HIGH COURT (CIVIL PROCEDURE) RULES 2026

Commencement

19th day of January, 2026

In exercise of the powers conferred on me by section 274 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and all other powers enabling me in that behalf, I, HONOURABLE JUSTICE JOEL F. AGYA, Chief Judge of Taraba State of Nigeria, hereby make the following Rules:

ORDER 1

Citation, Application and Interpretation

Civil Procedure Rules and Citation

1. (1) The provisions contained in these Rules shall be the rules of civil procedure to be followed in the High Court of Justice of the State, and shall replace the Taraba State High Court (Civil Procedure) Rules 2011, which is hereby revoked.

(2) These Rules may be cited as the Taraba State High Court (Civil Procedure) Rules 2026.

Savings and transitions.

(3) (a) These rules shall not apply to any cause or matter part-heard on the date when these Rules come into operation.

(b) Where an action is filed and no further step is taken other than the filing, other subsequent procedures shall be under these Rules.

(c) in any other case where a cause or matter is pending, the Court shall give such direction as may be necessary or expedient to ensure conformity with the requirements of these Rules.

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

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

Absence of provisions in the Rules

2. Where a matter arises in respect of which no provisions are made in the Rules, the Court shall adopt such procedure as

will in its view do substantial justice between the parties concerned.

Construction of reference law, rules etc.

3. (1) Any reference in these Rules to anything done under these Rules includes a reference to the thing done before the commencement of these Rules under any corresponding law or Rules of Court ceasing to have effect on the commencement of these Rules.

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

Application and objective.

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

Interpretation of terms.

5. (1) These Rules shall be interpreted in accordance with the Interpretation Law or any modification or re-enactment thereof.

(2) In these Rules, unless the context otherwise requires
"**Chief Judge**" means the Chief Judge of the State;
"Plaintiff" shall include a claimant in a counter-claim;
"Court" means the High Court of Justice of the State;
"Court process" or "**processes**" shall include writ of summons, originating summons, notices, petitions, pleadings, orders, motions, summons, warrants and all documents or written communication of which service is required;
"Decision" means any decision of a Court and includes judgment, ruling, decree, order, conviction, sentence or recommendation;
"Defendant" shall include a defendant to a counter-claim;
"**Document"** includes electronically generated or scanned documents;
"E-Filing" means the electronic filing of Court processes or documents on the NCMS Portal;
"Governor" means the Governor of the State;
"**Guardian"** means any person who has for the time being, the charge of or control over a person under legal disability and includes a person appointed to institute or defend an action on behalf of any person under legal disability;
"Law" means the High Court Law of Taraba State of Nigeria or any modification or reenactment thereof;

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

"**NCMS**" means the Nigerian Case Management System.

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

"Person under legal disability" means any person who lacks capacity to institute or defend any proceedings by reason of age, unsoundness of mind or otherwise;

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

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

"Registry" means the Registry of the Court in the appropriate Judicial Division;

"State" means Taraba State of Nigeria;

"Taxation of Cost" means assessment of costs; and

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

ORDER 2

Form and Commencement of Action

Mode of beginning civil proceedings.

1. Subject to the provisions of any enactment, civil proceedings may be begun by a writ of summons, originating summons, originating motion or petition, as hereinafter provided.

Proceedings must be begun by writ.

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

(a) where a plaintiff claims:

i. any relief or remedy for any civil wrong;

ii. damages for breach of duty, whether contractual, statutory or otherwise; or

iii. damages for personal injuries to or wrongful death of any person or in respect of damage or injury to any person or in respect of damage or injury to any property;

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

(c) where an interested person claims a declaration.

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

Form of Writ. Form 1.

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

Form of writ for service out of Nigeria. Form 2

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

Proceedings which may be begun by originating summons.

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

Construction of enactment.

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

Discretion of the Judge.

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

Forms of Originating Summons. Forms 3, 4 or 5.

8. (1) An originating summons shall be in Form 3, 4 or 5, with such variations as circumstances may require.

(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.

Service outside Taraba State.

9. Subject to the provisions of the Sheriffs and Civil Process Act, a writ of summons or other originating process for service in Nigeria but outside Taraba State, shall be endorsed by the plaintiff with the following notice:

"This summons (or as the case may be), is to be served out of Taraba State of Nigeria and in the ……. State or the Federal Capital Territory".

Proceedings to be begun by motion or petition.

10. Proceedings may be commenced by originating motion or petition whereby these Rules or under any written law the proceedings in question are required or authorized to be so begun but not otherwise.

ORDER 3
Place of Instituting and Trial of Suit

Place of trial of suit.

1. Subject to the provisions of any law with respect to transfer of suits or to specific subject matters, the place for the trial of any suit or matter shall be as provided in this Order.

Suit relating to land and property distrained or seized.

2. All suits relating to land, or any mortgage or charge on land or any interest in land, or any inquiry or damages to land and all actions relating to personal property distrained or seized for any cause, shall be commenced and determined in the Judicial Division in which the land is situate, or the distress or seizure took place.

Suit for recovery penalties etc.

3. 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.

Suit upon contract.

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

Other suits.

5. All other suits shall be commenced and determined in the Judicial Division in which the defendant resides or carries on business or in which the cause of action arose.

Suit commenced in wrong Judicial Division.

6. If any suit is commenced in the wrong Judicial Division, it may be tried in that Division unless the Chief Judge otherwise directs.

ORDER 4
Effect of Non-compliance

Non-compliance.

1. (1) Where in beginning or purporting to begin any proceedings there has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, the failure shall nullify the proceedings.

(2) Where at any stage in the course of or in connection with any proceedings, there has by reason of anything done or left undone been a failure to comply with the requirements as to time, place, manner or form, the failure shall be treated as an irregularity. The Judge may give any direction as he thinks fit to regularize such steps.

(3) The Court 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 provision of these Rules to be begun by an originating process other than the one employed.

Application to set aside for irregularities.

2. (1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) Any application under sub-rule (1) may be made by summons or motion on notice, and the grounds of objection shall be stated in the summons or notice of motion.

ORDER 5
Endorsement of Claim and Address

Endorsement.

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

Endorsement to show representative Capacity.

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

Probate action.

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

Claim for liquidated demand: Amount claimed to be stated.

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

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

Desire to have account taken.

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

Endorsement of address by Plaintiff or by Legal Practitioner.

6. (1) A plaintiff suing in person shall state on the originating process his residential or business address as his address for service.

If he lives and carries on business outside the jurisdiction, he shall state an address within the jurisdiction as his address for service.

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

Endorsement of address.

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

Failure to state address or address illusory, etc.

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

ORDER 6

Filing and Lifespan of Originating Process

Preparing and filing originating process.

1. Originating process shall be prepared by a plaintiff or his Legal Practitioner and shall be filed via the NCMS e-Filing Platform.

Lifespan of originating process.

2. The lifespan of every originating process shall be 12 months non-renewable.

ORDER 7

Service of Originating Process

By whom service is to be effected.

1. (1) Service of originating process shall be made by:

(a) a Sheriff or Deputy Sheriff, Bailiff, Special Marshall or other officer of the Court;
(b) the Legal Practitioner filing the document who shall then file a scanned copy of the proof of service and submit the hardcopy to the registry of the court; or
(c) the Chief Judge may also appoint and register any Law Chambers, Courier Company or any other person to serve Court processes and such Law Chambers, Courier Company or person shall be called process server.

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

Service of originating process, etc,

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

and how effected.

When originating process need not be served personally.

3. 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.

Mode of service when not personal.

4. All processes in respect of which personal service is not expressly required by these Rules or any applicable law, shall be sufficiently served by courier service or if left with an adult person resident or employed at the address for service given under Order 5, rule 6

Substituted service.

5. Where personal service of an originating process is required by these Rules, and a judge is satisfied that prompt personal service cannot be effected, the judge may upon application by the plaintiff, make such order for substituted service as may seem just, including service by electronic or other digital means.

Person under legal disability.

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

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

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

Service on detainee.

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

Service on Partners.

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

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

Service on Corporation or company.

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

Service on Foreign Corporation.

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

Provided that where a foreign company has complied with the relevant provisions of the Companies and Allied Matters Act, personal service shall be effected on one of the persons authorized to accept service on behalf of such company.

Local agent of principal who is out of jurisdiction.

11. Where a contract has been entered into within the jurisdiction by or through an agent residing or carrying on business out of 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 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 plaintiff by courier to the defendant at his address out of.

Where violence threatened.

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

Proof of service generally.

13. (1) After serving any process, the process server shall 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) the Proof of Service generated by the Legal Mail on service on a Legal Practitioner is sufficient proof without a supporting affidavit.

Expenses of service.

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

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

Time of service on certain days.

