Court at Benin City his own Will, sealed up under his own seal and the seal of the Court.

104. Custody of Wills of which probate is granted

Every original Will, of which probate or administration with Will annexed is granted, shall be filed and kept in the probate registry, in such manner as to secure at once, the due preservation and convenient inspection of same. A copy of every such Will, and of the probate or administration, shall be preserved in a book kept for the purpose in the registry.

105. Will not given out without order of Court

No original Will shall be delivered out for any purpose without the direction in writing of the Court where the Will is filed. A certified transcript under the seal of the Court of the Probate

or Administration with the Will annexed, may be obtained from the Court.

Probate or Administration with Will Annexed

106. Examination of Will as to its execution

(1) On receiving an application for probate or for administration with Will annexed, the Court shall inspect the Will, and see whether it appears to be signed by the testator, or by some other person in his presence, and by his direction, and to be subscribed by two witnesses according to the enactments relative thereto, and shall not proceed further if the Will does not appear to be so signed and subscribed.

(2) If the Will appears to be so signed and subscribed, the Court shall then refer to the attestation clause (if any), and consider whether the wording thereof states the Will to have been, in fact executed in accordance with those enactments.

107. Proof of execution where attestation clause is defective

If there is no attestation clause, or if the attestation clause is insufficient, the Court shall require an affidavit from at least one of the subscribing witnesses if either of them is living, to prove that the Will was, in fact, executed in accordance with those enactments. The affidavit shall be engrossed and form part of the probate, so that the probate may be a complete document on the face of it.

108. Where Will not executed according to law

If on perusal of the affidavit it appears that the Will was not, in fact executed in accordance with those enactments, the Court shall refuse probate.

109. Evidence on failure of attesting witnesses

If both subscribing witnesses are dead, or if from other circumstances, such an affidavit cannot be obtained from either of them, resort to such an affidavit shall be had from other persons (if any) present at the execution of the Will; but if no such affidavit can be obtained, proof shall be required of that fact, and of the handwriting of the deceased and of the subscribing witnesses, and also of any circumstances raising a presumption in favour of the due execution of the Will.

110. Will of blind or illiterate testator

Where the testator was blind or illiterate, the Court shall not grant probate of the Will, or administration with the Will annexed, unless the Court is first satisfied, by proof or by what appears on the face of the Will, that the Will was read over to the deceased before its execution, or that he had at that time knowledge of its contents.

111. Interlineations, erasures, obliterations

The Court on being satisfied that the Will was duly executed, shall carefully inspect it to see whether there are any interlineations or alterations, or erasures, or obliterations appearing in it, and requiring to be accounted for. 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. 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. 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.

112. Documents referred to in a Will

(1) Where a Will contains a reference to any document of such a nature as to raise a question whether it ought or ought not to form a constituent part of the Will, the Court shall require the production of the document, with a view to ascertaining whether or not it is entitled to probate and if it is not produced, a satisfactory account of its non-production shall be proved. A document cannot form part of a Will unless it was in existence at the time when the Will was executed.

(2) If there are vestiges of sealing wax or wafers, or other marks on the Will, leading to the inference that some document has been at some time annexed or attached thereto, a satisfactory account of them shall be proved, or the production of the document shall be required and if not produced, a satisfactory account of its non-production shall be proved.

113. Executor dying without proving or not appearing

Where a person appointed executor in a Will survives the testator, but either dies without having taken probate, or having been called on by the Court to take probate, does not appear, his right in respect of the executorship wholly ceases, and without further renunciation, the representation to the testator and the administration of his property may go on and be committed as if that person had not been appointed executor.

114. Marking of Will or copy sworn to

(1) Every Will or copy of a Will to which an executor or an administrator with the Will annexed is sworn, shall be marked by the executor or administrator and by the person before whom he is sworn.

(2) *Codicils*

The provisions respecting Wills apply equally to codicils.

115. Viva voce examination of persons making affidavits

In every case where evidence is directed or allowed to be given by affidavit, the Court may require the personal attendance of the deponent, if within the jurisdiction, before the Court, to be examined *viva voce* respecting the matter of his affidavit. The examination may take place before any affidavit has been sworn or prepared if the Court thinks fit.

116. Right of assignee to grant

(1) Where all the people entitled to the estate of the deceased under a Will have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace in the order of priority for a grant of probate, the assignor or if there are two or more assignors, the assignors with the highest priority in the absence of a proving executor.

(2) Where there are two or more assignees, probate may be granted with the consent of the others to anyone 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.

117. Joinder of administrator

In the absence of a proving executor;

(c) an application to join with a person entitled to a grant of administration with the Will attached, by a person in a lower degree shall, in default of renunciation by all persons entitled in priority to such last-mentioned person, be made to the Registrar and shall be supported by an affidavit by the personal representative and such other evidence as the Registrar may require.

(d) an application to join with a person entitled to a grant of administration with the Will attached, by a person having the right thereto, shall be made to the Registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Registrar may require:

Provided that there may, without any such application, be joined with a person entitled to administration with the Will attached.

(a) on the renunciation of all other persons entitled to join in grant, any kin of the deceased having no beneficial interest in the estate.
(b) unless the Registrar otherwise directs, any person whom the guardian of an infant may nominate for the purpose;
(c) a trust corporation.

118. Additional personal representatives

(1) An application to add a personal representative shall be made to the Registrar and shall be supported by an affidavit by the applicant, the consent of the person proposed to be added as personal representative and such other evidence as the Registrar may require.

(2) On any such application, the Registrar may direct that a note shall be made on the original grant, of the addition of a further personal representative, or he may impound or revoke the grant or make such other order as the circumstances of the case may require.

119. Grants where two or more persons entitled in same degree

(1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same degree.

(2) A dispute between persons entitled to a grant in the same degree, shall be brought by application before the Registrar.

(3) If an application under this rule is brought before the Registrar, he shall not allow any grant to be sealed until such application is fully 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.

120. Exceptions to rules as to priority

(1) Nothing in rules 21, 42, or 44 shall operate to prevent a grant being made to any person to whom a grant may or may require to be made under any enactment.

(2) The rules mentioned in the last foregoing sub-rules shall not apply where the deceased died domiciled outside the State, except in a case to which the proviso to rule 47 applies.

121. Grants where two or more persons entitled in same degree

When the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant of administration with the Will attached, and has consented to such administration being granted to the person or persons who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or one or more (not exceeding four) of such persons:

Provided that a surviving spouse shall not be regarded as a person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate, whatever its value may be.

122. Where the deceased died domiciled outside the State

Where the deceased died domiciled outside the State, the Registrar may order that a grant be issued:

(1) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the deceased died domiciled;

(2) to the person entitled to administer the estate by the law of the place where the deceased died domiciled;

(3) if there is no such person as is mentioned in sub-rule (1) or (2) of this rule or if in the opinion of the Registrar, the circumstances so require to such person as the Registrar may direct;

(4) if a grant is required to be made to, or if the Registrar in his discretion considers that a grant should be made to, not less than two administrators, to such person as the Registrar may direct jointly with any such person as is mentioned in sub-rule (1) or (2) of this rule or with any other persons:
Provided that without any such order as aforesaid:

(a) probate of any Will which is admissible to proof may be granted-
  (i) if the Will is in English or in the local vernacular, to the executor named therein;
  (ii) if the Will describes the duties of a named person in terms sufficient to constitute him executor according to the tenor of the Will to that person;
(b) where the whole of the estate in the State consists of immovable property, a grant limited thereto may be made in accordance with the law which would have been applicable if the deceased had died domiciled in the State.

123. Grant to attorneys

(1) Where a person entitled to a grant resides outside the State, a grant may be made to his lawfully constituted attorney, for his use and benefit, limited until such person shall obtain a grant or in such other way as the Registrar may direct:

Provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any.

(2) Where the Registrar is satisfied by affidavit that it is desirable for a grant to be made to the lawfully constituted attorney of a person entitled to a grant and resident in the State, he may direct that a grant be made to the attorney for the use and benefit of such person, limited until such person shall obtain a grant or in such other way as the Registrar may direct.

124. Grants on behalf of infants

(1) Where the person to whom a grant would otherwise be made is an infant, a grant for his use and benefit until he attains the age of eighteen years shall, subject to sub-rules (3) and (5) of this rule be granted:
(a) to both parents of the infant jointly, or to any guardian appointed by a Court of competent jurisdiction; or
(b) if there is no such guardian able and willing to act and the infant has attained the age of sixteen years, to any next-of-kin nominated by the infant or, where the infant is a married woman, to any such next-of-kin or to her husband, if nominated by her.

(2) Any person nominated under paragraph (b) of the last foregoing sub-rule, may represent any other infant whose next-of-kin he is, being an infant below the age of sixteen years entitled in the same degree as the infant who made the nomination.

(3) Notwithstanding anything in this rule, administration for the use and benefit of the infant until he attains the age of eighteen years may be granted to any person assigned as guardian, by order of a Court in default of, or jointly with, or to the exclusion of any such person as is mentioned in sub-rule (1) of this rule; and such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the Court, an affidavit of fitness sworn by a responsible person.

(4) Where a grant is required to be made to not less than two persons and there is only one person competent and willing to take a grant under the foregoing provisions of this rule, a grant may, unless the Registrar otherwise directs, be made to such person jointly with any other person nominated by him as a fit and proper person to take the grant.

(5) Where an infant who is a sole executor has no interest in the residuary estate of the deceased, administration with the Will attached for the use and benefit of the infant until he attains the age of eighteen years shall, unless the Registrar otherwise directs, be granted to the person entitled to the residuary estate.

(6) An infant's right to administration may be renounced only by a person assigned as guardian under sub-rule (3) of this rule authorized to renounce by the Registrar.

125. Grants where infant is co-executor

(1) Where one of two or more executors is an infant, probate may be granted to the other executor or executors not under disability, with power reserved for making the like grant to the infant on his attaining the age of eighteen years, and administration for the use and benefit of the infant until he attains the age of eighteen years may be granted under rule

49 if and only if the executors who are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application therefore.

(2) An infant executor's right to probate on attaining the age of eighteen years may not be renounced by any person on his behalf.

126. Grants in case of mental or physical incapacity

(1) Where the Registrar is satisfied that a person entitled to a grant is by reason of mental or physical incapacity, incapable of managing his affairs, a grant for his use and benefit, limited during his incapacity or in such other way as the Registrar may direct, may be made:

(a) in the case of mental incapacity, to the person authorized by the Court to apply for the grant; or

(b) where there is no person so authorized, or in the case of physical incapacity –

(i) if the person incapable is entitled as executor and has no interest in the residuary estate of deceased, to the person entitled to such residuary estate;

(ii) if the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate; or to such other person as the Registrar may by order direct.

(2) Unless the Registrar otherwise directs, no grant shall be made under this rule unless all persons entitled in the same degree as the person incapable, have been cleared off.

(3) In the case of mental incapacity, notice of intended application for a grant under this rule shall, unless the Registrar otherwise directs, be given to the person alleged to be so incapable.

127. Renunciation of probate and administration

(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 some other person entitled in a lower degree.

128. Notice to State of intended application for grant

In any case in which it appears that the State is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Attorney-General, and the Registrar may direct that no grant shall be issued within a specified time after the notice has been given.

129. Guarantee

(1) The Registrar shall not require a guarantee as a condition of making a grant except where it is proposed to make it:

(a) by virtue of sub-rule (5) of rule 21; to a creditor or the personal representative of a creditor, or to a person who has no immediate beneficial interest in the estate of the deceased, but may have such an interest in the event of an accretion to the estate;

(b) under rule 46; 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 48; to the attorney of a person entitled to a grant;

(d) under rule 49; for the use and benefit of a minor;

(e) under rule 51; for the use and benefit of a person who is by reason of mental or physical incapacity, incapable of managing his affairs;

(f) to an applicant who appears to the Registrar, to be resident elsewhere other 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 trust corporation.

(3) Every guarantee entered into by a surety for the purposes of this Order, shall be in Form 51.

Civil Form 51

(4) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an authorized officer, commissioner for oaths or any other person authorized by law to administer an oath.

(5) Unless the Registrar otherwise directs:

(a) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed N50,000.00 (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 become 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 status by an affidavit of means.

(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 final 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.

130. Resealing

(1) An application for the resealing of probate or administration with the Will attached, granted by the Court of a place not within the State, shall be made by the person to whom the grant was made or by any person authorized 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 sub-rule (1) of rule 54, or except where he considers that there are special circumstances making it desirable to require sureties;
- (b) sub-rule (4) of rule 8 and sub-rules (2), (4), (5) and (6) of rule 54 shall apply with any necessary modifications; and
- (c) a guarantee entered into by a surety shall be in Form 51.

Civil Form 52

(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-rule (1) or (2) of rule 47 or to a person to whom a grant could be made under a proviso to that rule.

(5) No limited or temporary grant shall be resealed except by leave of the Registrar.

(6) Every grant lodged for resealing shall include a copy of any Will to which the grant relates or shall be accompanied by a copy thereof, 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.

131. Amendment and revocation of grant

If the Registrar is satisfied that a grant should be amended or revoked, he may make an order accordingly.

Provided that, except in special circumstances, no grant shall be amended or revoked under this rule except on the application or with the consent of the person to whom the grant was made.

132. Caveats

(1) Any person who wishes to ensure that no grant is sealed without notice to himself, may enter a caveat in the registry.

(2) Any person who wishes to enter a caveat (in this rule called "the caveator") may do so by completing Form 53 in the appropriate book at the registry and obtaining an acknowledgment or entry from the proper officer, or by sending through the post, at his own risk, a notice in Form 51 to the registry in which he wishes the caveat to be entered.

Civil Form 53

(3) Where the caveat is entered by a legal practitioner on the caveator's behalf, the name of the caveator shall be stated in Form 53.

Civil Form 53

(4) Except as otherwise provided by this rule, a caveat shall remain in force for six 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.

(5) 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 a caveat having been entered against the sealing of a grant for which application has been made.

(6) 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.

(7) A caveator may be warned by the issue from the Registry, of a warning in Form 54, at the instance of any person interested (in this rule called "the person warning") which shall state his interest and if he claims under a Will the date of the Will, and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased; and every warning or a copy thereof, shall be served on the caveator.

Civil Form 54

(8) 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 thereupon 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.

(9) A caveator having an interest contrary to that of the person warning may, within eight 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 (11) of this rule, enter an appearance in the Registry by filing Form 55, and making an entry in the appropriate book, and shall forthwith thereafter serve on the person warning, a copy of Form 55 sealed with the seal of the Registry.

Civil Form 55

(10) 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 eight 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 (11) of this rule, issue and serve a summons for

directions, which shall be returnable before the Registrar.

(11) 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 foregoing sub-rule, and thereupon the caveat shall cease to have effect.

(12) Upon the commencement of a probate action, the Probate Registrar shall, in respect of each caveat then 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.

(13) Unless the Registrar otherwise directs:

(a) Any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to sub-rule (8) of this rule, remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such proceedings, and upon such application, any caveat entered by a party who had notice of the proceedings, shall cease to have effect;

(b) Any caveat in respect of which an appearance to a warning has been entered, shall remain in force until the commencement of a probate action;

(c) The commencement of a probate action shall, whether or not any caveat has been entered, operate to prevent the sealing of a grant until application for a grant is made by the person shown to be entitled thereto by the decision of the 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 (12) of this rule, shall cease to have effect.

(14) 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 (11) or (13) of this rule.

133. Citations

(1) Every citation shall be settled by the Registrar before being issued.

(2) Every averment in a citation and such other information as the Registrar may require, shall be certified by an affidavit sworn to by the person issuing the citation (in this Order called "the citor") or, if there be two or more citors, by one of them:
Provided that the Registrar may, in special circumstances, accept an affidavit sworn to by the citor's legal practitioner.

(3) Every Will referred to in a citation, shall be lodged in the Registry before the citation is issued, except where the Will is not in the citor's possession and the Registrar is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may within eight 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 59 or sub-rule (2) of rule 60, enter an

appearance in the Registry, by filing Form 55 and making an entry in the appropriate book and shall forthwith thereafter serve the citor, a copy of Form 55 held with the seal of the Registry.

Civil Form 55

134. Citation to accept or refuse to take a grant

(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 at least survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased.

(4) A person cited, who is willing to accept or take a grant, may apply *ex-parte* to the Registrar for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor, with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may:

(a) in the case of a citation under sub-rule (1) of this rule, apply to the Registrar for an order for a grant to himself.

(b) in the case of a citation under sub-rule (2) of this rule, apply to the Registrar for an order that a note be made on the grant that the executor in respect of whom power was reserved, has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly 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 a grant to himself or some other person specified in the summons.

(6) An application under the last foregoing sub-rule (5) shall be supported with 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:

(d) in the case of citation under sub-rule (1) of this rule, apply by summons to the Registrar for an order for a grant to himself;

(e) in the case of a citation under sub-rule (2) of this rule, apply by summons to the Registrar for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (b) of sub-rule (5) of this rule:

(f) 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.

135. Citation to propound a Will

(1) A citation to propound a Will shall be directed to the executors named in the Will and to all persons interested thereunder and may be issued at the instance of any citor having an 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 59, apply by summons to the Registrar for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (b) of sub-rule (5) of rule 59.

(c) in the case of a citation under sub-rule (3) of rule 59, apply by summons to the Registrar for an order requiring the person cited, to take a grant within a specified time or for a grant to himself or some other person specified in the summons, and the summons shall be served on the persons cited in each case.

136. Address for service

All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

137. Application for order to bring in a Will or to attend for examination

(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 of 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.

138. Limited grants

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:

(d) 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;

(e) whether the estate of the deceased is known to be insolvent;

(f) that the persons entitled to a grant in respect of the whole estate in priority to the applicant, have been cleared off.

139. Grants of administration ad colligenda bona

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.

140. Application for leave to swear to death

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.

141. Grants in respect of codicils and copies of Wills

(1) An application for an order, admitting to proof a codicil, or a Will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original Will is not available, may be made to the Registrar.

Provided that, where a Will is not available owing to its being retained in the custody of a foreign court or official, a duly 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) its existence after the death of the testator; and

(c) the accuracy of the copy or other evidence of the contents of the Will; together with any consent in writing to the application given by any person not under disability who would be prejudiced by the grant.

142. Grants durante absentia

An application for an order for a grant of special administration where a personal representative is residing outside the State, shall be made to the Court on motion.

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

(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 56 in the Registry.

Civil Form 56

(2) A notice filed under this rule shall be noted on the grant and the record which shall be open to inspection.

144. Issue of copies of original Wills and other documents

(1) Where copies are required of original Wills or other documents deposited under the provisions of any written law, such copies may be Photostat copies 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 photostat copies 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.

145. Taxation of costs

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

(2) The party applying for taxation, shall file the bill and give notice to all 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.

(3) If any party entitled to be heard on the taxation does not attend within a reasonable time after the time appointed, the taxing officer may proceed to tax the bill upon being satisfied that such party had due notice of the time appointed.

(4) 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.

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

The Registrar may require any application to be made by motion or by summons.

147. Exercise of powers of a Judge

All powers exercisable under this Order by a Judge in chambers, may be exercised by the Registrar.

148. Appeals from Registrars

(1) Any person aggrieved by a decision or requirement of the Registrar, may appeal by summons to a Judge.

(2) If in the case of an appeal under the last foregoing paragraph, any person besides the appellant who appeared or was represented before the Registrar from whose decision or requirement the appeal is brought, the summons shall be issued within seven days thereof for hearing on the first available day and shall be served on every such person concerned.

149. Service of notice of motion and summons

(1) A judge or the Registrar may direct that a notice of motion or summons for the service of which no other provision is made in this Order, shall be served on such person or persons as the Judge or Registrar may direct.

(2) Where by the provisions of this Order or by any direction given under the last foregoing sub-rule, a notice of motion or summons is required to be served on any person, it shall be served not less than five days before the hearing of the motion or summons.

150. Notices etc

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 prepaid registered post to that person's address for service or if he has no address for service, his last known address.

95. Affidavits

Every affidavit used in non-contentious probate business shall satisfy the requirements of the Evidence Act on affidavits.

96. Time

The provisions of Order 43 shall apply to the computation, enlargement and abridgement of time under this Order.

97. Application to pending proceedings

Subject in any particular case to any direction given by a Judge, this Order shall apply to any proceedings which is pending on the date on which these Rules come into operation, as well as to any proceedings commenced 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.

98. Contentious probate: form of suit

Suits respecting 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 ordinary civil claims.

99. Interpretation

(1) 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 a registry who is for the time being, authorized 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 sworn by every applicant for grant.

"**Personal applicant**" means a person other than a trust corporation, who seeks to obtain a grant without employing a legal practitioner and "personal application" has a corresponding meaning.

"**Registrar**" means the Probate Registrar, being the Chief Registrar of the High Court of the State;

"**Registry or Probate Registry**" means the Probate Registry at Benin City;

"**Will**" includes a codicil and any testamentary document or copy or reconstruction thereof.

(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.

Proceedings Generally

100. Probate actions

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.

101. Service of writ of summons

In probate actions, service of a writ of summons may, by leave of a Judge, be allowed out of Nigeria.

102. Pleadings and further actions

In probate actions, the 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.

103. Where claimant disputes defendant's interest

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.

104. Notice of opposition to Will

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.

105. Inquiry as to outstanding personal estate

Every judgment or order for a general account of the personal estate of a testator or intestatus, shall contain a direction for any inquiry as to what parts of such personal estate are outstanding or undisposed of unless the Judge shall otherwise direct.

106. Discretion to order costs

Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Judge otherwise orders, be entitled to the costs of such proceedings in so far as they are not recovered from or paid by any other person out of the fund held by the trustee or personal representative or the mortgaged property as the case may be, and the Judge may otherwise order only on the ground that the trustee, 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.

107. Originating summons relating to deceased person

The executors or administrators of a 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;

(h) Any question affecting the rights or interest of the person claiming to be creditor, beneficiary, next-of-kin, or heir-at-law or *cestui que* trust;
(i) The ascertainment of any class of creditors, beneficiary, next-of-kin, or others;
(j) The furnishing of any particular accounts by the executors or administrators or trustees and the pouching, when necessary, of such account;
(k) The payment into Court, of any money in the hands of the executors or administrators of trustees;
(l) Directing the executors or administrators or trustees to do or abstain from doing any particular act, as executors or administrators or trustees;
(m) The approval of any sale, purchase, compromise, or other transaction;
(n) The determination of any question arising in the administration of the estate or trust.

108. Order for administration of estate of deceased and of trust

Any of the persons named in rule 90 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 had previously been made.

109. Persons to be served

The person to be served with the summons under rules 88 and 89 of this Order in the first instance, shall:

(c) Where the summons is taken out by an executor or administrator or trustee:
  (i) for the determination of any question under paragraph (a), (c), (f) or (g) of rule 88 of this Order, the person or one of the persons whose rights or interests are sought to be affected;
  (ii) for the determination of any question, under paragraph (b) of rule 88 of this Order, any member or alleged member of the class;
  (iii) for the determination of any question under paragraph (c) of rule 88 of this Order, any person interested in taking such accounts;
  (iv) for the determination of any question under paragraph (d) of rule 88 of this Order, any person interested in taking such money;
  (v) for relief under paragraph (b) of rule 89 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;
  (vi) for relief under paragraph (b) of rule 89 of this Order, the *cestui que* trust or some of them;
  (vii) 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;

(d) where the summons is taken out by any person other than the executors, administrators or trustees, the executors, administrators or trustees, or some of them must be served.

110. Judge not bound to order administration

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.

111. Order which may be made on application for administration or execution of trusts, where no account or insufficient accounts have been rendered

Upon an application for administration or execution of trusts by a creditor or beneficiary under a Will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the Judge may, in addition to the powers already existing;

(c) order that the application shall stand over for a certain time, and that the executors, administrators or trustees in the meantime shall render to the applicant, proper statement of their accounts, with an intimation that if this is not done, they may be made to pay the costs of the proceedings;

(d) when necessary to prevent proceedings by other creditors, or by persons beneficially interested, make the usual judgment or order for administration with a proviso that no proceedings are to be taken under such judgment or order without leave of the Judge.

112. Interference with discretion of trustee

The issue of a summons under rule 88 of this Order shall not interfere with or control any power or discretion vested in any executor, administrator or trustee except so far as such interference or control may necessarily be involved in the particular relief sought.

113. Application by summons

Any of the following applications may be made by summons:

(e) *Appointment of new trustees and vesting order.*
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 where the appointment is made by a Judge.

(g) *Vesting order on sale, etc*
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) *Payment out of Court*
An application relating to a fund paid into Court in any case coming within the provisions of this Order.

ORDER 60

APPEAL FROM MAGISTRATE'S COURT, ETC

22. Notice of appeal

Every appeal shall be brought by notice of appeal, which shall be lodged in the lower court within 30 days of the decision appealed from and served on all other parties affected by the appeal within that period.

23. Contents, etc, of notice of appeal

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

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

(3) The notice of appeal shall give an address within Edo State to which notices may be sent to the appellant and such notices may be sent to him by registered post.

(4) The notice of appeal shall be in Form 57 in the Appendix and may be varied to suit the circumstances of the case but no variation of substance shall be made.

24. Copies of proceedings

(1) The Registrar of the lower court shall, within three months of the decision appealed from, prepare as many certified copies of the proceedings required for the consideration of the appeal as there are parties on record:

Provided that where the Registrar fails to compile the record of appeal within the time stipulated above, the appellant shall within 60 days thereafter, compile the record, for certification by the Registrar

(2) Save where the fees for preparing such copies are remitted, a deposit decided upon by the Registrar as likely to cover such fees, shall be made by the appellant before the preparation of such copies.

25. Appeal to Judge of High Court

The Registrar of the lower court shall within 7 days of preparing the copies aforesaid, send same to the Registrar of the Court in the Judicial Division in which the lower court is situated and the appeal shall be decided by the Judge of that Division.

26. Respondent to be supplied with copy of proceedings

When notifying a party of the day fixed for the hearing of the appeal, the Registrar of the Court shall send him a copy of the proceedings.

Filing of brief

(d) The appellant shall file his brief of argument within 30 days of receipt of the record of appeal;

(e) The brief of argument shall be served on the respondent, who shall file his own brief of argument within 30 days of its receipt;

(f) The appellant shall upon receipt of respondent's brief of argument, file his reply on point of law only, if any, within 7 days thereof.

27. Proceedings time

The times prescribed in rules 1 to 4 may be enlarged at any time by the Court, on such terms (if any) as may seem fit, after notice given to the respondent by the appellant of his application for enlargement of time.

28. Where time expires

Where the time available to the appellant for the taking of any step has expired before such step has been taken or completed, the respondent may, on notice to the appellant, apply to the Court to strike out the appeal, and the Court may strike out, or enlarge time for sufficient reason shown.