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

(2) Except in exceptional circumstances and as may be authorized by the Court, service shall not be effected on a Sunday or on a public holiday.

Recording of service.

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

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

ORDER 8
Service Out of Nigeria and Service of Foreign Process

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

1. The Court 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 the jurisdiction;

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

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

(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 the jurisdiction or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, which ought to be executed according to the law in force in the State;

(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 the jurisdiction; or

ii. made 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, and

iii. which by its terms or by implication is to be governed by the applicable law in the 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 the jurisdiction, of a contract wherever made notwithstanding that such breach was preceded or accompanied by a breach out of the jurisdiction which rendered impossible the performance of the contract which ought to have been performed within the jurisdiction,

(f) the claim is founded on a tort committed within the jurisdiction;

(g) an injunction is sought as to anything to be done within the jurisdiction or any nuisance within the jurisdiction is sought to be prevented or removed, whether or not damages are sought in respect thereof;

(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 the jurisdiction;

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

(j) the proceedings relate to a person under legal disability; or

(k) the proceedings relate to probate matters, or where any proceedings under any law or rule of Court has been instituted by any originating process.

Agreement as to service.

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

Service abroad by letter of request. Forms 7, 8 and 9

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

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

Form 8

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

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

Form 9

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

Provided that notwithstanding the foregoing provisions a plaintiff may with leave of the Court serve any originating process by courier.

(2) Nothing herein contained shall in any way affect any power of the Court 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 of existence of the proceedings with a view to such person having an opportunity of claiming, opposing or otherwise intervening

Foreign country with which convention is made.

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

Form 10

(a) the party desiring such service shall file in the Registry a request in Form 10 with such modification or variation 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 Registrar to the Permanent Secretary, 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) The Court, in granting leave to serve a process out of jurisdiction under this Order, may upon request thereof in appropriate cases direct that courier shall be used by the party effecting service.

Service of foreign process.

5. 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 on any person or citation in such matter is transmitted to the Court by the State Attorney-General with intimation that it is desirable that effect be given to the same, the following procedure shall be adopted:

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

(b) service of the process or citation shall be effected by a process server unless the 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 of 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 and the affidavit shall be transmitted to the Registrar with one copy of the process annexed;
(e) the 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.

Inapplicability of rule 4.

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

Service on behalf of Foreign Tribunal.

7. Where in a civil suit pending before a Court or tribunal in a foreign country with which a Convention in that behalf has been made, request for service of any process or document on any person within the jurisdiction is received by the Chief Judge from the appropriate authority in that country, the following procedure shall, subject to any special provisions in the Convention, be adopted:
(a) the process server shall deliver the original or a copy thereof, along with a copy of its translation to the party to be served;
(b) the process server shall submit the particulars of the costs and expenses of service to the Registrar who shall certify the amount payable in respect of the services;
(c) the Registrar shall transmit to the appropriate foreign authority a certificate establishing the fact and date of service or indicating reasons for failure to serve and also notify the authority as to the amount certified under paragraph (b).

Substituted service out of Nigeria or service of foreign process.

8. In appropriate cases, upon application, the Court may order for substituted service out of Nigeria or service of foreign process in any manner as it may seem just, including service by electronic or digital means.

ORDER 9
Sittings of the Court and Vacation

Sittings.

1. 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.

Public or private sittings of Court.

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

Office hours.

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

Days of sittings: Long vacation.

4. (1) Subject to the direction of the Chief Judge, the sitting of the Court for the dispatch of causes shall be held on every week-day, except that the Court shall not sit:

(a) on any public holiday,

(b) during the period beginning from the Monday of the week of Good Friday and ending on the Friday of the week of Easter Monday (Easter Vacation),

(c) during the period commencing on 20th December and ending on the 5th January next following (Christmas Vacation).

(2) There shall be an annual vacation of the Court to commence on such date in August and of such duration, not exceeding six weeks, as the Chief Judge may by notification in the Gazette appoint.

Hearing of urgent action.

5. (1) Notwithstanding the provisions of rule 4, any action may be heard by a Judge in Court during any of the periods mentioned in sub-rule (1) (b) or (c) of rule 4 or sub-rule (2) where the action is urgent or with the consent of the parties.

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

Sundays and public holidays.

6. No business shall be transacted in Chambers on Sundays and public Holidays.

7. (1) The Chief Judge may assign one or more Judges to be Vacation Judge(s) to hear and determine any urgent cause, matter or application during the vacation period.

(2) Notwithstanding the provision of sub-rule (1) of this rule, the Chief Judge may hear or determine or assign any other Judge, not being a Vacation Judge, to hear and determine any cause, matter or application in any judicial division.

Virtual hearing; Online Court Sittings.

8. (1) Notwithstanding any other provisions of this rules, the sittings of the Court may be held virtually.

(2) Place of sittings of the Court shall include Online Court sittings by means of appropriate Video Conferencing Software enabling Judges, Court Staff and Counsel to conduct and join proceedings and public access via links to view and hear proceedings.

ORDER 10

Computation of Time

Rules for computation of time.

1. Whereby any law or order made by the Court, a time is appointed or limited for the doing of any act, the period shall be reckoned:
(a) as excluding the day on which the order is made or on which the event occurs;
(b) where the last day of the period is a holiday, the time shall continue until the end of the next day following which is not a holiday;
(c) where the time limited is less than 5 days, no holiday shall be reckoned as part of the time;
(d) as excluding the days which fall during the period of Christmas, Easter, or annual vacations, strikes and other extraordinary emergencies that prevent the normal business of the Court.

Definition of "holiday".

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

Time of service.

3. No pleadings, summons, motions, orders, originating processes, 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, except that service effected after 6:00 p.m. on Saturday shall be deemed to have been effected on the following Monday.

No enlargement or abridgement of time by consent of the parties.

4. The parties shall not by consent, enlarge or abridge any of the times fixed by the provisions of these Rules for taking any step, filing any document, or giving any notice.

Court may enlarge or abridge time.

5. The Court may, on such terms, as it thinks just, by order enlarge or abridge the period within which a person is required or authorized by these provisions, or by any judgment, order or direction to do any act in any proceeding:

Provided that any party who defaults in performing an act within the time authorized by the Court or under these Rules, shall pay to the Court an additional fee of N400.00 for each day of such default at the time of filing his application for extension of time.

ORDER 11
Interlocutory Application, Motion Ex-Parte and Motion on Notice

I - MOTION GENERALLY

Interlocutory applications.

1. Subject to these Rules an interlocutory application may be made at any stage of an action.

Application by motion.

2. (1) Whereby these Rules, any application is authorized to be made to a Judge, such application shall be made by motion which shall be supported by affidavit and shall state under what rule of Court or Law the application is brought.

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

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

(4) The applicant may on being served with the written address of the opposing party file and serve an address in reply on points of law within 7 days of being served.

Motion list.

3. The Registrar shall make up, for each day on which there are motions to be heard, a motion list, on which he shall enter the names of each cause in which a motion is made, the party moving and the terms of the order sought.

Hearing of motion.

4. A motion may be heard at any time while the Court is sitting or by a judge in chambers.

Adjournment of motion.

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

Motion to be on notice except in emergency.

6. No motion shall be made without previous notice to the parties affected thereby, but 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, may make an order ex-parte upon such terms as to costs or otherwise and

subject to rule 10 (1) and such undertakings, if any, as the justice of the case demands.

II - EX-PARTE MOTION

Mode of filing motion ex-parte.

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

(2) Every motion ex-parte shall in addition to the requirements of rule 2, sub-rules (1) and (2) state sufficient grounds why delay in granting the order sought would entail irreparable damage or serious mischief to the party moving.

Argument on motion Ex-parte.

8. Any party moving the Court ex-parte shall support his argument addressed to the Court on the facts put in evidence. No party to the suit or proceedings, although present, other than the party moving, shall be entitled to be heard.

Order on ex parte motion.

9. Where a motion is made ex-parte, the Court may make or refuse to make the order sought or may grant an order for the respondent to show cause why the order sought should not be made or may direct the motion to be made on notice to the parties to be affected thereby.

Duration of ex-parte order.

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

(2) The Court may upon application extend the effective period of an order made ex-parte if it is satisfied that such extension is necessary in the interest of justice or to prevent an irreparable or serious mischief. The application for such an extension shall be made before abatement of the order and the extension shall not be for a period exceeding 7 days from the day the extension is granted.

III - ORDER TO SHOW CAUSE

Return-day to be specified.

11. 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 ordinarily be not less than 3 days after service.

Counter-affidavit.

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

Further service certain cases.

13. 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.

Appearance or proof of service.

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

General power as to order.

15. The Court may either discharge the order or make it 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 merit of the case.

IV - NOTICE OF MOTION

Notice of motion.