29. Constitution of court hearing appeals

All civil appeals from lower courts shall be heard by one Judge of the Court.

30. Time and place for hearing

The appeal shall come on for hearing at such time and at such place as the Registrar of the Court shall certify to the parties after either party must have filed and exchanged their respective briefs of argument.

31. Where appellant fails to appear

(1) If, on the day of hearing or at any adjournment of the case, the appellant does not appear, the appeal shall be struck out and the decision shall be affirmed, unless the Court thinks fit for sufficient cause, to order otherwise.

(2) If in any such case the respondent appears, the judgment shall be with costs of the appeal against the appellant, unless the Court expressly orders otherwise; but if the respondent does not appear, the costs of the appeal shall be at the discretion of the Court.

32. Where appellant appears

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 in form:

Provided that if it appears or is proved to the Court that the appellant has not complied with the requirements precedent to the hearing of an appeal hereinbefore contained the Court shall dismiss the appeal and affirm the position with or without costs of the appeal against the appellant.

33. Appeal limited to grounds given in notice

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 for appeal:

Provided that where, in the opinion of the Court, other grounds for appeal than those set forth in the memorandum of grounds for appeal should have been given, or statement of grounds of appeal is defective, the Court, in its discretion, may allow such amendments of the memorandum of grounds for appeal upon such

conditions as to service upon the respondent and as to costs, as it may think fit.

34. Request to confirm judgment on other grounds

(1) The respondent may give notice that he intends at the hearing in the Court, to confirm the judgment of the lower court on grounds other than those stated by the Court.

(2) The notice shall be accompanied by a clear statement of the grounds on which the respondent tends 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 for appeal, and shall be served on the appellant or his legal practitioner.

35. Counter appeal

(1) The respondent may file grounds for appeal against any part of the judgment of the lower court.

(2) Such grounds shall be filed by the respondent within 14 days of service on him of the appellant's notice and grounds of appeal and shall be served on the appellant or his legal practitioner before the hearing.

36. Objections to form of grounds of appeal

(1) No objection on account of any defect in the form of setting forth any ground for appeal, shall be used unless the Court is of opinion that the ground of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the respondent to enquire into the subject-matter thereof or to prepare for the hearing.

(2) In any case where the Court is of opinion that any objection to any reason for appeal ought to prevail, the Court may, if it thinks fit, cause the reason for appeal forthwith to be amended upon such terms and conditions, if any, as the Court may think just.

37. Defect in proceedings under appeal

On any appeal from a decision of a lower court, no objection to any reason for appeal ought to prevail, the Court may, if it thinks fit, cause the reason for appeal forthwith to be amended upon such terms and conditions, if any, as the Court may think just:

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 appellants have been thereby deceived or misled, it shall be lawful for the Court either to refer the case back to the lower court with directions to re-hear and determine the same or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.

38. Defects in notice of appeal or recognizance

No objection shall be taken or allowed on any appeal to any notice of appeal which is in writing or to any recognizance entered into under this Order for the due prosecution of such appeal for any alleged error or defect therein, but if any such error or defect appears to the Court to be such that the respondent on such appeal has been thereby deceived or misled, it shall be lawful for the Court to amend same 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 deem just.

39. Additional evidence

The Court may, in any case where it may consider it necessary that evidence should be adduced, 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 may think fit to give, or direct it, after taking such evidence; to report specific findings of fact for the information of the Court, and on any such reference the case shall so far as may be practicable and necessary, be dealt with as if it were being heard in the first instance.

40. Mode of taking evidence

(1) When additional evidence is to be taken by the lower court and specific findings of fact reported, it shall certify such evidence to the Court which shall thereupon proceed to dispose of the appeal.

(2) The appellant or his legal practitioner shall be present when the additional evidence is taken.

(3) Evidence taken in pursuance of rule 18 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 18, 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.

41. Fees

The fees in the second schedule shall be chargeable in civil appeals, save where same would have to be paid by a government officer acting in his official capacity or where the lower court or the Court waives or remits same on the ground of poverty of the person chargeable therewith where it appears that there are substantial grounds of appeal.

2nd Schedule

42. Allowance to witnesses

Allowances may be made to witnesses in accordance with the provisions of the third schedule.

3rd Schedule

23. Stay of execution

(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 money or the value of the property affected by the decision or

said sum;

(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 judgment appealed from relates to possession of land 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;

(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.

(8) 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 such performance within the time so limited, execution may be issued or proceeded.

(9) An application for stay of execution under the enactment establishing the lower court, may be made at any time after judgment of the notice of appeal and shall in the first instance, be made to the lower court;

Provided that, 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 made 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 it 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.

(13) 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 proceedings shall be invalidated except so far as either court may direct.

23. Costs

judgment appealed from, or give security to the satisfaction of the Court for the

The Court may made such order as to the payment of costs by or to the appellant, as it may deem to be just and such order may be made also in any case where an appeal has not been entered into or prosecuted.

30. Security for costs

(1) The Court may, in special circumstances, upon application on notice by motion (original or interlocutory as the case may require), supported by affidavit, order the appellant to deposit such sum or give such security as may seem fit for the respondent's costs of appeal, including the costs incidental to the application.

(2) The order shall limit the time (not exceeding thirty days) within which the deposit or security shall be made or given and may direct that in default of its being made or given within the time so limited, the appeal shall without further order stand dismissed.

(3) Where an appeal so stands dismissed, the respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such costs may be stated in the order in anticipation or may be assessed at any time by the Court of its own motion or on notice given within (30 days) of such dismissal (but not otherwise).

(4) Where an appeal so stands dismissed, the appellant shall take no further step or proceedings therein, save by leave of the Court for reinstatement of the appeal, which may be granted on such terms (if any) as may seem fit upon application by motion on notice given within (30 days) 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), costs shall not normally be granted to the applicant save where the net proceeds of execution levied on the appellant's goods are sufficient to satisfy the amount payable under the judgment or decision appealed from.

31. Orders of High Court to be certified to Magistrate's Court

(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 in conformity with the judgment or order of the Court and, if necessary, the records shall be amended in accordance therewith.

32. Enforcing of Judgment

After the pronouncement of the judgment of the Court, the lower court from which the appeal came, shall have the same jurisdiction and power to enforce and shall enforce any decision which may have been affirmed, modified, amended, or substituted by the Court, or any judgment which may have been pronounced by the Court in the same manner in all respects as if such decision or judgment had been pronounced by itself.

33. Enforcement of orders

Any order given or made by the Court may be enforced by the Court or by the lower court as may be most expedient.

34. High Court may enlarge time

The Court may, if it deems fit, enlarge any period of time prescribed by this Order.

35. Interpretation

In this Order:

"**the lower court**" means the Court whose judgment is appealed against, and includes a Magistrate's Court but does not include an Arbitrator, a Referee or an Auditor;

ORDER 61

APPEALS TO THE HIGH COURT

FROM DECISIONS OF AUDITORS

9. Application

"**Judgment**" includes an order or a ruling.

This Order shall apply to any appeal to the Court from a decision of an auditor made under the provisions of any written law which confers the right to appeal to the High Court against any such decision.

10. Method of appeal

An appeal to the Court from a decision of an auditor shall be by notice of motion.

11. Evidence

The evidence upon the hearing of the appeal, shall be by affidavit except in so far as the Court at the hearing, may direct oral evidence to be given.

12. Service

The notice of motion shall be served before the expiration of six weeks after the date of the decision of which it relates, upon the auditor in charge of the audit in respect of which the decision has been made and also upon the local government or other body in relation to whose accounts or to the accounts of whose officer the decision was given, if that local government or other body is not the appellant.

13. Contents of notice, date of hearing

The notice of motion shall state the grounds of appeal and the date mentioned in the notice for the hearing of the appeal shall not be less than twenty-eight days after the service of the notice.

14. Reasons for appeal to be filed

(1) The appellant shall within seven days after service on the auditor, of the notice, of motion file with the Registrar, a copy of such notice and an affidavit or affidavits setting out the reasons stated by the auditor for his decision and the facts upon which the appellant intends to rely at the hearing, and thereupon the motion shall be set down for hearing.

(2) If the notice of motion is not set down in accordance with this provision, either the local government or other body or the auditor, may apply to the Court, upon notice to the appellant, for an order discharging the notice of motion and for the costs of the application.

15. Copy of affidavits to be served on the parties

The appellant shall deliver forthwith, to the local government or other body and to the auditor, a copy of any affidavit filed under rule 6 in support of the motion and any person intending to oppose the motion shall four days at least before the hearing, deliver to the appellant, a copy of any affidavit intended to be filed by him in opposition to the motion.

16. Service on Auditor other than the Auditor who gave the decision

Where under rule 4, notice of motion is served on an auditor other than the auditor who gave the decision, that auditor may appear in opposition thereto in all respects as if he were the auditor by whom the decision was given and these provisions shall apply accordingly.

ORDER 62

FEES AND ALLOWANCES

3. Fees

(1) Subject to the provision of any written law and the following Orders:

(a) The fees set out in the Second, Third and Fourth Schedules hereunder, shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in those schedules.

2nd, 3rd and 4th Schedules

(b) *Allowances*

The allowances set out in Part II of the Second Schedule shall be payable to the various categories of witnesses mentioned therein, by any person at whose instance they testify;

(Part II of 2nd 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.

4. Regulations

The regulations set out in the Fourth Schedule shall be observed by all officers of Court concerned with the rendering of services, and/or collection of fees payable, under the provisions of the foregoing Orders.

(4th Schedule)

Fees and Allowances

3. Fees Appendix 1

(1) Subject to the provisions of any written law and of the foregoing Orders, the fees set out in Appendix 1 to these Rules, shall be payable by any person commencing the respective proceedings, or desiring the respective services for which they are specified in the Appendix.

Exemptions

(2) These fees are waived in respect of a party which is or represents a Government Ministry, non-Ministerial Departments, Federal, State and Local Government or any of their agencies.

Allowances: Appendix 2

(3) The allowances set out in Appendix 2 to these Rules, shall be payable to the various categories of witnesses mentioned therein by any person at whose instance they testify. A witness who testifies at the instance of the Court, acting on its own motion, shall be paid out of public revenue.

4. Regulations Appendix 3

The regulations set out in Appendix 3 to these rule shall be observed by all officers of Court concerned with the rendering of services and/or collection of fees payable under the provisions of the foregoing Orders.

8. Order to be made

Subject to particular rules, the Court may in all causes and matters, make any order which it considers necessary for doing justice, whether the order has been expressly asked for by the person entitled to the benefit of the order or not.

9. Other procedure rules

The Chief Judge may modify or add to the list of rules set out in the Appendices to these

Rules.

10. Recovery of Penalties and cost

All fines, forfeitures, pecuniary penalties and cost ordered to be paid, may be levied by distress, seizure and sale of both movable and immovable property of the person making default in payment.

11. Notice

In all cases in which the publication of any notice is required, the same may be made by advertisement in the State Gazette, unless otherwise provided in any particular case by any rule of Court or otherwise ordered by the Court.

12. Filing

A document shall not be filed unless it has endorsed on it, the name and number of the case, the date of filing, the telephone and e-mail address of the legal practitioner filing, and whether filed by the claimant or defendant, and on being filed, the endorsement shall be initialed by the Registrar.

13. Fees: Appendix 4

The fees set out in Appendix 4 to these Rules, may be charged in respect of the duties of a notary public or of a notarial act and other duties therein mentioned.

14. Where no rules exist

Where a matter arises in respect of which no provision or no adequate provisions are made in these Rules, the Court shall adopt such similar procedure in other Rules as will in its view do substantial justice between the parties concerned.

ORDER 63

POWERS OF THE CHIEF JUDGE TO AMEND RULES AND ISSUE PRACTICE DIRECTIONS

5. Power of Chief Judge over new Rules

Whenever additional provisions are made to these Rules or any part thereof is amended or modified, the Chief Judge may issue directives for addition, publication or reprint of supplements to these Rules.

6. Publication of new Rules

Whenever the Chief Judge makes amendment or modification to these Rules, it shall be sufficient to publish same as supplemental provisions without the necessity of new body of Rules, except when necessary.

7. Chief Judge's power to issue practice directions, etc.

The Chief Judge shall have the power to issue practice directions, protocols, directives and guidance towards the realization of speedy, just and effective administration of justice.

8. Practice directions, etc, to be published

Such practice directions, protocols, directives and guidance, shall be published in the State Gazette and be given effect towards the realization of the fundamental objective of these Rules.

ORDER 64

ESTABLISHMENT OF COMMUNICATIONS AND SERVICE CENTRE FOR E-FILING

4. Power of the Chief Judge

The Chief Judge may issue directions to establish communication and service centre for the purpose of achieving the fundamental objective of these Rules, which may include designated electronic filing sites for on-line filing of processes and documents.

5. Further rules thereof

The Chief Judge may make such further rules to guide the effective operation of the communications and service centre for E-filing.

6. Time for establishment

"The Chief Judge from time to time, may make necessary rules and issue appropriate practice directions for the establishment, upgrading and updating of the communications and E-filing Service Centre."

FORM I

General Form of Writ of Summons, etc. (0.3, r.5)

20.....

(Here put the letter and number (see note (a) following this form).
In the High Court of Edo State

In the ……Judicial Division
Suit No.....

Between
A. B. ..... Claimant
and
C. D.....Defendant

To C.D. ….....in the .....of.....You are hereby commanded that within forty-two 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 of 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.