16. Unless the Court gives special leave to the contrary, there shall be at least 2 clear days between the service of a motion and the day named in the notice for hearing the motion.

Service of motion.

17. Notice of motion may be served by any person duly authorized by the Registrar, notwithstanding that such person is not an officer of the Court.

Service on Legal practitioner.

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

Copy of affidavit to be served with notice.

19. There shall be served along with the notice of motion a copy of any affidavit on which the party moving intends to rely at the hearing of the motion.

Order for service.

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

Service of motion with originating process.

21. The plaintiff may file any motion along with an originating process and may serve both on any defendant simultaneously.

V - EVIDENCE IN INTERLOCUTORY PROCEEDING

Oral evidence.

22. Oral evidence shall not be heard in support of any motion unless by leave of the Court.

Evidence in addition to or in lieu of affidavit.

23. The Court may, in addition to or in lieu of affidavit if it thinks it expedient, examine any witness viva voce, or receive documents in evidence and may summon any person to attend to produce documents before it or to be examined or cross-examined before it in like manner as at the hearing of a suit.

Notice to parties and interested parties.

24. Such notice as the Court in each case according to 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 are entitled to inspect the documents to be produced or to examine the person summoned or to be present at his examination, as the case may be.

Evidence of witness and how taken.

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

Affidavit not filed with motion paper.

26. Upon the hearing of any motion, the Court may on such terms as to costs and adjournment as it may deem fit, allow any additional affidavit to be used, after the affidavit has been duly filed and served on the opposite side.

ORDER 12
Interlocutory Order, etc.

Preservation or interim custody of subject-matter of disputed contract.

1. (1) When by any contract, a prima facie case of liability is established and there is alleged as a matter of defense 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 action or may order that the amount in dispute be brought into Court or otherwise secured.

(2) An application for an order under sub-rule (1) may be made by the plaintiff at any time after his right thereto appears from the pleadings or if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court.

Early trial of cause.

2. Whenever an application shall be made before trial for an injunction or other order and on the opening of such application at any time during the hearing thereof, it shall appear 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 whole merits on affidavit or other evidence for the purposes of the application, the Court may make an order for such trial accordingly and in the meantime make such order as the justice of the case requires.

Order for sale of perishable goods, etc

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

Detention, preservation or inspection of property

4. (1) The Court may upon the application of any party to an action or matter and upon such terms as may be just, make an order for the

the subject matter.

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, or for all or any of the purposes aforesaid, authorize any person or persons to enter upon or into any land or building in the possession of any party to such action or matter or 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 sub-rule (1) (including an application made before any pleadings have been delivered in the cause or matter) and it appears that inspection was requested in writing by the applicant and was not given, then, unless the Judge is satisfied that the respondent did not unreasonably fail or refuse to permit the inspection, he may order the costs to be paid by the respondent.

Inspection of property or thing by a Judge.

5. A Judge by whom any action or matter is tried, may inspect any property or thing concerning which any question arises therein.

Sale of property in Court's custody.

6. (1) Where any property is in the custody of the Court either 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 the property and the proceeds thereof to be paid into the High Court Central account for the benefit of the person adjudged entitled to it at the trial or on appeal.

(2) The money kept in the High Court Central account shall be withdrawn by the Chief Registrar and paid to the person entitled to it by the judgment of the Court.

Proceeds of sale after disposal of goods.

7. Where any money paid after sale of any goods or chattel is in the custody of the Court, such money shall be paid to the person entitled to it by the Registrar.

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

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

Allowance of income of property pendente lite.

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

Injunction against repetition of wrongful act for breach of contract.

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

Appointment of a receiver by way of equitable execution.

11. 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 it is just or convenient that such Court appointment should be made, shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver and to the probable costs of his appointment and may if the judge shall deem fit, direct any inquiries on these or other matters before making the appointment.

Receiver: security and remuneration. Forms 11 and 12

12. 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 the same as the Court shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. The security to be given shall be by guarantee or by an undertaking in Forms 11 and 12 with such variations as circumstances may require. The undertaking shall be filed in the registry and form part of the record of proceedings until it has been dully vacated.

Where receiver appointed in Court: adjournment to give security.

13. Where any judgment or order is pronounced or made in Court appointing a person therein named to be receiver, the Court may adjourn the proceedings then pending, in order that the person named as receiver may give security as mentioned in rule 12 and may thereupon direct such judgment or order to be drawn up.

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

14. When a receiver is appointed with a direction that he shall pass accounts, the Court shall fix the days upon which he shall and (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 shall be certified as proper to be paid by him. With respect to any such receiver as neglect to leave and pass his accounts and pay the balances at the times fixed for the purpose as aforesaid, 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 the same appears to have remained in his hands.

Form of receivers' accounts. Form 13

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

Leaving account with the Registrar. Form 14.

16. Every receiver shall deliver to the Registrar his account together with an affidavit verifying the same in Form 14 (with such variations as circumstances may require) and the plaintiff or party having the conduct of the action shall thereupon obtain an appointment for the purpose of passing the account.

Consequences of default by receiver.

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

Passing of guardians' accounts.

18. The accounts of guardians shall be passed and verified in the same manner as is by this Order directed as to receiver’s account.

ORDER 13
AFFIDAVIT

Evidence on motion etc.

1. Upon any motion, petition or summons, evidence may be given by affidavit; but the Court or a Judge in Chambers may, on the application of either party order the attendance for cross-examination of the person making any such affidavit and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence unless by special leave of the Court or a judge in chambers.

Title of affidavit.

2. Every affidavit shall be titled in the cause or matter in which it is sworn, but in every case in which there are more than one plaintiff

or defendant, it shall be sufficient to state the full name of the first plaintiff and the first defendant respectively and indicate that there are other plaintiffs or defendants, as the case may be.

Use of defective affidavit.

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

Special time for filing affidavit.

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

Affidavit in support of ex parte application.

5. Except by leave of the Court or a 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 made, was actually made before the order was applied for and produced or filed at the time of making the motion.

Notice of intention to use affidavit in Chambers.

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

Alteration in account to be initialed.

7. Every alteration in an account verified by affidavit to be left at Chambers, shall be marked with the initials of the Commissioner before whom the affidavit is sworn, and the alterations shall not be made by erasure.

Exhibit.

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

Certificate on Exhibit.

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

Application of Evidence Act.

10. The relevant provisions of the Evidence Act governing affidavits shall apply as if they were part of these Rules.

Admissibility of affidavit taken in Commonwealth country.

11. A document bearing the seal or signature of a Court, Judge, notary public or a 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 being of that Court, Judge, notary public or person.

Use in chambers of affidavits used in Court.

12. An affidavit which has been previously made and read in Court on any proceeding in cause or matter may be used before a Judge in chambers.

ORDER 14
PARTIES
I - Parties Generally

Persons claiming jointly or severally.

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

Action in name of wrong plaintiff.

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

Misjoinder and counter-claim.

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

Joinder of person as defendant.

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

Action in name of wrong defendant.

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

Defendant need not be interested in all the reliefs.

6. (1) It shall not be necessary that every defendant shall be interested as to all the reliefs prayed for or as to every cause of action included in any proceeding against him.

(2) The Court 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.

Joinder of persons severally or jointly and liable.

7. A plaintiff 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 one contract, including parties to bills of exchange and promissory notes.

Plaintiff in doubt as to person from whom redress is to be sought.

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

Persons under legal disability.

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

Guardian.

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

Trustees, executors, may be sued as representing the estate.

11. Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate and shall be considered as representing such persons, but the Court 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.

Numerous persons interested in one suit.

12. (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, the Court may allow one or more of such persons to defend the action on behalf or for the benefit of all persons so interested.

Representative of persons or classes of persons in certain Proceedings.

13. (1) Where in any proceedings concerning:

(a) the administration of an estate;

(b) property subject to a trust;

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

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

the Court is satisfied that:

i. the person 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; or

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 members of the class, the Court may make the appointment. The decision of the Court in the proceedings shall be binding on the persons or class of persons so represented.

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

(3) If in any proceedings mentioned in sub-rule (1), 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.

Power to approve compromise.

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

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

(b) the absent persons are represented by a person under rule 13 who so assents,

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

Where there is no personal representation.

15. (1) If in any proceedings it appears to the Court that any deceased person who was interested in the proceedings has no legal representative, the Court may proceed in the absence of any person representing the estate of the deceased person or may appoint some persons to represent his estate for the purpose of the proceeding, on such notice to such persons (if any) as the Court 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 dully constituted legal personal representative of the deceased person had been a party to proceeding.

(2) Where a sole surviving plaintiff or defendant in a proceeding dies and the cause of action survives but the person entitled to proceed fails to proceed, the Court 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.

Proceedings not defeated by misjoinder or nonjoinder.

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

(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 name 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 persons under legal disability shall be added as a plaintiff suing without a guardian and no person shall be added as the guardian of a plaintiff 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 the Court and the proceedings against such person shall be deemed to have begun on the service of such originating processes or notice.

Application to add or strike out.

17. (1) Any application to add, strike out, substitute, or vary the name of a plaintiff or defendant shall be made to the Court by motion.

(2) Where the application is to add a plaintiff or a defendant, the application shall be accompanied by the statement of claim or defense as the case may be, copies of every document intended to be used and the deposition 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.

Where the defendant is added.

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

Joinder of Third Parties.

19. (1) Where it appears to the Court that any person not a party in the proceedings may bear eventual liability either in whole or in part the Court 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 of joinder and all existing processes shall be served on the Third Party within the time prescribed for delivering the defense.

Entering of appearance by Third Party.

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

Default by Third Party.

21. If a Third Party duly served with the order and all existing processes, does not enter an appearance or make default in filing any pleading, he shall be deemed to admit the validity of the

proceedings and shall be bound by any judgment given in the action, whether by consent or otherwise.

Subsequent Third Party.

22. A party joined as a Third Party in any 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.

Claim against co-defendant.

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

II - Action Against Firm and Person Carrying on Business in Names Other Than Their Own.

Action by and against firm.

24. Any two or more persons claiming or alleged to be liable as partners and doing business within the jurisdiction may sue or be sued in the name of the firm, if any, of which they were partners when the cause of action arose. Any party to an action may in such case apply to the Court 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 Court may direct.

Disclosure of partners' names.

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

(2) Where the plaintiffs 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 the Court 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 plaintiffs in the originating process, and the proceedings may continue in the name of the firm.

Appearance of partners.

26. (1) Where persons are sued as partners in the name of their firm, they shall appear individually in 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.

Application of rules to actions between co-partners.

27. Rules 24, 25 and 26 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.

Person trading as firm.

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

III - Alteration of Parties

Action not abated where cause of action survives.

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

Order to proceedings.

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

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

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

Continuation of cause or assignment, creation or devolution of estate or title.

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

Application to discharge order by person having a guardian.

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

Application to discharge order by person having no guardian.

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

IV - Legal Practitioner or Agent

Act may be done by legal practitioner or agent.

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

ORDER 15
LEGAL PRACTITIONER

Legal Practitioner to conduct cause or matter to final judgment.

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

Application for change or Withdrawal of Legal Practitioner.

2. An application for a change of Legal Practitioner or withdrawal may be made by the plaintiff or defendant or the Legal practitioner as the case may be, not less than 3 clear days before the date fixed for hearing.

Service of application on all parties.

3. Where the application is made by a Legal Practitioner, it shall be served on all parties to the cause or matter.

ORDER 16
Appearance

Filing of memorandum of appearance by defendant. Form 15.

1. (1) A defendant served with originating process shall, within the period prescribed in the process for appearance, file in the Registry a duly completed and signed memorandum of appearance as in Form 15 with such modifications or variations as circumstances may require.

(2) On receipt of the memorandum of appearance, the Registrar shall make entry thereof and stamp the copy with the seal showing the date he received it and deliver the sealed copy to the plaintiff, or to the plaintiff's legal practitioner, as the case may be.

Defendant appearing in person or represented by Legal Practitioner.

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

Memorandum of Appearance with fictitious address.

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

Defendant appearing through same legal Practitioner.

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

Penalty for late filing of appearance.

5. If a defendant files an appearance after the time prescribed in the originating process, he shall pay to the Court an additional fee of N400.00 for each day of default. If the defendant appears late but within the time prescribed for filing his defense, he shall file his defense within that time.

Intervener in probate matters.

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

Recovery of land.

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

Landlord appearing.

8. Any person appearing to defend an action for the recovery of land as landlord, in respect of property of which he is in possession only

through his tenant, shall state in his memorandum of appearance that he appears as landlord.

Person under disability.

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

Definition of "tenant".

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

ORDER 17
DEFAULT OF APPEARANCE

Default appearance.

1. Where any defendant fails to appear, a plaintiff may proceed upon default of appearance under the appropriate provisions of these rules upon proof of service of the originating process.

Default of appearance of a person under disability.

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

Liquidated demand.

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

Liquidated demand: several defendants.

4. Where the claim in the originating process is a liquidated demand and there are several defendants of whom one or more appear, and another or others fail to appear, a plaintiff 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.

Judgment in default of appearance.

5. Where the claim in the originating process is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and the defendant or all of several defendants fail to appear, the plaintiff 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 in respect of that part claim.

Several defendants.

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

Detention of goods, damages and liquidated demand.

7. Where the claim in the originating process is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes liquidated demand and any of the defendants fail to appear, a plaintiff 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 in respect of that part of the claim.

Recovery of land.

8. If no appearance is entered within the time prescribed in the originating process in a claim for recovery of land or if appearance is entered but the defense is limited to part only, the plaintiff 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 defense does not apply.

Claims for profits, etc.

9. Where in an originating process for recovery of land, the plaintiff 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 for the land and may proceed to prove the other claims.

Judgment for costs: upon payment, satisfaction, etc.

10. In any case to which rules 3 to 8 do not apply, and the defendant or all of several defendants fail to appear, but by reason of payment, satisfaction, abatement of nuisance or any other reason, is unnecessary for the plaintiff to proceed, he may apply to the Court for judgment for costs:

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

Setting aside judgment.

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

Default of appearance in action not otherwise specifically provided for.

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

Compulsory service

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

ORDER 18
Arrest of Absconding Defendant

Defendant leaving jurisdiction or removing property.

1. If in any action, the defendant is about to leave the jurisdiction of the Court or has disposed of or removed from the jurisdiction, his property or any part thereof or is about to do so, the plaintiff 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.

Warrant to arrest. Form 16.

2. (1) If the judge, after 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 the jurisdiction of the Court or that he has disposed of or removed from the jurisdiction, his property or any part thereof or is about to do so and that by reason thereof the execution of any judgment which may be made against him is likely to be obstructed or delayed, the judge shall issue a warrant to bring the defendant before him, that he may show cause why he should not give good and sufficient bail bond for his appearance.

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

Bail for appearance or satisfaction.

3. If the defendant fails to show cause, the judge shall order him to give bail bond 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 against him in the suit or to give bail bond for the satisfaction of such judgment and the surety or sureties shall undertake in default of such appearance of satisfaction to pay any sum of money that may be adjudged against the defendant in the suit with costs.

Deposit in lieu of bail bond.

4. (1) Where the defendant offers to deposit a sum of money in lieu of bail bond for his appearance sufficient to answer the claim against him with costs of the suit the judge may accept such deposit into the High Court central account.

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

Committal in default

5. (1) If the defendant fails to furnish security or offer a sufficient deposit, the judge may commit him into custody until the determination 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.

(4) An applicant shall deposit with the Court a sufficient amount of money to compensate the defendant where it is discovered that the arrest was frivolous vexatious and without any good cause.

Cost of subsistence of persons arrested.

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

ORDER 19
Interim Attachment of Property

When a defendant be called to give security.

1. Where:

(a) the defendant in any suit with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property or any part thereof or to remove any such property from the jurisdiction; or

(b) in any suit founded on contract or for detinue or trover in which the cause of action arises within the jurisdiction:

(i) the defendant is absent from jurisdiction or there is probable cause to believe that he is concealing himself to evade service, and

(ii) the defendant is beneficially entitled to any property in the State in the custody or under the control of any other person or such person is indebted to the defendant, then in either such case the plaintiff may apply to the Court either at the time of the institution of the suit or at any time thereafter until final judgment to call upon

the defendant to furnish sufficient security to fulfill any decree that may be made against him in the suit and on his failing to give such security or pending the giving of such security, to direct that any property movable or immovable belonging to the defendant shall be attached until the further order of the Court.

Application for attachment.

2. The application shall contain a specification of the property required to be attached and the estimated value thereof so far as the plaintiff can reasonably ascertain and the plaintiff shall declare that to the best of his information and belief the defendant is about to dispose of or remove his property with such intent as aforesaid.

Form of order. Form 17.

3. If the Court after making such investigation as it may consider necessary, is satisfied that the defendant is about to dispose of or remove his property with intent to obstruct or delay the execution of the decree, the Court may order the defendant within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order to produce and place at the disposal of the Court when required, the said property or the value of the same or such portion thereof as may be sufficient to fulfill the decree, or to appear and show cause why he should not furnish security.

Failure of the defendant to show cause or give security.

4. If the defendant fails to show such cause or to furnish the required security within the time fixed by the Court, the Court may direct that the property specified in the application if not already attached, or such portion thereof shall be sufficient to fulfill the decree, be attached until further order. If the defendant shows such cause or furnished the required security, and the property specified in the application or any portion of it shall have been attached, the Court shall order the attachment to be withdrawn.