N. B:

This writ is to be served within six calendar months from the date thereof or if renewed, within three calendar months from the date of the last renewal, including the day of such date and not afterwards.

Forms of Writ of Summons, etc., continued

The defendant may enter appearance personally or by legal practitioner either by handing in the appropriate form, duly completed, at the Registry of the High Court of the Judicial Division in which the action is brought or by sending them to the Registry by registered post.

Endorsements to be made on the writ before issue thereof:
The claimant's claim is for, etc. (b) .....
This writ was issued by G H ...of..... whose address for service (c) is ..... agent for ..... of. .....legal practitioner for the said claimant who resides at (d). ..... (mention the city, town district and also the name of the street and number of the house of the claimant's residence, if any).

Endorsement to be made on copy of the writ forthwith after service.

This writ was served by me at..... on the defendant (here insert mode of service on the .....day of.....20.....Endorsed the .....Day of .....20.....

.....
(Signed)

.....
(Address)$_N$

Note:

(g) Heading and Title- if the action for administration, the writ must be headed "In the matter of the Estate of..... deceased." lf it is a debenture holder's action, the writ must be headed in the matter of the company, and in a probate action- "In the Estate of A.B. deceased."A writ of summons claiming administration of a trust or settlement may be instituted as "In the matter of the (Trust or settlement)."

(h) Endorsement of Claim-if the claimant sues or the defendant is sued in a representative capacity, the endorsement must state in what capacity the claimant sues or the defendant is sued. See 0.4 r.2. If the claim is a debt or liquidated demand only, the Endorsement, even though not special, must strictly comply with the provisions of O.4 r. 4 including a claim for four days' costs.

(i) Address for Service-see O. 4. r. 6. The address must be within the jurisdiction.

(j) Address of Claimant-In the case of a company in liquidation the claimant's address should run ".....claimants, who is a company in liquidation. The liquidation is (name of liquidator), of (address of liquidator)."

In the case of a foreign corporation within the meaning of part 10 of the Companies and Allied Matters Act. the claimants' address should run thus: "..... claimants, who are a foreign corporation within the meaning of the Companies and Allied Matters Act. The registered name and address of the person to be served are (here add registered name and address)."

(k) Endorsement of Service-See O.7. r. 13.

(l) Probate Actions-In these actions, the endorsement of claim must show the nature of the claimant's interest, under which he claims (0.4, r. 3), and the alleged interest of the defendant.

The Registry, High Court of Edo State
In the..... Judicial Division

A sufficient affidavit in verification of the endorsement on this writ to authorise the sealing thereof has been produced to me this.....day of ..... 40. .....

.....
(Signature of Registrar)

Before the writ is issued, the following certificate must be endorsed on it·

FORM 2

Writ for Service out of Nigeria
(O. 3, r. 8)

To C.D. of..... you are hereby commanded that within (here insert the number of days directed by the Court or Judge ordering the service or notice) days after service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you i n the ..... Judicial Division of the High Court of Edo State in an action at the suit of 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. ..... by order of the Court.

.....
Registrar

Memorandum to be subscribed on the writ.

N. B:
This writ is to be served within six calendar months from the date thereof, or, if renewed, within three calendar month from the date of the last renewal, including the day of such date, and not afterwards. The defendant (or defendants) may appear hereto by entering appearance (or appearances) either personally or by legal practitioner at the Registry of the judicial division in which the writ is issued.

This writ was served (as in Form No. 1).

Endorsement to be made on the writ before the issue thereof:

N. B:
This writ is to be used where the defendant or all the defendants or one or more defendants is or are out of the jurisdiction.

Note:

The above endorsement "N.B." must be on every writ or concurrent writ for service out of the jurisdiction. The endorsement "N.B." need not be made on a writ against defendants domiciled abroad, but whom it is intended to be served on within the jurisdiction. Endorsement: If the claim is for a debt or liquidated demand only, the endorsement, even though not special, must strictly comply with the provision' of O.4 r. 4, including a claim for costs.

See also notes to Form No. l, supra

FORM 3

General Form of Originating Summons
(O. 3, r. 12)

In the High Court of Edo State

In the.....Judicial Division

(If the question to be determined arises in the administration of an estate or a trust, entitle it: In the matter of the estate or trust.)

Between

A.B ..... Claimant

and

C.D. and E. F ..... Defendants

Let..... of..... in..... within forty-two days after service of this summons on him, inclusive of the day or such service, cause an appearance to be entered for him and file any other process in response to this summons which is issued upon the application of ……... of..... who claims for the determination of the following questions: (State the questions).

DATED the .....day of .....20.....

This summons was taken out by .....legal practitioner for the above-named .....

The defendant may appear hereto by entering appearance personally or by legal practitioner either by handing in the appropriate forms, duly completed at the High Court registry of the .....Judicial Division of Edo State or by sending them to that office by post.

Note:
If the defendant does not enter appearance within the time and at the place above mentioned, such orders will be made and proceedings may be taken as the Judge may think just and expedient.
.

FORM 4

Originating Summons
(O.3, r 12)

No.....of 20 .....

In the High Court of Edo State

In the..... Judicial D1vision

Suit No.....

In the matter of A. B. a legal practitioner (Re Taxation of costs, etc.) (or as may be).

Let A.B. of .....attend the Court, (or Chief Registrar's Office) High Court of Edo State on the ..... day of ..... 20..... at 9 O'clock in the forenoon (on the hearing of an application on the part of. .....). (State relief sought).

(If for leave to endorse award under the Arbitration Act, add, *"And that the respondent pays the costs of this application to be taxed"*).

DATED the ..... day of .....20..... This summons was taken out by.....

Note:
It will not be necessary for you to enter an appearance in the *HIGH COURT REGISTRY,* but if you do not attend either in person or by your legal practitioner, at the time and place above mentioned (or at the time mentioned in the endorsement thereon), such order will be made and proceedings taken as the Judge may think just and expedient.

FORM 5

Form of *ex-parte* Originating Summons
(O.3, r.12)

In the High Court of Edo State

ln the,.....,. .....Judicial Division

Suit No.....

In the matter of A.B. an infant (or, as may be). Let all parties concerned attend before the Judge or (Chief Registrar's Office). High Court, Edo State, at the time specified in the margin hereof, on the hearing of an application on the part of the above named A.B, an infant, by C.D. his next friend, that etc.

This summons was taken out by ..... of ..... agents for ..... of .....legal practitioner for the applicant

FORM 6
CERTIFICATE OF PRE-ACTION COUNSELLING
(O.3 r.3 (e))

I, *(full name of legal practitioner)* certify that as legal practitioner representing *(full name of party)* the claimant/ defendant has counseled my client in the strength and weakness of his cause or matter and informed him/ them of the opportunities available for the alternative dispute resolution of this case and the possibility of a reconciliation between the parties being effected either with or without the assistance of such an organization and should this matter turn out to be frivolous, I am prepared to be liable as per the provisions of the rules of this court.

Dated this……day of……20……

Legal practitioner's name and Signature.

FORM 7

Form of Memorandum for ReneWed Originating Process
(O.6. r.6 (2))
(Heading as in form No. 1)

Seal renewed Originating Process in this action endorsed as follow:
The originating Process renewed on the .....day of.....20.....pursuant to Order of Court made .....day of.....20..... for 3 months

(Copy original Originating Process and the endorsement).

FORMS 8

Request to Minister of Affairs to Transmit Writ to Foreign Government (O. 8, r. 3(a))

The Chief Judge of Edo State presents his compliments to the Minister of Foreign Affairs, and encloses herewith, a notice of a summons issued in an action of A.B……Versus……C…… ……..D… .....pursuant to orders, out of the Judicial Division of the High Court of Edo State for transmission to the Ministry of Foreign Affair in (name of country with the request that same may lie served personally upon (name of defendant to be served) against whom proceeding have been taken in the.....Judicial Division of the High Court of Edo State and with the further request that such evidence of the service of same upon the said defendant, may be officially certified to the High Court of Edo State, or declared upon oath, or otherwise, in such manner as is consistent with the usage or practice of the courts of the (name country) in proving service of legal process.

The Chief Judge further request that in the event of efforts to effect personal service of the said notice of writ proving ineffectual, the Government or Court of the country be requested to certify same to the High Court of Edo State.

FORM 9

Request for Service Abroad (Title as in for No.4) (O. 8 r. 3(b))

I (or we) hereby request that the writ of summons in this action be transmitted through the proper channels to(name of country) for service (or substituted service) on the defendant (naming him)at(address of defendant) or elsewhere in (name of country, And I (or we) hereby personally undertake to be responsible for all expenses incurred by the Ministry of Foreign Affairs in respect of the service hereby requested, and on receiving due notification of the amount or such expenses. I (or we) undertake to pay same into the High Court Registry for transmission to the permanent secretary of the Ministry of Foreign Affairs.

DATED this .....day of ..... 20.....

….....

Signature of Legal Practitioner

FORM 10

Letter ForWarding Request for Substituted Service (0.8, r.3(d))

The Chief Judge of Edo State presents his compliments to the Minister of Foreign Affairs and endorsed herewith, a writ of summons in the case of ..... versus ..... in which the claimant has obtained an order of the. .....Judicial Division of the High Court of Edo State (which is also enclosed) giving leave to make a request that the said writ may be served by substituted service on the ....at. ..... in the (name of country).

The Chief Judge requests that the said writ and order may be
forwarded to the proper authority in (name of country) with the request that same may be transmitted by post addressed to the defendant at (the last known place of abode or the place of business.) of the said defendant or there delivered in such manner as may be consistent with the usage or practices of the courts of (name of country) for Service of legal process where personal service cannot be effected; and with the further request that same may be officially certified to the ... . Judicial Division of the High Court of Edo State, or declared upon oath, or otherwise, in such manner as is consistent with the practice of the courts of the (name of country) in proving service of legal process.

FORM 11

MEMORANDUM OF THE APPEARANCE (O.9, r. 9(1)) In the High Court of Edo State

The Chief Judge of Edo State presents his compliments to the Minister of Foreign Affairs and encloses herewith, a writ of summons issued in an action ..... of ..... versus the (insert name of the defendant High Contracting Party) pursuant to an order out of the..... Judicial Division of the High Court of Edo State for delivery to the Government of (insert name of the country of the contracting party) and to request that an official certificate may in due course be dispatched to the.....Judicial Division of the High Court of Edo State, stating that the writ of summons has been delivered, and on what date

FORM 12

MEMORANDUM OF APPEARANCE
(O. 9 r. 1(1))
In the High Court of Edo State

In the.....Judicial Division

Suit No.....

Between

.....Claimant(s)

and

.....Defendant(s)

Please enter an appearance for I(a) .... sued as I(b) .....

in this action.

DATED the ..... day of .....20.....

Signed ....'..... Whose address for service is l(c).....

N.B:
Additional notes for the guidance of defendants seeking to enter an appearance are given on the back, please read carefully.

Note:

8. (a) The defendant must give his or her full name

(b) Give name by which the defendant is described in the writ if this differs from defendant's full name, otherwise delete words "such as"

(c) A Defendant appearing in person must give his residence or some other place within the Judicial Division of Edo State to which communication for him should be sent. Where he appears by a legal practitioner, the legal practitioner's place of business should be given.

9. Where the defendant is a firm, the appearance must be entered by the individual partners by name with the description "Partner in the firm of... ....."

10. Where the defendant is an individual trading in a name other than his own, the appearance must be entered by him in his own name with the addition of the description "Trading as".

11. Where the defendant is a limited liability company, the appearance must be entered by a legal practitioner.

12. Where the appearance is being entered by leave of the Court, a copy of the order granting leave must accompany this Form.

13. Where the defendant has no defence or admits the claimant's claim, the entry of appearance will delay judgment and may increase the costs payable by the defendant.

14. Acknowledgment of service shall be as follows:

4. ..... acknowledge that on the ..... day of .....

21.....at (time and place) received the following documents :

(a) .....
(b) .....
(c) .....

I also acknowledge that I am the person referred to in the sealed copy of the originating process.

DATED this ..... day of ..... 20.....

.....
Signature

FORM 13

Notice of Counter-Claim
(O.17 r.8)

In the .....Judicial Divi ion

Between

A.B.....Claimant

and

C.D.....Defendant

To the within-named X. Y.

Take notice that if you do not appear to the counter-claim of the within-named C. D. within 8 days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

Appearance to be entered at the.....Judicial Division High Court Registry Edo State

DATED this .....day of.....20.....

.....
Legal Practitioner/Claimant .

FORM 14

Concession to Defence
(O.17, r. 15)
In the High Court of Edo State

In the… ..... Judicial Division

Between

A.B…. .....Claimant

And

C.D.E.F. and G.H…. .....Defendant(s)
The claimant concedes to the defence stated in the paragraph.....of the defendant's defence (or, of the defendant's further defence).

DATED this ……day of ……..20……

.....……
Legal Practitioner/Claimant.

FORM 15

Notice of Payment into Court
(O., 21, r. 1(6))

In the High Court of Edo State

In the..... Judicial Division

Between.

A.B. ..... Claimant and
C.D.E. F. and G H..... Defendants

Take notice that the defendant ..... has paid into Court to..... and says that (. ..... paid of) that the sum is enough to
satisfy the claimant claim (for and N.....the other part of that sum is enough to satisfy the claimant's claim for.....)

DATED this .....day of ..... 20.....

.....
Mr. P.O. legal practitioner for the defendant. C.D.

To X. Y. the claimant's legal practitioner, and to Mr. R. S. legal practitioner for the defendant E. F.