Right of Third Parties not to be affected.

5. The attachment shall not affect the rights of persons not parties to the suit and in the event of any claim being preferred to the property attached before judgment, such claim shall be investigated in the manner prescribed for the investigation of claims to property attached in execution of a decree.

Removal of attachment.

6. In all cases of attachment before a judgment, the Court shall at any time remove the attachment on the defendant furnishing security as above required, together with security for the costs of the attachment or upon an order for a non-suit or striking out the cause or matter.

ORDER 20
Accounts and Inquiries

Summary order for account.

1. (1) Where a writ is endorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may at any time or after the defendant has entered an appearance of after the time limited for appearing, apply for an order for an account under this rule.

(2) An application under this rule shall be made by summons and supported by affidavit or other evidence.

Form 18

(3) On the hearing of the application, the Court may, unless satisfied by the defendant by affidavit or otherwise that there is some preliminary question to be tried order that an account be taken as in Form 18 and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

Court may direct taking of accounts.

2. (1) The Court may on application made by summons at any stage of the proceedings in a cause or matter, direct any necessary accounts or inquiries to be taken or made.

(2) Every direction for the taking of an account or the making of inquiry, shall be numbered in the judgment or order so that, as far as may be, each distinct account and inquiry may be designated a number.

Direction as to manner of taking account.

3. (1) Where the Court orders an account to be taken, it may by the same or subsequent order give directions with regard to the manner in which the account is to be taken or vouched.

(2) Without prejudice to the generality of sub-rule (1), the Court may direct that in taking the account the relevant books of account shall be evidence of the matters contained therein, with liberty to the parties interested to take such objections thereto as they think fit.

Account to be made, verified, etc.

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

Erroneous account.

5. Any party who seeks to charge an accounting party with an account 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 in any other respect, shall give notice thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or as the case may be the grounds for alleging that the item is erroneous.

Allowances.

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

Delay in prosecution of accounts, etc.

7. (1) If it appears to the Court that there is undue delay in the prosecution of any accounts or inquiries, 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 proceeding or for expediting them or for conduct thereof and for costs as the circumstances require.

(2) The Court may direct any party or Legal Practitioner to take over the conduct of proceedings in question and to carry out any directions made by an order under this rule and may make such order as it thinks fit as to the payment of the Legal Practitioner's costs.

Distribution of fund before all persons entitled are ascertained.

8. 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 person ascertained and reserving the remainder of the fund to meet the subsequent cost of ascertaining those other persons and their shares.

ORDER 21

ARBITRATION

I - Reference to Arbitration, Nomination, and Appointment of Arbitrators.

Nomination of arbitrator.

1. In any case in which a matter is referred to one or more arbitrators under the provisions of these Rules, the arbitrators shall be nominated by the parties in such manner as may be agreed upon between them.

Court may appoint arbitrator.

2. If the parties cannot agree with respect to the nomination or if the persons nominated refuse to act, and the parties are desirous that

the nomination be made by the Court, the Court shall appoint the arbitrators.

Form of order of reference. Form 19.

3. The Court shall by an order under its seal refer to the arbitrators the matter in difference in the suit which they may be required to determine and shall fix a time for the delivery of the award and the time so fixed shall be stated in the order as in Form 19.

Umpire where necessary.

4. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among them, by the appointment of an umpire or by declaring that the decision shall be with the majority or by empowering the arbitrators to appoint an umpire or otherwise as may be agreed between the parties or if they cannot agree, as the Court may determine.

Attendance of witnesses.

5. When a reference to arbitration is made by an order of Court, the same process to the parties and witnesses, whom the arbitrators or umpire may desire to have examined, shall issue as in ordinary suits, and persons not attending in compliance with such process, or making any other default or refusing to give evidence or being guilty of any contempt of the arbitrators or umpire during the investigations of the suit, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrators or umpire, as they would incur for the same offences in suits tried before the Court.

Extension of time for making award.

6. (1) 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 delivery of the award, if it thinks it proper.

(2) In any case in which an umpire is appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators, if they shall have allowed their time or their extended time, to expire without making an award or have delivered to the Court or to the umpire, a notice in writing stating that they cannot agree.

(3) An award shall not be liable to be set aside only by 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 or umpire or unless the award shall have been made after the issue of an order by the Court superseding the arbitration and recalling the suit.

Power of Court in case of death, incapacity or refusal to act.

7. (1) In any case of reference to arbitration by an order of Court the arbitrator or umpire dies or refuses or becomes incapable to act, the Court shall appoint a new arbitrator or arbitrators or umpire in

the place of the person or persons so dying, or refusing or becoming incapable to act.

(2) Where the arbitrators are empowered by the terms of the order or reference to appoint an umpire and do not appoint an umpire, any of the parties may serve the arbitrators with a written notice to appoint an umpire, and if within 7 days after the notice is served, no umpire is appointed, the Court shall, upon the application of the party having served such notice as aforesaid and upon proof to its satisfaction of such notice having been served, appoint an umpire.

(3) In any case of appointment under this rule, the arbitrators or umpire so appointed, shall have the like power to act in the reference as if their names had been inserted in the original order of reference.

Finding.

8. The award shall contain a conclusive finding on each of the several matters.

Special case for opinion of the Court.

9. It shall be lawful for the arbitrators or umpire upon any reference by an order of Court, if they shall think fit, and if it is not provided to the contrary, to state their award as to the whole or any part thereof in the form of a special case for the opinion of the Court.

Modification and correction of award by Court.

10. The Court may, on the application of either party, modify or correct an award where it appears that a part of the award is upon matters not referred to the arbitrators, (provided such part can be separated from the other part and does not affect the decision on the matter referred) or where the award is imperfect in form or contains any obvious error which can be amended without affecting such decision.

Order as to costs.

11. The Court may also on such application, make such order as it thinks just, respecting the costs of the arbitration, if any question arises about such cases or their amount and the award contains no sufficient provision concerning them.

Power of Court to remit award for reconsideration.

12. In any of the following cases, the Court may remit the award or any of the matters to arbitration, for reconsideration by the arbitrators or umpire, upon such terms as it thinks proper, if:

(a) the award has left undetermined some of the matters referred to arbitration;
(b) it has determined matters not referred to arbitration;
(c) the award is so indefinite as to be incapable of execution; or
(d) an objection to the legality of the award is apparent upon the face of the award.

Condition for setting aside of Award.

13. (1) No award shall be liable to be set aside except on the ground of perverseness or misconduct of the arbitrators or umpire.

(2) Any application to set aside an award shall be made within 15 days after the publication thereof.

Filing award: effect of.

14. If no application is made to set aside the award, or to remit it or any of the matters referred for reconsideration, or if 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.

II - Arbitration Proceedings

Application under the Arbitration and Mediation Act.

15. Every application in this rule to the Court under the Arbitration and Mediation Act 2023 to:

(a) revoke an arbitration agreement;
(b) appoint an arbitrator;
(c) stay proceedings;
(d) remove an arbitrator or umpire;
(e) direct an arbitrator or umpire to state the reasons for an award;
(f) ask that a case on trial which is the subject of an arbitration agreement be referred to an arbitration;
(g) set aside an award;
(h) declare 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 proceedings were arbitrary or that the award has been improperly procured;
(i) determine any question of law arising in the course of or concerning any arbitration agreement or proceedings referred to the Court; or
(j) subpoena witness to attend,

shall be made by originating motion.

Application to be made within fifteen days.

16. An application under rule 15 shall be made on notice and within 15 days after the award or the proceedings has been made or commenced.

III - Enforcement of Arbitration Award

Mode of enforcing award.

17. (1) An application to enforce an award on any arbitration agreement in the same manner as a judgment or order of Court may be made ex-parte, but the Judge 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 and 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.

(3) An application may be brought under this rule for leave of Court to enforce a decision reached at the Multi-Door Court House in the same manner as a judgment or Order of Court.

IV - Registration of Foreign Arbitration Award

Award made in proceedings in foreign territory.

18. Where 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 proceedings 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 22
Reference to Referee

Reference to referee.

1. In any legal proceeding the judge may at any time order the whole cause or matter or any question or issue of facts arising therein, to be tried before an official referee or officer of the Court notwithstanding that it may appear that there is a special or other relief 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.

Instruction to referee.

2. 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 before the referee during the inquiry.

Interim inquiries or accounts.

3. The Court may at any stage of the proceeding direct any such or necessary inquiries or accounts to be made or taken, notwithstanding that it may appear, that there is some special or further relief sought for 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.

General power of the referee.

4. The referee may, subject to the order of the Court, hold the inquiry at or adjourn it to any place which he may deem most expedient

and have any inspection or view which he may deem expedient, for the disposal of the controversy before him and shall as far as practicable, proceed with the inquiry from day to day.