To be signed by the cashier, High Court.

I received the above sum of ..... Naira

.....kobo ..... into Court in this action.

DATED this .....day of ..... 20.....

FORM 16

Acceptance of sum Paid into Court
(O.21, r. 2(1))
In the High Court of Edo State

In the ..... Judicial Division

Between

A.B. .....Claimant

and

C.. D., E. F., and G H. ..... Defendants

Take notice that the claimant accepts the sum of N. ..... paid by the defendant (C.D.) into Court in satisfaction of the claim in respect of which it was paid in (and abandons his other claims in the action).

DATED this ..... day of ..... 20.....

.....
X. Y. Claimant's Legal Practitioner

To

Mr. P. O. legal practitioner for the defendant C. D. and Mr. R. S. legal practitioner for the defendant E. F.

FORM 17

Acceptance of sum Paid into Court By one of Several Defendants (O.21, r. 4(2))

In the High Court of Edo State

In the. .....Judicial Division

Between

A.B. .....Claimant

and

C.D.E. F. and G H.....Defendants

Take notice that the claimant accept the sum of N. ..... paid by the defendant C.D. into Court, in satisfaction of his claim against the defendant C.D.

DATED this ....., ... day of..... 20.....

.....
X.Y. Claimant's Legal Practitioner

To:

Mr. P. O. legal practitioner for the defendant C.D. and Mr. R.S. Iegal practitioner for the defendant E. F.

FORM 18

Acceptance of sum Paid into Court (O.21, r. 2(1)) In the High Court of Edo State

in the .....Judicial Division
Holden at ……..
Suit No……..
This Honourable Court hereby orders that the matter
between……
….....Claimant
Address……
..
And
……
….....Defendants
Address……

Be referred to the Edo State Multi-Door Courthouse for settlement.
By Order

……
Honourable Judge

FORM 19

Interrogatories
(O.27, r. 2)
In the High Court of Edo State

In the ..... Judicial Division

Suit No .....

Between

A.B.....Claimant

and

C.D., E. F. and G H ..... Defendants

Interrogatories on behalf of the above-named (claimant or defendant C.D.) for the examination of the above-named (defendants E.F. and G H. or claimant).

7. Did not, etc.

2 Has not etc.

(The defendant E. F. is required to answer the interrogatories numbered .....)
(The defendant G.H. 1s required to answer the Interrogatories numbered.....

DATED this.....day of .....20.....

. .....
Legal Practitioner/Claimant

FORM 20

AnsWer to interrogatories
(O. 27 r. 6)

In the High Court of Edo State

In the.....Judicial Division

Suit No .....

Between

A.B..... Ciaimant

and

C.D..E.F. and GH ..... Defendants

The answer of the above named defendant E.F., to the interrogatories for his examination by the above-named claimant

In answer to the said interrogatories, I the above-named E.F. make oath and say as follows:

I, the above-named defendant E.F. do hereby solemnly swear by Almighty God that this is my name and handwriting and that the facts deposed by me in this affidavit arc the truth. the whole truth and nothing but the lnlth.

.....

Deponent

Sworn to at the High Court Registry,
on the .... Day of .....20.....

Before me

Commissioner for Oath

FORM 21

Affidavit as to Document
(O. 27 r. 8 (3))

In the High Court of Edo State

In the ..... Judicial Division

Suit No .....

Between

A.B. .....Ciaimant

and

C.D..E.F. and GH..... Defendants

I, the above-named defendant CD., make oath and say as follows:

6. I have in my possession or power, the documents relating to the matters in question in this suit set forth in the first and second par1s of the first schedule hereto.

7. I object to produce the said documents set forth in the second part of the said first schedule hereto (state grounds of objection).

8. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

9. The last-mentioned documents were last in my possession or power on (stale when, and what has become of them and in whose possession they now are).

10. To the best of my I. knowledge, information and belief. I have not now, and never had in my possession, custody or power. or in the possession. custody or power of my legal practitioner or agent. or in the possession. custody or power of any other persons or person on my behalf, any deed, account, book of account. voucher. receipt,. letter, memorandum, paper, or writing, or any copy extract of any such document. or any other document whatsoever, relating to the manners in question in this suit, or any of them, or wherein any entry ha\ been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedule hereto.

DATED this .....day of.....20.....

(ILLITERATE JURAT)

.....

.....

FORM 22

Form of Order for Accounts and Inquiries
(O. 28 r. 11)

In the High Court of Edo State

In the.....Judicial Division

Suit No .....

Between

A.B. .....Claimant

And

C D.. E. F. and G. H. ..... Defendants

This Court doth order that the following accounts and inquiries be taken and made; that is to say:

I.

8.

9.

10.

And it is ordered that the following further inquiries and accounts be made and taken; that is to say:

11.

12.

7

8

And it is ordered that the further consideration of this cause be adjourned and any of the parties are to be at liberty to apply as they may be advised.

DATED this .....day of ..... 20.....

.....

Registrar

FORM 23

Legal Practitioner's Undertaking as to Expenses
(O. 32 r. 8(a))

(Heading as in Form No. 1)

I (or We) hereby undertake to be responsible for all expenses incurred by the Ministry of Foreign Affairs in respect of the letter of request issued herein on the.....and on receiving due notification of the amount of such expenses, undertake to pay same as directed by the Chief Registrar of the High Court.

The following have been appointed as agents for the parties in connection with the execution of the above letter of request.

Claimant's Agent ..... of..... .....
Defendant's Agent .....of .....

DATED this ..... day of ..... 20.....

.....
Legal Practitioners for
.....
.....

FORM 24

Letter of Request to take Evidence Abroad
(Convention Country)
(O. 32 r. 8(b) (1))

To the Competent Judicial Authority of ..... in the. ..... of . .....Whereas a civil (commercial) action is now pending in the ..... Judicial Division of the High Court of Edo State, Nigeria. in which ..... is the claimant and .....is the defendant and in the said action the claimant claims .....

And whereas it has been represented to the said Court that it is necessary for the purpose of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is.....of ..... and.....,.....of and it appears that such witnesses are resident within your jurisdiction.

Now. the Chief Judge of the High Court of Edo State Nigeria, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you will be pleased to summon the said witnesses (and such other witnesses being the agents of the said claimant and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before you or such other person as according to your procedure is competent to take the examination of witnesses and that will cause such witnesses to be examined (upon the interrogatories which accompany this letter of request and viva voce*)* touching the said matters in question in the presence of the agent, so the claimants and defendant or such of them as shall, or due notice given attend such examination.

And I further have the honour to request that you will permit the agents of both the said claimant and defendant or such of them as shall be present to be at liberty to examine (upon interrogatories and viva *voce* upon the subject-matter thereof or arising out of the answers thereto) such witnesses as may, after due notice in writing, be produced on their behalf, and give liberty to the other party to cross-examine the said witnesses (upon cross-interrogatories and *viva voce and* the party producing the witnesses for examination is at liberty to re-examine them viva *voce.*

And I further have the honour to request that you will be pleased to cause (the answers of the said witnesses and all additional *viva voce* questions, whether on examination, cross examination or re-examination, the evidence of such witnesses to be reduced into writing and all books, letters, papers and documents produced upon such examination to be duly marked for identification and that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as is in accordance with your procedure, and to return same together with (the interrogatories and cross interrogatories), and a note of the charges and expenses payable in respect of the execution of the request through the Ministry of Foreign Affairs from whom the name was received for transmission to the said High Court of Edo State.

And I further beg to request that you will cause me, or the agents of the parties if appointed, to be informed of the date and place where the examination is to take place.

DATED this .....day of..... 20.....

.....
Judge

Note:
If the convention requires that the invitation or notice to the witnesses must expressly state that no compulsory powers may be used, this requirement must be complied with.

FORM 25

Order for Appointment of the Nigeria Diplomatic Agent As Special Examiner (in Convention Country) (O. 32 r. 9)

(Heading as in Form No. 1)

Upon hearing the legal practitioners on both sides and upon reading the affidavit of . ....., It is ordered that the Nigerian Diplomatic Agent or his deputy at..... be appointed as Special Examiner for the purpose of making the examination, cross-examination and re- examination, *viva voce,* on oath or affirmation of ..... witnesses on the part of .... at..... aforesaid. The examiner shall be at liberty to invite the attendance of the said witnesses and the production of documents, but shall not exercise any compulsory powers, otherwise such examination shall be taken in accordance with the Nigerian High Court Procedure.

The..... legal practitioners to give to the legal practitioners .....days after the service of such notice, the legal practitioners for the claimants and defendants respectively do exchange the names of their parties at..... to whom notice relating to the examination of the said witnesses may be sent. That .....days (exclusive of Sunday prior to the examination of any witness held under notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party unless such notice be dispensed with). That the depositions when taken together with any documents referred to therein or certified copies of documents or of extracts therefrom, be transmitted by the examiner under seal, to the Chief Registrar of the High Court of Edo State, Nigeria, on or before the ..... day of ..... next, or such further or other day as may be ordered, there to be filed in the proper office. That either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions. That the trial of the action be stayed until the filling of such depositions. That the costs of and incidental to this application and such examination be costs in the action.

Note:
If the Convention requires that the invitation or notice of the witnesses must expressly state that no compulsory powers may be used, these requirements must be complied with.

FORM 26

Form of Praecipe
(O. 32 r. 21)

In the High Court of Edo State

In the .....Judicial Division

Suit No .....

Between

A.B.....Claimant

and

C.D..and others ..... Defendants

Seal Writ of *Subpoena* ..... on behalf of the.....directed on . .....returnable.

DATED this .....day of ..... 20.....

(Signed) .....
(Address) .....

Legal Practitioner for the ....

FORM 27

Subpoena ad Testificandum
(O. 32 r. 22)

In the High Court of Edo State

In the ..... Judicial Division

Suit No .....

Between

A.B. ..... Claimant

And

.....Defendant

To ..... of..... You are commanded in the name of the Governor of Edo State to attend before this Court at ..... on .....the ..... day of ..... 20 ..... at ..... O'clock in the forenoon. and so from day to day till the above cause is tried, to give evidence on behalf of the.....

DATED this .....day of ..... 20.....

.....

Judge

FORM 28

Habeas Corpus Ad Testificandum
(O. 32 r. 22)

In the High Court of Edo State

In the ..... Judicial Division
Suit No .....

Between

A.B. .....Claimant

And

.....Defendant
... .The Controller of Prison at .....) you are commanded in the name of the Governor of Edo State to have.....who it is said is detained in your custody in Prison at ..... before the ..... at.....on.....the ..... day..... at. .....O'clock in the forenoon; and so from day to day until the above action is tried to give evidence in the above-named cause and immediately after the said. ..... shall have so given *his* evidence, you shall duly conduct him to the prison from which he shall have been brought.

DATED this .....day of ..... 20.....

....
Judge

FORM 29

Subpoena Duces Tecum (Ad Testificandum)
(O. 32 r. 22)

In the High Court of Edo State

In the ..... Judicial Division
Suit No .....

Between

A.B. .....Claimant

And

.....Defendant

To ..... of .....You are commanded in the name of the Governor of Edo State to attend before this Court at ..... on .....the ..... day of ..... 20 ..... at.....O'clock in the forenoon and so from day to day until the above cause is tried, to give evidence on behalf of the. .....and also to bring with you and produce at the place aforesaid.....

(Specify Document to be produced)

DATED this .....day of ..... 20.....

.....
Judge

FORM 30

Form of Guarantee for the Defaults of a Receiver (O. 39 r. 10)

In the High Court of Edo State

In the ..... Judicial Division

Suit No:……

PARTIES

Re……Vs…….Guarantee for N…..... Annual premium N……This guarantee is made the… ..... day of……..20… ..... Between (XYZ) of (called "The Receiver") of the first part, and ……of… ..... (called "the surety") of the second part and The President of the Federal Republic of Nigeria. By an order of the High Court of Edo State….....Judicial Division dated the……day of……20…….and made in the above-mentioned action the receiver has been appointed to receive (and manage) (follow words of the order). And it was ordered that the Receiver should give security to the satisfaction of the Judge on or before the ..... day of……..20……

The surety in considerable of the annual premium stated above at the request of the Receiver has agreed to issue this guarantee agreeable to the Judge as proper security pursuant to the court order.
Now this guarantee witnesses as follows:

4. The Receiver and the surety jointly and severally convent with the president of the Federal Republic of Nigeria and his successors that the Receiver shall and will from time account for what he has already received since the date of the order appointing him and shall further receive or for what since the date of the appointing him he has or shall be become liable to pay or account for as such Receiver (and manager) including as well every sum of money or other property received during the period for which he has been appointed. Also every sum of money or other property received for any extended period for which he may be appointed and shall pay or deliver every sum or property as the court or a Judge may direct

5. It is hereby mutually agreed as follows:

a) If the Receiver shall not for every successive twelve moth to be computer from the date of his appointed as such receiver as aforesaid or within fifteen days after expiration of such twelve months pay the office of the surely the annual premium or sum of N… .....then the surely shall be at liberty to apply by summons in the action to be relieved from all further liability as surety under this guarantee except any damage or loss occasioned by any act or default of the receiver in relation to his duties as receiver (and Manager) prior to the hearing and determination of such summons.

b) A statement under the hand of any registrar of the High Court of Edo State of the amount which the receiver is liable to pay and has not paid under this guarantee and that the loss or damage has been incurred through the act or default of the receiver, shall be conclusive evidence in any action or information by the President of the Federal Republic of Nigeria against the receiver and surety or either of them or by surety against the receiver of the truth of the contents of such statement and shall constitute a binding charge not only against the receiver and his personal representatives but also against the surety and his funds and property without being necessary for the President of the Federal Republic of Nigeria to take any legal or other proceeding against the receiver for the recovery and without any further proof being given in that behalf in any action to enforce this guarantee.

c) The liability of the surety under this guarantee is limited to the sum of N…… provided nevertheless that a register of the High Court may be his signature to the endorsement on this guarantee (in the form printed) reduce the said liability of the surety further or with the consent of the surety by an instrument in writing duly executed increase such liability shall continue in full force but in that case the premium shall be correspondingly reduced or increase.