Taking of evidence and enforcement of Attendance of witness.

5. 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.

Limitations in certain particulars.

6. Nothing in these Rules shall authorize any referee to commit any person to custody or to enforce any order by attachment or otherwise but the Court may, in respect of matters before a referee make any order of attachment or committal it may consider necessary.

Report made in pursuance of reference.

7. The report made by a referee in pursuance of a reference under these Rules, shall be made to the Court and notice thereof served on the parties to the reference.

Referee may report questions of facts specifically.

8. (1) A referee may in his report submit any question arising therein for the decision of the Court or make a special statement of facts from which the Court may draw such inferences as it thinks fit.

(2) On the receipt of a referee's report, the Court may:

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

(b) vary the report;

(c) require an explanation from the referee;

(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; or

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

(3) 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 that hearing by the Court or the further notice thereof any other application with respect to the report may be made on that hearing without notice.

(4) Where on a reference under this order, the Court or judge in chambers 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 the rule shall have effect subject to any such directions.

ORDER 23
Summary Judgment

Where plaintiff believes there is no defense.

1. Where a plaintiff believes that there is no defense to his claim, he shall file his writ of summons together with the documents mentioned in Order 2 rule 2 subrule 2, and an application by way of motion for summary judgment, which application shall be supported by an affidavit stating the grounds for his belief and a written address in respect thereof.

Service.

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

Where defendant intends to defend.

3. Where a party served with the processes and documents referred to in rule 1 intends to defend the suit, he shall within 30 days file his response to the:

(a) writ of summons in terms of Order 26 rule 2; and

(b) application for summary judgment in terms of Order 11 rule 2 subrule 3.

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

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

(2) Where it appears to the Court that the defendant has no good defense, the Judge may thereupon enter judgment for the plaintiff.

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

Where there are several defendants.

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

Oral submission on written address.

6. Under this order the parties shall be at liberty to advance before the Court, oral submission to expatiate their respective written address.

ORDER 24
Joinder of Causes of Action

Joinder of causes.

1. (1) Subject to rule 3, a plaintiff may in one action claim relief against the same defendant in respect of two or more causes of action:

(a) if the plaintiff claims and the defendant is alleged to be liable in the same capacity in respect of all the causes of action;
(b) if the plaintiff claims, or the defendant is alleged to be liable in the capacity of executor or administrator of an estate in respect of one or more of the causes of action, and in his personal capacity but with reference to the same estate in respect of the other or others; or
(c) with leave of Court.

(2) An application for leave under this rule shall be made ex-parte by motion before the originating process is issued and the affidavit in support of the motion shall state the grounds of the application.

Counter claim against plaintiff.

2. (1) Subject to rule 2 (2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counter claim in respect of that matter, and where he does so he shall add the counter-claim to his defense.

(2) Rule 1 shall apply in relation to a counter-claim as if the counter-claim were a separate action and as if the person making the counter-claim were plaintiff and the person against whom it is made a defendant

(3) A counter-claim may be proceeded with notwithstanding that judgment is given for the plaintiff in his action or that the action is stayed, discontinued or dismissed.

Ordering of separate trials, etc.

3. (1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counter-claim or if two or more plaintiffs or defendants are parties to the same action and it appears to the Court that the joinder of such causes of action or of parties as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court

may order separate trials or make such other orders as may be expedient.

(2) If it appears on the application of any party against whom a counter-claim is made, that the subject matter of the counterclaim ought for any reason to be disposed of by separate action, the Court may order it to be tried separately or make such order as may be expedient.

ORDER 25
Proceedings in Lieu of Demurrer

Abolition of Demurrer.

1. No demurrer shall be allowed.

Raising point of law by pleading.

2. Any party shall be entitled to raise by his pleading any point of law and any point so raised shall be disposed of by the Judge before or at the trial.

Dismissal of action.

3. If, in the opinion of the Judge the decision on the point of law substantially disposes of the whole action or of any cause of action, ground of defense, set-off, counter-claim, or reply therein, the Judge may thereupon dismiss the action or make such other order therein as may be just.

Striking out pleading where no reasonable cause of action disclosed.

4. The Judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defense being shown by the pleadings to be frivolous or vexatious, the Judge may order the action to be stayed or dismissed or judgment to be entered accordingly as may be just.

Declaratory Judgment.

5. No action or proceeding shall be opened to objection on the ground that a merely declaratory judgment or order is sought thereby and the Judge may make binding declaration of right whether any consequential relief is or could be claimed or not.

ORDER 26
Pleadings

Filing of pleadings.

1. (1) A plaintiff shall file his originating process and accompanying documents simultaneously for service on the defendant or if there are two or more defendants, on each defendant.

(2) A defendant shall, not later than 30 days after service on him of the plaintiff's originating process and accompanying documents, file his statement of defense, set off or counter-claim, if any, together with a list of witnesses, a written statement on oath

of each witness to be called, and list and copies of every document to be relied upon at the trial.

(3) A plaintiff shall within 14 days of service of the statement of defense and counter-claim, if any, file his reply, list of additional witnesses with their written statement on oaths, list and copies of additional documents, if any:
Provided that where a defendant sets up a counter-claim, if a plaintiff 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, the Court may at any time order that such counter-claim be excluded.
(4) Where a plaintiff files both a reply and a defense to counterclaim, he shall include them in the same document.

Pleadings to state material facts and not evidence.

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

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

Particulars to be given where necessary.

3. (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 defamation, if the plaintiff alleges that the words or matter complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of his allegation.

Matters which must be specially pleaded.

4. (1) A party shall plead specifically any matter (for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality) which, if not specifically pleaded, might take the opposite party by surprise.

(2) Any condition precedent, the performance or occurrence of which is intended to be contested, shall be specified in the pleadings of the parties, and, subject thereto, an averment of the

performance or occurrence of all conditions precedent necessary for the case of the parties shall be implied in his pleading.

(3) Without prejudice to sub-rule (1), the defendant in an action for the recovery of land shall plead specifically every ground of defense on which he relies.

Further and better statement of particulars.

5. (1) A further and better statement of the nature of the claim or defense or further and better particulars of any matter stated in any pleading, notice or written proceeding requiring particulars, may in all cases be ordered, upon such terms as to costs and otherwise, as may be just.

(2) Before applying for particulars by summons or notice, a party may apply for them by letter and the costs of the letter and of any particulars delivered pursuant thereto shall be allowable on taxation.

(3) In dealing with the costs of any application for particulars by summons or notice, the provisions of this rule shall be taken into consideration by the Court or Judge in Chambers.

(4) Particulars of a claim shall not be ordered under this rule before filing of defense.

Order for particulars not a stay.

6. (1) The party at whose instance particulars have been filed under a Judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the service of the particulars on him that he had initially.

(2) Except the Court otherwise orders, an order for particulars shall not operate as a stay of proceedings or give an extension of time.

Specific denial.

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

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

Joinder of issue.

8. If there is no reply to a defense, there is an implied joinder of issue on that defense.

Pleading to be consistent.

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

Grounds of claim founded on separate facts to be separately stated.

10. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated separately and distinctly, and the same rule shall apply where the defendant relies on several distinct grounds of set-off or counter-claims founded upon separate and distinct facts.

Stating of relief claimed.

11. Every statement of claim shall state specifically the relief which the plaintiff claims either simply or in the alternative, and may also ask for general relief, and the same rule shall apply to any counterclaim made or relief claimed by the defendant in his defense.

Allegation shall not be made generally but specifically.

12. It shall not be sufficient to deny generally the facts alleged by the statement of claim, but the defendant shall deal specifically with them, either admitting or denying the truth of each allegation of fact seriatim, as the truth or falsehood of each is within his knowledge.

Denial of fact must answer point of substance.

13. (1) When a party denies an allegation of fact, he shall not do so evasively, but shall answer the point of substance.

(2) When a matter of fact is alleged with diverse circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a full and substantial answer shall be given.

Admission of whole or part of a case.

14. (1) Any party may give notice by his pleading that he admits the truth of the whole or any part of the case of any other party.

(2) The defense shall admit such material allegations in the statement of claim as the defendant knows to be true, or desires to be taken as established without proof thereof.

(3) Where admissions of fact are made by a party, either by his pleadings or otherwise, any other party may apply to the Court for such judgment or order as upon those admissions he may be entitled to without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, as it thinks just.

(4) An application under sub-rule (3) shall be by motion on notice.

Set-off or counter-claim to be pleaded.

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

counter-claim as the case may be, and the particulars of the set-off or counter-claim shall be given.

Striking out of pleadings.

16. The Court may at any time in any proceedings order to be struck out or amended, any matter in any endorsement or pleading, which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the action, and may in any such case, if the Court shall deem fit, order costs of the application to be paid as between a Legal Practitioner and client.

Striking out pleadings disclosing no reasonable cause of action.

17. The Court may at any time, on the application of either party, strike out any pleading or any part thereof, on the ground that it discloses no cause of action, or no defense to the action, as the case may be or on the ground that it is embarrassing or scandalous, or vexatious or an abuse of the process of the Court, and the Court may either give leave to amend that pleading, or may proceed to give judgment for the plaintiff or the defendant, as the case may be or may make such other order and upon such terms and conditions as may seem just.

Denial of contract, promise or agreement.

18. When a contract, promise, or agreement is alleged in any pleading, a bare denial of it by the opposite party shall be construed only as a denial in fact of the express contract, promise or agreement alleged or the matters of fact from which it may be implied by law, and not as a denial of the legality or sufficiency in law of the contract, promise or agreement, whether with reference to any statute or otherwise.

Effect of document to be stated.

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

Malice, knowledge, defamation.

20. (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 it as a fact without setting the circumstances from which it 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 plaintiff 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 that malice is to be inferred.

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

Allegation of notice of any fact, etc.

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

Implied contract or relation.

22. (1) 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 that contract or relation as a fact and to refer generally to those letters, conversations or circumstances without setting them out in detail.

(2) If as in sub-rule (1), the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from those circumstances, he may state them in the alternative.

Presumption of law.

23. A party need not plead any fact, if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleadings.

Pleadings: probate actions.

24. (1) In probate actions, it shall be stated with regard to every defense 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 the Court or a Judge in Chambers, no evidence shall be given of any other instances at the trial.

(2) In a probate action, the party opposing a Will may, with his defense, 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 there upon 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 is of opinion that there was no reasonable ground for opposing the Will.

Technical objection.

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

Stated or settled account.

26. In every case in which the cause of action is stated or settled account, it shall be alleged with particulars, but in any 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 it need not be alleged in the pleadings.

Defense of tender.

27. Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defense to the whole or part of a claim made by the plaintiff, it may be included in the defense and set-off against the plaintiff's claim whether or not it is also added as a counter-claim.

Judgment for balances.

28. (1) Where in any action a set-off or counter-claim is established as a defense against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for the balance or otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

(2) Sub-rule (1) shall apply mutatis mutandis where the balance is in favour of the plaintiff.

Close of pleadings.

29. (1) The pleadings in an action are deemed to be closed:

(a) at the expiration of 7 days after service of the reply or if there is no reply but only a defense to counter-claim, after service of the defense to counter-claim;

(b) if neither a reply nor a defense to counter-claim is served, at the expiration of 7 days after service of the defense;

(c) where a pleading subsequent to reply is not ordered then, at the expiration of 7 days after the service of the defense or reply (if a reply has been filed); or

(d) where a pleading subsequent to reply is ordered, and the party which have been ordered or given leave to file the same, fails to do so within the period limited for that purpose, then, at the expiration of the period so limited.

(2) The pleadings in an action are deemed to be closed at the time provided by sub-rule (1) notwithstanding that any request or order for particulars has been made, but has not been complied with.

ORDER 27
Amendment

Amendment of originating process and pleadings.

1. A party may amend his originating process and pleadings at any time before the matter proceeds to trial and not more than twice during the trial but before closing his case.

Application to amend.

2. Application to amend may be made to the Court and such application shall be accompanied with a copy of the proposed amendment with the portion so amended underlined or in bold fonts and may be allowed upon such terms as to costs or otherwise as may be just.

Amendment of originating process.

3. Where any originating process and or a pleading is to be amended, a list of any additional witness (if any) 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.

Penalty for not amending within time limited.

4. If a party who has obtained an order to amend does not amend accordingly within the time limited for that purpose by the order or if no time is thereby limited, then within 7 days from the date of the order, such party shall pay an additional fee of N400.00 for each day of default until the expiration of additional 7 days, when the order shall lapse.

Filing and service of amended process.

5. Whenever any originating process or pleading is amended a copy of the document as amended shall be filed in the registry.

Date of order and amendment to be displayed.

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

"Amended the …….. day of …….. pursuant to order of (name of Judge) dated the……day of ……..……”

Clerical and accidental omission.

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

ORDER 28
Default of Pleadings

Claim for debt or liquidated demand.

1. If the claim is only for a debt or liquidated demand and the defendant does not, within the time allowed by these Rules or an order of Court or a Judge in Chambers for that purpose, file a defense, the plaintiff may at the expiration of such time apply for final judgment for the amount claimed, with costs.

Several defendants: default of one.

2. When in any action for a debt or liquidated demand there are several defendants and if one of them makes default as mentioned in rule 1, the plaintiff may apply for final judgment against the defendant making default and the Court may issue execution upon that judgment without prejudice to his right to proceed with his action against the other defendants.

Default of defense: claim for unliquidated damages.

3. Where the claim against a defendant is for unliquidated damages only, if that defendant makes default in filing his defense, the plaintiff may apply to the Court for judgment and judgment shall be given upon the statement of claim as the Court shall consider the plaintiff entitled, with costs.

Default of defense: claim in detinue.

4. Where the claim against the defendant relates to the detention of goods only, if the defendant makes default in filing his defense the plaintiff may apply to the Court for:

(a) judgment against the defendant for the delivery of the goods; or

(b) judgment for the value of the goods to be assessed by the Court and costs, and in either case, he may proceed with the action against the other defendants, if any.

Default of defense: claim for possession of land.

5. (1) Where the claim against a defendant is for possession of land only, if the defendant makes default in filing his defense, the plaintiff may, stating that he is not claiming any relief in the action of the nature of mortgage action, have judgment entered for possession of the land as against the defendant and costs and proceed with the action against other defendants, if any.

(2) Where there is more than one defendant, judgment entered under sub-rule (1) shall not be enforced against any defendant unless and until judgment for the possession of the land has been entered against all the defendants.

Claim for mesne profits, arrears of damages, etc.

6. Where the plaintiff has endorsed a claim for mesne profits, arrears of rent in respect of the premises claimed or any part of them, damages for breach of contract, or damages, wrong, or injury to the premises claimed upon a writ for possession of land, if the defendant makes default in filing his defense, or if there may be more than one defendant, some or one of the defendants makes such default, the plaintiff may apply for final judgment against the defaulting defendant or defendants and proceed against the other defendants.

Default of defense: mixed claims.

7. Where the plaintiff makes against a defendant two or more of the claims mentioned in rules 3 to 6, if the defendant fails to file a defense, the plaintiff may apply to have judgment entered against

that defendant as he would be entitled to under those rules if that were the only claim made, and proceed with the action against the other defendants, if any.

Default of defense: other claims.

8. Where the plaintiff makes against a defendant(s), a claim of a description not mentioned in rules 3 to 6, if the defendant(s) fails to serve a defense on the plaintiff, the plaintiff may apply to the Court for judgment and on the hearing of the application, the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.

Default of defense: several claims.

9. (1) Where the plaintiff makes such a claim as is mentioned in rule 8 against more than one defendant, if one of the defendants makes default as mentioned in that rule, the plaintiff may:

(a) if his claim against the defendant in default is severable from his claim against the other defendants, apply for judgment against that defendant and proceed with the action against the other defendants; or

(b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial or is set down on motion for judgment against the other defendant.

(2) An application under sub-rule (1) shall be by motion on notice.

Default of third party.

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

Counter-claiming defendant: how treated.

11. A defendant who counter-claims against a plaintiff shall be treated for the purposes of rules 3 to 10 as if he were a plaintiff.

Setting aside default judgment.

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

What amounts to party making default.

13. In this Order, a party makes default in pleading when he fails to file and serve his defense on the opposite party, within the time fixed for doing so by these Rules or by the order of the Court or Judge in Chambers.

ORDER 29
Interpleader

Where relief by interpleader is granted.

1. Relief by way of interpleader may be granted where the person seeking the 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 plaintiffs") making adverse claims:

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

Matter to be proved by application.

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

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

Adverse title of plaintiffs.

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

When application to be made by a defendant.

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

Summons by applicant.

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

Stay of action.

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

Order upon summons.

7. If the plaintiffs appear in pursuance of the summons, the Judge may order either, that any plaintiff 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 plaintiffs be stated and tried and in the latter case may direct which of the plaintiffs is to be plaintiff and which is to be defendant.

Failure of plaintiff to appear or neglect to obey summons.

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

Costs, etc.

9. The Judge may, in any interpleader proceeding make orders as to cost and for such other matters as may be just.

ORDER 30
Withdrawal and Discontinuance

Discontinuance of action by parties.

1. (1) The plaintiff may, at any time before receipt of the defense or after the receipt thereof but before taking any other steps 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 defendants costs of the action or if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn.