6. It is further agreed between the receiver and the surety as follows:

a) The receiver on being discharge from his office or the surety to act as receiver (and manager) shall give written notice to the surety by registrar post and also within 7 days of such notice furnish to the surety free of charge an office copy of the order, if any, of the Judge discharging him.

b) The receiver and his personal representatives shall at all times indemnify the surety and its property and funds against all loss damage, costs and expenses which the surety or its funds or property may or might otherwise sustain by reason of the surety having executed this guarantee at his request.

In witness, the receiver has his hand seal and the surety has caused its Common Seal to be affixed the ……day of……20……in the matter of …..... increase liability.

To be attached by way endorsement of guarantee

The liability of the surety under the guarantee has, with the consent of the receiver and the surety, been increased from N……..to N……for any acts or omissions to which the guarantee relates committed by the receiver subsequent to the date the total liability of the surety for both the guarantee and his endorsement being limited to the increased sum above stated.

Sealed with the seal of the receiver and also the Common Seal of the surety this…..... day of……20… ..... as evidence of such increased liability and the admission by the receiver and the surety respectively.

Signed, sealed and delivered by……..the receiver in the presence of ……the common Seal of the surety was affixed in the presence of…….

FORM 31
Receiver's Security by Undertaking
(O. 39. r .10)

In The High Court of Edo State

In the .....Judicial Division
Suit No……

PARTIES

Re…….....……vs…….....……

I, …….....……Of..... the receiver (and manager) appointed by order dated…..... (or proposed to be appointed) in this action hereby undertake with the court to duly account for all moneys and property received by me as receiver for manager) or for which I may be held liable and to pay the balance from time to time found from me and to deliver any property received by me as receiver (or manager) at such times and manner as the court or a judge shall direct.

And we.....jointly and severally (in the use of guarantee or other company strike out "jointly and severally") undertake with the court to be answerable for any default by the said, as receiver (or manager) and upon default to pay to any person as the court shall direct any sum not exceeding in the whole N…..... that may from time to time be certified by a registrar of the High Court to be due from the receiver and we submit to the jurisdiction of the court in this action to determine any claim made under this undertaking.

Dated this……day of…….20…….

Signature of receiver and his surety or sureties, In the case of a surety being a guarantee or other company, must be sealed or otherwise duly executed.

FORM 32

Receiver's Account
(O.39. r 13)
(TITLE)

Suit No……. of 20 ……

The (. .....) account of A.B., the receiver appointed in this cause (or, pursuant to an order made in this cause, dated the .....day of….....), to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate of C.D, the testator (or intestate) in this cause named, from the…… day of……..
(To accord with the order)

REAL ESTATE – RECEIPTS

No of item	Date when received	– –	Description of premises	Annual rent	Arrears due at ……	Amount received	Amount due at ……..	Amount remaining due	observations
				₦	₦	₦		₦	

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE

No of item	Date of payment or allowance	Names of persons to whom paid or allowed	For what purpose paid or allowed	amount	
			One year's insurance of due ……..		
			Bill for repairs at house let to ……		
			Allowance for a half-year income		
			Tax, due …….		
			Total Payments ₦		

RECEIPT ON ACCOUNT OF PERSONAL ESTATE ACCOUNT

PAYMENT AND ALLOWANCES ON PERSONAL ESTATE PERSONAL ESTATE

No of item	Date when received	Names of persons from whom received	On what account received	Amount Received	No of item	Date when paid or allowed	Names of persons to whom paid or allowed	For what purpose paid or allowed	Amount paid or allowed

SUMMARY

₦ ₦

Amount of balance due from receiver on account of real estate on test account …….....……..
Amount of receipts on the above account of real estate…….....…….

Balance of fast account paid into court…….....……
Amount of payments and allowances on the above account of real estate…….....
Amount of Receiver's costs of passing this account as to real estate.....₦

Balance due from the Receiver on account of real estate
Amount of balance due from Receiver on last account of personal estate …….....
Amount of receipts on the above of personal estate…. .....₦

Balance of last account paid into court …….....….
Amount of payments and allowance on the above account of personal estate…….
Amount of receiver's costs of passing this account as to personal estate……..
Balance due from the receiver on account of personal estate .....₦

FORM 33

Affidavit Verifying Receiver's Account

(O.42, r. 14) (O.39 r.14)

In The High Court of Edo State

In the .....Judicial Division

Suit No:……...

Between:

A.B ..... Claimant (s)

And

C.D. and E.F..... Defendant(s)
I,……..of .....the Receiver appointed …..... in this cause, make oath and states as follows:

14. The document now shown to me marked "A" is as specified.

15. ……..…..and ……..…….my sureties named in the guarantee (or undertaking) dated 20.... are both alive and neither of them has become bankrupt or insolvent.

16. The ……Co. Ltd, my surety named in the… ..... guarantee (or undertaking) dated.....20……is still carrying on business and no petition or other proceeding for its winding-up is pending).

Additional paragraphs as to wages and petty cash are sometimes necessary.

FORM 34

(O. 42 r. 9(11))
Certificate of the Chief Registrar
(Title as in Form 1)

In pursuance of the directions given to me by Hon. Justice… .....I hereby certify that the result of the accounts and inquiries which have, been taken and made in pursuance, of the judgment (or order) Sit this cause dated the..... Day of……20… ..... is as follows:

1. The defendants.....the executions of (the testators), have received personal estate to the amount of N ..... and they have paid, or are entitled to be allowed an account thereof, sums to the amount of N .....leaving a balance due from (or to) them of N….....on that account. The particulars of the above receipts and payments appear in the account marked verified by the affidavit of filed on the ….....…… day of……...….20… ..... and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums (state the same here or in a schedule), and except that l have disallowed the item of disbursement in the same account numbered and (or in cases where a transcript has been made).

   The defendants… ..... have brought in an account verified by the affidavit of … .....and which account is marked and is to be filed with this certificate. The account has been altered, and the account marked… ..... and which is also to be filed with this certificate, is a transcript of the account as altered and passed.

10. The debts of the testator which have been allowed, are set forth in the schedule hereto and with the interest thereon and cost mentioned in the schedule are due to the person therein named, and amount altogether to N.....

11. The funeral expenses of the testator amounted to the sum of N .....which I have showed the said executors in the said amount of personal estate.

12. The legacies given by the testators are set forth in the….....schedule hereto, and with the interest therein mentioned remain due to the persons therein named, and amount altogether to N ….....……..

13. The outstanding personal estate of the testator consists of the particulars set forth in the schedule hereto.

14. The real estate to which use the testator was entitled consist of the particulars set forth in the schedule.....hereto.

15. The defendants have received rents and profits of the testator real estate, etc, (in a form similar to that provided with respect to the personal estate).

16. The encumbrances affecting the said testator's real estate are specified in the schedule hereto.

17. The real estate of the testator directed to be sold, have been sold and the purchase moneys amounted altogether to..... and have been sold and the purchase moneys which amounted altogether to N.....have been paid into Court

Notes:
The above numbers are to correspond with the numbers in the Order after each statement, the evidence produced is to be stated as follows:

The evidence produced on this account (or inquiry) consist of the probate of the testator's Will, the affidavit of A. B, filed,……. and paragraph number of the a ffidavit of C.D, filed ……

DATED this……day of …….. 20 ……..

……
Registrar

FORM 35

(O. 40, r.10)
Writ of Habeas Corpus ad Subjiciendum
(Heading as to Form 1)

To:
The Asst Comptroller of Prisons,
Federal Prisons Service,
…….....……
You are hereby ordered to have in the High Court of Justice (or before a Judge in chambers) at …..... on the day and at the time specified in the notice served with this writ, the body of…….....…….. being taken and detained under your custody as is said, together with a statement of the day and cause of its being taken and detained, by whatever name he may be called therein, that the Court (or Judge) may then and there examine and determine whether such cause is legal, and have you there this writ.

…….
Judge

DATED this…….day of ……20…….

ENDORSEMENT

By order of Court (Honourable Justice. .....)
This writ was issued by ……..of..……..
Legal Practitioner for…….

FORM 36

(O.40. 10)
Notice to be served With Writ of Habeas Carpus ad Subjiciendum

In the High Court of Edo State

In the… .....Judicial Division (if in a cause already begun, here insert the title, not otherwise)

Whereas this Court (or the Honourable Justice……) has granted a writ of *Habeas Corpus* directed to……..... (or other person having the custody of…… if so) commanding him to have the body of… ..... before the said Court (or before the Judge in chambers), at the High Court on the day and at the time specified in this notice, together with a statement of the day and at the time specified in this notice, together with a statement of the day and cause of his being taken and detained.

Take notice that you are required by the said writ to have the body of the said…… before this Court (or before the Judge aforesaid) on ..... the…… day of .....20.....at… .....O'clock before noon, and to make a return to the said writ.

In default, thereof, the said Court will then, or so soon thereafter as counsel can be heard, tie moved to commit you to prison for your contempt in not obeying the said writ (or if in vacation, will be made to one of the Judges of the said Court for a warrant for your arrest in order that you may be held to bail to answer for your contempt in not obeying the said writ).

Dated the …… day of ……. 20 …….

(Signed): ……
Of ……..
Legal Practitioner for……

FORM 37

(O. 43 . r.9)
Writ of Habeas Corpus ad Testificandum
(Heading as in form 1)

To:

The Asst. Comptroller of Prisons,
Federal Prisons Service,
…….

You are hereby commanded to have before …… (give description of court) on ……. The …… day of …… 20 …… at..... O'clock in the forenoon, the body of …… being to testify to the truth and give evidence on behalf of ……..…… against …….. for ……..……. (description of office or other proceedings) and so from day to day until the said ……..……. shall have given his evidence as aforesaid. And when he shall have given his evidence, then you take him back without delay to the said prison under your custody and cause him to be detained therein under safe custody, until he shall from hence be discharged by due course of law.

……
Judge/Magistrate

By order of …….

ENDORSEMENT

This writ was issued by ……. of ……
Legal Practitioner for ……

FORM 38

(O.47,r.3 (1)
Warrant to Arrest Absconding Defendant
(For use in the High Court)
(General Title)

Whereas there is probable cause for believing that the defendant… ..... is about to leave (or has, or is about) dispose of, or remove (his property out of) the jurisdiction of the Court by reason whereof the execution of any judgment which may be given against him in this suit is likely to be obstructed or delayed.

You are therefore commanded to bring the said defendant before this Court forthwith, in order that he may show why he should not (give bail for his appearance at any time when called upon while this suit is pending and until execution or satisfaction of the judgment, if any).

DATED the ……. day of …….. 20…..…

……
Judge

To the Sheriff and Bailiffs of the Court.
Fee on the issue of this warrant…….....……..

Note:
If the defendant gives bail before a Magistrate or Justice of the peace in the sum of N … .....with sufficient surety (for his appearance as aforesaid) or for the satisfaction of the judgment or other property of the same or greater value, he shall thereupon, in respect of this warrant, be discharged from your custody.

FORM 39

Order for Payment of Principal Money or Interest Secured by Mortgage or Charge (O.52, r. 2)

It is ordered that the claimant do recover against the defendant N… ..... secured by a mortgage (or charge) dated the ……day of ……...20…….(being the total of the principal sum of N……..and N ……..for interest thereon at N …….. percent, per annum less tax to the ……day of (date of order) and N..... for costs (or his costs of the summons to be taxed).

And it is ordered that upon the defendant paying to the claimant, the moneys ordered to be recovered and all other moneys (if any) secured to claimant, by the said mortgage (or charge), the claimant (subject and without prejudice to the due exercise of any power of sale for the time feting vested in Aim) releases to the defendant, the security constituted by the said mortgage (or charge).

And it is ordered that all parties be at liberty to apply to the Court as they may be advised.

FORM 40

Order for Possession of Property forming a security for payment to the claimant of any principal Money or Interest (O.52,r.2)

It is ordered that the defendant do give the claimant possession on or before the…….....day of ……20…..…….....of the land hereinafter described and comprised in a mortgage (or charge) dated the……..... day of …….....…20…..…..…..that is to say… .....(description of the property).

And it is ordered that upon the defendant paying to the claimant, the moneys remaining due to the claimant upon the security of the said mortgage (or charge) the claimant (subject and without prejudice to the due exercise of any power of sale for the time being vested in him) do re-deliver to the defendant, possession of the property, subject to the said mortgage (or charge), and release to the defendant, the security constituted by the said mortage (or charge)

And it is ordered that all parties be at liberty to apply to the Court as they may be advised.

FORM 41

Order for payment of Principal Money or Interest Secured by Mortgage or Charge and for Possession of Property Comprised therein (O.52,r.2)

It is ordered that the claimant do recover against the defendant N. ..... secured by mortgage (or charge) dated the ……day of ……. 20 …… (being the total of the principal sum of N ……and N …….for interest thereon at N.....percent per annum less tax to the day of (date of order), and N.....for costs (or his costs of this summons to be taxed).

And it is ordered that the defendant, do give the claimant possession on or before the ……day of ……20…….....of the land hereinafter described and comprised in the said mortgage (or charge) that is to say……..... (description of the property).

And it is ordered that upon the defendant paying to the claimant the monies hereby ordered to be recovered and till other monies (if any) secured to the claimant by the said mortgage (or charge) the claimant (subject and without prejudice to the due exercise of any power of sale for the time being vested in Same) re-delivers to the defendant, possession of the property subject to the said mortgage (or charge) and releases to the defendant, the security constituted by the said mortgage (or charge),

And it is ordered that all parties be at liberty to apply to the Court as they may be advised.

FORM 42

Originating Summons for Possession (O.54, r. 2) In The High Court of Edo State

In the .....Judicial Division
Suit No……..

Between

A.B…..... Claimant

and

C.D.E.F., and G.H.…..... Defendants (if any) whose name is known to the claimant

To (C.D. and) every (other) person in occupation of..... Let all persons concerned attend before…… at the High Court of the …….. Judicial Division, Edo State on…… the ……. day of …….. 20……at….....9 O'clock in the forenoon for the hearing of an application by A.B, for an order that he recovers possession of.....on the ground that he is entitled to possession and that the person(s) in occupation is (are) in occupation without his license or consent .

Dated this ……. day of ……..20…….

This summons was taken out by ……. Of …….. legal practitioner for the said Claimant whose address is.....(or This Summons was taken out) by……
of……..
for…… of ……..
Legal Practitioner for the said claimant whose address is.....) (or when the claimant acts in person).

This Summons was taken out by the said claimant who resides at .....and is (state occupation) and (if the claimant does not reside within the jurisdiction) whose address for service is……

Note:
Any person occupying the premises who is not named as a defendant by this summons, may apply to the Court personally or by legal practitioner, to be joined as defendant. If a person occupying the premises does not attend personally or by legal practitioner at the time and place also mentioned, such order will be made as the court may think just and expedient.

FORM 43

Order for Possession
(O.54, r.6 (1))
(Heading as in Form No. 1)

Upon hearing..... and upon reading the affidavit of …….. filed on the …… day of …… 20… ..... it is ordered that the claimant A.B, do recover possession of the land described in the originating summons as ……. (and the defendant… ..... do give possession of the said land on …….) (and that the defendant .....do pay the claimant N…..... costs (or costs to be taxed).
(The above costs have been taxed and allowed at N… ..... as appears by a taxing officer certificated dated ……..day of …..... 20.....).

DATED the……. day of ……20…….

……
Judge

FORM 44
PETITION
(O.56, r.3 (1))

IN THE HIGH COURT OF EDO STATE

Suit No……

In the..... Judicial Division

Between

A.B…..Petitioner

And

C.D…..Respondent

To C.D. of ……. in the …….. of ……..

You are hereby commanded that within fourteen (14) days after the service of this Petition on you, inclusive of the day of such service, to cause appearance to be entered for you in action at the suit of A.B. and take notice that in default of your so doing, the Petitioner may proceed therein, and judgment may be given in your absence.

Dated this …… day of……20…….

……
Registrar

FORM 45

Application to place matter on the Fast Track Division (O. 57, r. 4 (e))

In the HIGH COURT OF EDO STATE

DATE……

The Hon Chief Judge
Edo State High Court,
Benin City.

SUIT NO. / /20

_____CLAIMANT

AND

_____DEFENDANT

I hereby apply for the above named matter to be placed in the Fast Track Division of the court.

I undertake to comply with all the conditions.

Solicitor to Claimant/Claimant

FOR THE COURT
Approved/Refused to be heard in the Fast Track Division

……..…
Chief Judge

FORM 46

General Form of Writ of Summons (Fast Track) (O.3, r.7)

_____/20____
(Here put the letter and number (see note (a) following this form).

In the HIGH COURT OF EDO STATE
In the..... Judicial Division

Between:

A.B……..
Claimant

And

C.D .....D
efendant

To C.D of ……..in the……..of……..

You are hereby commanded that within _____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, and judgment may be given in your absence.

DATED this……..day of …….20…….

…..……..
Registrar

Memorandum to be subscribed on the writ.

N.B:
This writ is to be served within three calendar months from the date or if renewed, within three calendar months from the date of the last renewal, including the day of such date, and not afterwards

Form of Writ of Summons, continued

The defendant may enter appearance personally or by legal practitioner either by handling in the appropriate forms, duly completed at the registry of the High Court of the Judicial Division in which the action is brought or by sending them to the registry by

registered post.

Endorsements to be made on the writ before issue.
The claimant's claim is for (b)…….....……
This writ was issued by G.H. of ……....whose address for service (c) is… agent for.....of ….....legal practitioner for the said claimant who resides at (d)……..(mention the city town or district and also the name of the street and number of the house of the claimant's residence, if any).

Endorsement to be made on copy of writ after service.

This writ was served by me at ..... on the defendant (here inset mode of service) on the ……day of…… 20……
Endorsed the …….day of ……..20…….

. .....……
(Signed)

……
(Address)

Note:

(g) Heading and Title – if the action is for administration the writ must be headed – "In the matter of the Estate of ..... deceased". If it is a debenture holder's action the writ must be headed "In the matter of the company" and in a probate action "In the Estate of A.B. deceased". A writ of summons claiming administration of a trust or settlement may be instituted "In the matter of the (Trust or settlement)".

(h) Endorsement of Claim – If the claimant sues or defendant is sued in a representative capacity the endorsement must state in what capacity the claimant sues or the defendant is sued. See O.4, r.2. If the claim is for a debt or liquidated demand only, the Endorsement, even though not special must strictly comply with the provisions of O.4, r.4, including a claim for four day's costs.

(i) Address for service – see O.4.r.6. The address must be within the jurisdiction.

(j) Address of Claimant – In the case of a company in liquidation the claimant's address should run "…..claimants who are a company in liquidator)".

In the case of a foreign corporation within the meaning of part 10 of the Companies and Allied Matters Act the claimants' address should run thus:

"……..claimants who are a foreign within the meaning of the Companies and Allied Matters Act. The registered name and address of the person to be served are (here add registered name and address)".

(m) Endorsement of Service- see O.7, r.13.

(n) Probate Actions – In these actions the endorsement of claim must show the nature of the claimant's interest under which he claims (O.4, r.3); and the alleged interest of the defendant.

Before the writ is issued the following certificate must be endorsed on it:
The Registry, HIGH COURT OF EDO STATE.

In the ..... Judicial Division

A sufficient affidavit in verification of the endorsement on this writ to authorize the sealing has been produced to me this……day of…… 20……

.....……..…….
(Signature of Registrar)

FORM 47

Notice of Acceptance to Place Case on Fast Track Division

(O.59, r. 6 (2))

IN THE HIGH COURT OF EDO STATE

……..

……..

……..

……..

Suit No …...…/…..…/….……

…..... Claimant

And

…..... Defendant

NOTICE OFACCEPTANCE TO PLACE CASE ON FAST TRACK DIVISION

PLEASE TAKE NOTICE that following your application in the above-named matter, the above case has been placed on FAST TRACK LIST.

PLEASE NOTE that henceforth this matter shall be dealt with in accordance with FAST TRACK case Management directions, application and guidelines

Dated at ……. this ……. day of ……. 20……..

……..

COORDINATOR

FOR SERVICE

FORM 48

Non-Acceptance to Place Case on Fast Track Division

(O.57, r. 6 (2)

IN THE HIGH COURT OF EDO STATE

……..

……..

……..

……..

Suit No ……,,,,,,/……/……

Between

…..... Claimant

And

…..... Defendant

NON-ACCEPTANCE TO PLACE CASE ON FAST TRACK LIST

I refer to your application to place the above-named case on Fast Track list and wish to inform you that the case cannot be placed on Fast Track List. It has accordingly been placed on the general cause list.

You may contact the Coordinator for other details on this matter.

Dated at High Court…… this ……day of…….20……..

COORDINATOR

FORM 49

Daily Record of Cases Heard and Summary of Orders

(O.57 r.7)

IN THE HGH COURT OF EDO STATE MONTHLY

RECORD OF CASES HELD AND SUMMARY OF ORDERS

DATE…….

21. TITLE OF CASE _____SUIT NO……
22. NAME OF JUDGE _____TIME CASE CALLED…….
23. COURT MANAGER _____
24. APPEARANCES:
Counsel for Claimant_____
Counsel for Co-Claimant_____
Counsel for Defendant_____
Counsel for Co-Defendant_____
25. CASE CALLED COUNSEL FOR ALL SIDES PRESENT
26. COUNSEL FOR_____ABSENT_____PRESENT
27. STAGE CASE HAS REACHED_____
28. ACTION FOR THE DAY: motion heard; granted; not granted; adjourned
29. REASONS_____DATE_____
30. PART HARD STAGE
31. EVIDENCE OF CLAIMANT EXHIBIT TENDERED

---

32. EVIDENCE OF CLAIMANT WITNESS …….
33. EVIDENCE: OF DEFENDANT EXHIBIT TENDERED
34. EVIDENCE: OF DEFENDANT'S WITNES ……..
35. ADDRESS BY COUNSEL FOR THE CLAIMANT_____
36. ADDRESS BY COUNSEL FOR THE DEFENDANT_____
37. SPECIFIC ORDERS (if any) MADE IN THE DAY
38. TIME CASE ENDED FOR THE DAY_____
39. AT WHOSE INSTANCE _____
40. COST _____

FORM 50

Application for copies of proceeding (Transcript)

(O.57, r.16)

IN THE HIGH COURT OF EDO STATE

FAST TRACK COURT

APPLICATION FOR COPIES OF PROCEEDING

(TRANSCRIPT)

I..... Of (Postal Address)
Phone Number ……Fax Number .....E-mail Number.....

Wish to apply for copies of daily proceedings (or state portion required) of this Court in respect of (title of case).....Suit No.....
i pending before (name of Judge)

CERTIFICATION

By signing hereunder, I commit myself to the process of electronic recording of all the proceedings in this case and do hereby certify that I will pay all charges.

Dated at this …… day of ……..20 ……

Solicitor For Claimant/Defendant

The Coordinator,
Fast Track Court

FORM 51

(O.59, r.54 (3))

Surety's Guarantee
In the High Court of Edo State
Probate Registry

Suit No ……

In the Estate of.....deceased

Whereas …… of …… died on the …….. day of …….. 20 …… (and ……) (hereinafter called "the administrators" is/are the intended administrator(s) of his estate.)

Now therefore:

2. I/ We …… of …….. (and.....) hereby (jointly and severally) guarantee that I/We will, when lawfully required to do so, make good any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of the breach by the administrator(s) of his/her/ their duty:

(a) To collect and get in the estate of the deceased and administer it according to law;

(b) When required to do so by the Court, to Exhibit on oath in the Court, a full inventory of the estate and when so required, to render an account of the estate:

or

FORM 52

(O.59 r. 55 (3) (c))
Surety's Guarantee on application for Resealing
In the High Court of Edo State
Probate Registry

Suit No ……

In the estate of.....deceased.
Whereas …… of …….. ……..died on the ……..
Day of …….. 20 ……. And letters of administration of his estate were on the …… day of …… 20 ……. Granted by the …… to..... (and … .....) and are about to be sealed in the state under the succession Law.

Now therefore:

4. I/We …… of …… (and .....) hereby (jointly and severally) guarantee that I/We will, when lawfully required to do so, make good any loss which any person interested in the administration of the estate of the deceased in the state may suffer in consequence of the breach by the administration(s) of his/her their duty:

(a) To collect and get in the estate of the deceased which is situate in the State, and administer it according to law;

(b). When required to do so by the Court, to exhibit on oath in the Court, a full inventory of the estate and when so required, to render an account of the estate; or

5. The giving of time to the administrator(s) or any other forbearance or indulgence, shall not in any way affect my/our liability under this guarantee.

6. The liability under this guarantee shall be containing and shall be for the whole amount of the loss mentioned in paragraph "1" above, but my/our aggregate total liability shall not in any event exceed the sum of N…….

DATED this …….day of ……20……..

Signed, sealed and delivered by the above name in the presence of… .....Commissioner for Oaths, (or other person authorized by law to administer an oath)

The common seal of …….. was hereto affixed in the presence of …….

FORM 53

(O.59, r. 57 (2), (3)

Caveat

In The High Court of Edo State
Probate Registry

Suit No……..

Let no grant be sealed in the estate of .....deceased, who died on the ……. Day of ……20……at… ..... without notice to …….....

DATED this …… day of..... 20

(Signed……..
Legal Practitioner for the said Caveator whose address for service is
…….

FORM 54

(O.59, r. 57 (2), (7))

Warning of Caveat or
In The High Court of Edo State
Probate Registry

Suit No……..

To …… of..... a party who has entered a caveat in the estate of .....Deceased, you are hereby warned within eight days after service hereof upon you, inclusive of the day of such service:

3. To enter an appearance either in person or by your legal practitioner, at the Probate Registry, Setting forth what interest you have in the estate of the above-named deceased, contrary to that of the party at whose instance this warning is issued: or
4. If you have no contrary interest but wish to show cause against the sealing of a grant to such party, to issue and serve a summons for direction by the Registrar of the said registry.

And take notice that in default of your so doing, the Court may proceed to issue a grant of probate or administration in the said estate not withstanding your caveat

DATE this …… day of …….. 20…….

…….
Registrar

Issued at the instance of (here set out the name and interest, (including the date of the Will if any, under which the interest arises) the party warning, the name of his legal practitioner and the address for service, (if the party warning is acting in person, this must be stated)

FORM 55

(O. 59, r. 57 (9) & 58 (6))
Appearance to Warning or Citation

In the High Court of Edo Stale
Probate Registry

Suit No….....

Caveat No……. dated the…….. day of..... 20.....
Citation dated the……day of ……20.....

Full name and address of deceased:.....
Full name and address of person warning (citor):.....
Interest of person warning (or citor):.....
Full name and address of caveator (of person cited);.....
Date of will:.....
Interest, of caveator;.....

Enter an appearance for the above-named caveator (or person cited) .....
In this matter:.....

DATED this…….....day of…….....20……

Whose address, for service is:.....

(Signed):……

……
Legal Practitioner
(or "in person")

FORM 56

(O. 59, r, 68 (I))'
Notice of Election to Redeem Life Interest

In the High Court of Edo State
Probate Registry

Suit No……

Whereas …….....…. Of ……..……..died on the ……day of ……..20 ..... wholly/partial intestate leaving his/her lawful wife/husband and.....lawful issue of the said……..

And whereas probate/letters of administration of the estate of the said…….were granted to me, the said.....(and to……of……..) at the probate registry on the ……day of ……20……

And whereas (the said…….has ceased to be a personal representative because……) and I am now the sole personal representative.

Now I, the said..... hereby give notice that I elect to redeem the life interest to which I am entitled in the estate of the late……..by retaining N…….its capital value and N… .....the cost of the transaction.

DATED this…….....day of…….....20……

(Signed):……

To the probate registrar.

FORM 57

(O. 60, r, 2 (4))'
Notice of Appeal (Civil)

In the High Court of Edo State

In the .....Judicial Division

Suit No…….....……

Between:
A.B. Vs C.D.

Take notice that the claimant (or defendant, as the case may be A.B or C.D. name the party who is appealing) appeals from the judgment (order, or decision) dated the day of ……20… ..... in the above proceedings

And further take notice that the grounds of appeal…….....….
……
…….....

Dated……

……
A.B. (or C.D) (for the Legal Practitioner acting for him)

To C.D. (or A.B.) of……
Note:
This note must be filled with the registrar of the Magistrate's Court within a month of the decision appealed from and served on all parties affected by the appeal within the period. The ground of appeal should be given in full.

The rules on civil appeals from magistrates should be looked at carefully

SECOND SCHEDULE

High Court LaW (Cap. 65)
Sheriffs & (Process LaW (Cap. 151)
Fees payable and AlloWances to Witnesses
High Court of Edo State.
(O.60,r,20,21)

APPENDIX 1

2.	**CLAIMS**	**FEES**
A.	Filing of Action	₦200.00
B.	For the recovery of a specified sum	
	a) Below ₦600,000	₦2,000.00
	b) ₦600,001 -₦1,000.000	₦2500.00
	c) ₦1,000.001-₦5.000,000	₦5 ,000.00
	d) Above ₦5,000,000	₦7,000.00
C.	**For the recovery of non-monetary claims**	
	a) Each declaration	₦200.00
	b) Each order	₦100.00
	c) Maximum	₦1,000.00
D.	**For an account to be taken and payment of the sum found due:**	
	a) Initial fee	₦500.00
	b) Second fee payable before setting down for judgment per ₦1,000 or part thereof found due in excess of N2,000.00	₦100.00
	c) Maximum total fee	₦5,000.00
5.	**ACTION FOR POSSESSION**	
	For possession of property, as between Landlord and Tenant.	
	d) Where the annual rent or value does not exceed ₦100.000	₦500.00
	e) Above ₦100,000 and not exceeding ₦500,000	₦1,000.00
	f) Above ₦500,000	₦3,000.00
6.	**DECLARATION OF TITLE**	
	For declaration of title to land and possession of the land other than as between Landlord and Tenant .	
	d) Where the annual rent or value does not exceed ₦100.000	₦1,000,00
	e) Where annual rent or value is specified	₦2,000.00
	f) Maximum fee	₦5,000.00

17. ADMINISTRATION SUMMONS

For the administration of the property of a deceased person where there is no dispute regarding succession or distribution.

Where the gross value of the property is

a) ₦1,000.00-₦100,000.00 ₦500.00
b) ₦100,001.00-₦500,000.00 ₦1,000.00
c) Where the gross value of the property is N500,001.00-N1,000,000.00 ₦2,000 .00
d) Above ₦1,000,000.00 or not specified ₦3,000.00

18. For the administration of the property of a person of the unsound mind; same as under item 4.

19. For the determination of a question relating to the distribution of or the succession to the property of a deceased person, or to a trust whether the person who created the same is dead or alive.

a) Where the gross value of t he property of the deceased or of the property under trust does not exceed ₦100,000 ₦500.00
b) Where it exceeds ₦100,000 ₦1,000.00
c) Where no gross value can be specified ₦2,000.00
d) Maximum fee ₦3,000.00

20. For any other relief or assistance not specifically provided for ₦200.00

21. MOTION

a) Filing Fee ₦200.00
b) Filing Application for Amendment ₦200.00

22. AFFIDAVITS/AFFIRMATIONS/DECLARATIONS

a) In support of Court Process ₦100.00
b) Statutory Declarations ₦200.00
c) In cases other than a) & b) ₦1,000.00

23. CERTIFICATON/AUTHENTICATION OF DOCUMENT

a) Certification of document ₦300.00
b) For endorsing paper annexed to an Affidavit or declaration ₦50.00

c) For sealing any document not in Court process ₦300.00
d) For attesting the execution of or signature on an instrument or document not otherwise provided for ₦100.00
e) For any other document ₦500.00

24. PLEADINGS

a) Filing of Statement of Claim ₦200.00
b) Filing of Statement of Defence ₦200.00
c) Filing of Reply ₦200.00
d) Filing of Terms of Settlement ₦200.00
e) Any other Pleadings ₦200.00

25. MATRIMONIAL MATTERS

a) For every petition (other maintenance ₦1,000.00
b) Citation (if one person was named) ₦200.00
f) For each other person(s) cited ₦200.00
g) For the Registrar's Certificate ₦200.00
h) For a petition for maintenance ₦300.00

26. REGISTRAR'S DIRECTIONS FOR TRIAL DECREE NISI TO BE MADE ABSOLUTE

e) Application ₦100.00
f) Sealing the Decree Absolute ₦100.00
g) Copy of the Decree Absolute ₦300.00
h) Searching ₦100.00

14. PROBATE AND ADMINISTRATION OF ESTATES

15. On filing an application for Probate or Letters of Administration ₦200.00
16. On filing Oath of Executor or Administrator ₦200.00
17. On taking justification of sureties for each survey ₦100.00
18 On filing/Administration bond ₦100.00
19 On entering a Caveat ₦500.00
20. On every warning to a Caveat ₦200.00
21. On an application for Probate or Letters of or order for Administration:
10% of the total value of the property which exceeds ₦50,000.00
(Provided that the 10% Probate fee in respect of pensioners Entitlement would be deducted at the point of payment)

22. For re-sealing a grant so as to bring it within this jurisdiction. ₦2,000.00

23. On inventory taken by a Court officer per hour ₦200.00

24. Deposit of Will for safe custody ₦2,000.00

25. Applications, Affidavits, Judgments, Orders, Security Bonds, Warrants and Writs or other documents ₦200.00

26. On filing any other application ₦200.00

27. On filing a security bond ₦200.00

28. Justification of sureties for each surety ₦100.00

29. Withdrawal of Will ₦500.00

30. Sealing and Certification of Will ₦500.00

31. Sealing and Certification of Codicil ₦500.00

32. Filing Schedule of Debts and Funeral Expenses ₦500.00

33. Drawing up of Order or Grant ₦200.00

34. Swearing and filing of Affidavit of Alias ₦500.00

35. Application to search index to Grants or wills ₦500.00

47. Inspection of Grants or Wills ₦500.00

MISCELLANEOUS SERVICE/APPLICATIONS

48. For a special interpreter of a language not in common use: per day ₦200.00

49. For an inquiry by a Court official where so ordered by the court ₦200.00

50. For taking down a person's statement where so ordered by the court ₦100.00

51. For searching the Court archives ₦200.00

52. Inspection of the Court's case file ₦200.00

53. To prepare where authorized, any record of proceeding every folio 72 words or less ₦50.00

54. For every subpoena or witness summons ₦100.00

55. On warrant for prisoner to give evidence at a party's instance ₦200.00

56. For attesting the execution or signature on an instrument or document not otherwise provided for ₦100.00

57. For sealing any document not in proceedings ₦200.00

47. For certificate of service of foreign process (where not disallowed by convention) ₦500.00

53. For service of process on one person payable to the registrar for process serves per kilometer ₦100.00

TRANSFER OF CASES

54. On written application to the Chief Judge to transfer a case from Court to Court ₦100.00

55. On the directive or application to the Chief Judge transferring a civil case before the High Court from one Judge to another, or to a Magistrates Court or to a Customary court, where the order is made on the application of a party. ₦1,000.00

56. Upon the granting of an application to the Chief Judge or a Judge to transfer a civil case from one court to another court except the fees be waved ₦500.00

57. On an order transferring a civil case from one Magistrate's Court to another Magistrate's Court or the High Court or from one Magistrate; to another within the same District where the order is made on the application of a party. ₦500.00

ENFORCEMENT OF JUDGMENT

5. (a) Registration of a certificate of judgment of a High Court ₦400.00
(b) Registration of a certificate of judgment of any other court ₦500.00
(c) Endorsing processes for service from another State ₦200.00
(d) Other related processes ₦100.00

ATTACHMENT

6. (a) Writ of attachment ₦300.00
(b) Interpleader ₦200.00
(c) Other related processes ₦100.00

7. Where the amount of the judgment debt or the value of the property to be recovered
(a) Does not exceed ₦25,000.00 ₦250.00
(b) Exceeds ₦25,000.00 but not above ₦100,000.00 ₦500.00
(d) Exceeds ₦250,000.00 ₦1,000.00

8. For execution of every writ:
(a) Not exceeding ₦100,000 ₦200.00

APPENDIX 2

ALLOWANCES TO WITNESSES AND INTRPRETERS

		Per day
6.	Professional men, mercantile agents auctioneers, bank managers , Surveyors and any officer of the public service whose salaries are not less than Grade level 08	N2, 000.00
7.	Mercantile assistants, other persons and Officers in the public service whose salaries are less than Grade level 08	₦500.00
8.	If more than Grade level 07	₦1, 000.00
9.	Any other person not specifically provided for in the Appendix	₦300.00
10.	(a) The Interpreter of Nigerian language	₦200.00
	(b) The interpreter of foreign language	₦200.00

TRANSPORT ALLOWANCE

(c)	By private car per kilometer	₦100.00
(d)	By private motorcycle per kilometer	₦50.00

NOTE

- The traveling expenses of witnesses shall be allowed according to the sums reasonably and actually paid.

!No allowance is made to an officer of the public service is summoned as a witness by Government or by any department of the government, In all other cases, he/she is allowed costs and travelling expenses as if he/she were not an officer in the public service.

!Fees, cost and expenses payable to an officer in the public service shall be paid into revenue unless otherwise ordered.

APPENDIX 3

REGULATIONS REGARDING FEES

8. **Fees to be paid before any process is issued**
No process shall, except by special order of the Court, be issued until:
(a) all fees payable thereon as contained in the appropriate Appendix of fees shall have been paid; and
(b) An account thereof, initialed as received, is set forth by the officer issuing the process both in the margin and in the counterfoil thereof.

9. **Fees to be carried to account on being signed**
All such fees shall be carried to account immediately on the process on being signed by the Judge.

10. **Documents endorsed amongst of and number receipt**
Every document, for or in respect of which any fee shall have been paid, shall bear an endorsement initialed by the Registrar or other officer showing the amount of the fee or fees so paid and the number of the receipt referring to the payment:

Provided that when any form of process specifies the fee thereof, it shall be sufficient for the Registrar or other officer to initial the amount of the fees appearing thereon, and to q u o t e the number on the receipt.

11. **Counterfoil to produce signature**
Every Registrar or other officer submitting any writ of summons or other process whatever to be signed by a Judge, shall at the same time, produce the stamp of the receipt, given for the fees of such process.

12. **No document to be used unless fees are paid**
No document in respect whereof a fee is payable shall be used in any legal proceedings, unless it shall have been initialed as aforesaid by the Registrar or other officer or unless t h e Court shall have otherwise satisfied that the proper fees in respect thereof have been paid.

13. All fees for Service, execution and distance in kilometers, shall be paid into revenue.

14. No hearing fee or other fee shall be returned except upon a voucher payable at treasury, in favour of the party entitled to receive same and prepared at the direction of the Judge before whom the cause or matter is set down and comes on for hearing.

APPENDIX 4

NOTARIES' FEES OF OFFICE

Noting protest on bill or note	₦100.00
Extending protest on bills of exchange	₦200.00
Promissory note	₦200.00
Minuting or noting ship's protest	₦100.00
Extending ship's protest	₦200.00
Attestation to any document	₦100.00

TRANSLATIONS

For every folio of 72 words	₦500.00
Attestation to translation of any document	₦3, 000.00

FEES FOR REGISTRATION OF JUDGMENT

Registration of a certificate of judgment	₦2, 000.00

REGISTRATION OFA CAVEAT

For filling a Caveat	₦2, 000.00