(2) A defendant may:

(a) withdraw his defense or any part of it at any time; or

(b) discontinue a counter-claim as against any or all of the parties against whom it is made, at any time not later than 14 days after service on him of a defense to the counter-claim or if the counter-claim is made against two or more parties, of the defense to the counterclaim last served, by serving a notice to that effect on the plaintiff or other party concerned.

Withdrawal by consent.

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

Discontinuance of action, etc. with leave.

3. (1) A party may with leave of the Court discontinue an action or counter-claim or withdraw any particular claim therein, and the Court may order the action or counter-claim to be discontinued or any particular claim therein to be struck out as against any or all the parties on such terms as to costs.

(2) An application for the grant of leave under sub-rule (1) shall be by motion on notice.

Effect of discontinuance.

4. A withdrawal or discontinuance by a party of an action or counterclaim or a particular claim made by him in an action, shall not be a defense to a subsequent action for the same or substantially the same cause of action.

Stay of subsequent action until costs paid.

5. When proceedings have been stayed or struck out upon a plaintiff's withdrawal or discontinuance under this Order, no subsequent claim shall be filed by him on the same or substantially the same facts, until the costs have been paid or such other terms imposed on him by the Court have been fully complied with.

Withdrawal of summons and motion.

6. A party who has taken out a summons or filed a motion in a pending cause or matter may not withdraw it without leave of the Court.

ORDER 31

Payment into and out of Court

Payment into and out of Court

1. (1) Where in any proceeding for debt or damages, a defendant shows an intention to pay money into Court in respect of the proceeding, he shall notify the Registrar, who will thereupon direct him to pay the money into a High Court Central account and he shall file the teller for such payment with the Registrar.

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

(3) Where a defense 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(s) of action in respect of which payment is made and the sum paid in respect of each such cause(s) of action.

(6) The notice shall be in Form 20 with such modifications or variations as circumstances may require. The receipt of the notice shall forthwith be acknowledged in writing by the plaintiff within

Form 20

3 days. The notice may be modified, withdrawn or delivered in an amended form by leave of Court.

(7) Where money is paid into Court with denial of liability, the plaintiff 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 the Court 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 Court.

Plaintiff may take out money. Form 21

2. (1) Where money is paid into Court under rule 1, the plaintiff may within 14 days of the receipt of the notice of the payment into Court, or where more than one payment into Court has been made within 14 days of the receipt of the notice of the last payment into Court, accept the whole sum or anyone or more of the specific sum in satisfaction of the cause(s) of action to which the specified sum(s) relate by giving notice to the defendant in Form 21 with such modifications or variations as circumstances may require and thereupon shall be entitled to receive payment of the accepted sum(s) in satisfaction as aforesaid.

(2) Payment shall be made to the plaintiff or Legal Practitioner representing him in the cause and thereupon proceedings in the action or in respect of the specified cause(s) of action (as the case may be) shall abate.

(3) If the plaintiff accepts money paid into Court in satisfaction of his claim or if he accepts a sum(s) paid in respect of one or more specified cause of action and gives notice that he abandons the other causes of action, he may after 4 days from payment out and unless the Court 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 defamation, the plaintiff accepts money paid into Court, the Court may allow the parties or either of them to make a statement in open Court in terms approved by the Court.

Money remaining in Court.

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

When money is paid by several defendants.

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

Form 22

(2) If the plaintiff elects within 14 days after receipt of notice of payment into Court to accept the sum(s) paid into Court, he shall give notice as in Form 22 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(s) of action shall abate.

(3) The money shall not be paid out except in pursuance of an order of the Court dealing with the whole cause(s) of action.

Form 21

(4) In an action for defamation against several defendants sued jointly, if any defendant pays money into Court, the plaintiff may within 14 days elect to accept the sum paid into Court in satisfaction of his claim against the defendant making the payment and shall give notice to all the defendants as in Form 21 with such modifications or variations as circumstances may require. The plaintiff may tax his costs against the defendant who has made such payment in accordance with rule 2(3) and the action shall thereupon abate as against that defendant.

(5) The plaintiff 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 plaintiff against the defendant or defendants against whom the action is continued.

Payment into Court by defendant in counter-claim.

5. A person made a defendant to a counter claim may pay money into Court in accordance with the foregoing rules of this Order, with necessary modifications.

Persons under legal disability.

6. (1) In any proceeding in which money or damages is or are claimed by or on behalf of a person under legal disability suing either alone or in conjunction with other parties, no settlement, compromise, 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 the Court.

(2) No money (which expression for the purpose of this rule includes damages) in any way recovered, adjudged, ordered, 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 plaintiff,

guardian of the plaintiff or to plaintiff's Legal Practitioner unless the Court shall so direct.

(3) All money so recovered, adjudged, ordered, awarded or agreed to be paid, shall be dealt with as the Court shall direct. The directions thus given may include any general or special directions that the Court 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 plaintiff or to the guardian in respect of moneys paid or expenses incurred or for maintenance or otherwise for or on behalf of or for the benefit of the person under legal disability or otherwise or to the plaintiffs Legal Practitioner in respect of costs or of the difference between party and party and Legal Practitioner and client costs.

7. Every application for payment into, or transfers out of Court, shall be made ex-parte.

ORDER 32

Settlement out of Court and Settlement of Issues

Period for settlement.

1. (1) Where 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.

Formulation of issues or determination.

2. (1) Where a matter is to proceed to trial, the parties shall file settlement of issues disclosing the fact which they admit (admitted facts) and the fact which they do not admit (disputed facts).

(2) Trial shall proceed on the basis of the disputed facts.

ORDER 33

Special cases

Special case by consent of parties.

1. At the stage of settlement of issues, parties may concur in stating the questions of law arising in their case in the form of a special case for the opinion of the Judge. Every such special case shall be divided into paragraphs numbered consecutively and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions. Upon the argument of such case, the Judge and the parties may refer to all the contents

of such documents and the Judge may draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn from them if proved at a trial.

Special case by order before trial.

2. If at the stage of settlement of issues, 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.

Signing of special case by parties.

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

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

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

Agreement as to payment of money and costs.

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

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

Application of order.

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

ORDER 34

Discovery and Inspection of Documents

Discovery by interrogatories.

1. In any cause or matter any party may deliver interrogatories in writing for the examination of any other party or 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.

Form 23.

2. Interrogatories shall be in Form 23 with such modifications or variations as circumstances may require.

Corporations or companies as parties: delivery of interrogatories to same.

3. If any party to a cause or matter is a limited or unlimited company, body corporate, firm, enterprise, friendly society, partnership, 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 other party may deliver interrogatories to any member or officer of such party.

Objection to answering interrogatories.

4. Any objection to answering any one or more of several interrogatories, on the ground that it is or they are scandalous or irrelevant, may be taken in the affidavit in answer before trial.

Affidavit in answer: filing of.

5. Interrogatories shall be answered by affidavit to be filed and served within 7 days or within such other time as the Judge may allow.

Form of affidavit in answer: Form 24

6. An affidavit in answer to interrogatories shall be in Form 24 with such modifications or variations as circumstances may require.

Order to answer or answer further.

7. If any person served with interrogatories 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.

Application for discovery of document

8. (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. The party on whom such a request is served shall answer on oath completely and truthfully within 7 days of the request.

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

Form 25

(3) 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 25 with such modifications or variations as circumstances may require.

Processes filed after settlement of issues.

9. (1) Any process to be filed after the settlement of issues shall be accompanied by copies of documents referred to in the process.

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

Verification of business book.

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

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

(3) The Court may, upon application whether or not an affidavit or 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.

Attachment of party after service on Legal Practitioner.

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

Liability of Legal Practitioner.

12. A Legal Practitioner upon whom an order against any party for interrogatories or discovery or inspection is served under rule 11, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to pay cost of interrogatory without putting in the others or the whole of such answer.

Using answers to interrogatories at trial.

13. In such case the judge may look at all of the answers, and if he is of the opinion that any of them is so connected with those put in, that those put in ought not to be used without them he may direct them to be put in.

Discovery against Sheriff.

14. In any action against or by a Sheriff in respect of any matter connected with the execution of his office, the Court may, on the

application of either party, order that the affidavit to be made in answer either to interrogatories or to any order for discovery, shall be made by the officer actually concerned.

Irrelevant interrogatories.

15. Interrogatories which do not relate to any matter in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

Application of Order to person under legal disability.

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

ORDER 35
Transfer and Consolidation

Re-assignment of cause or matter by the Chief Judge.

1. A cause or matter may at any stage of the proceedings be reassigned 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.

Action by Chief Judge on transfer of cause.

2. If for any reason a Judge hearing a cause or matter and who has taken any steps 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 Court, the Judge shall refer the cause or matter to the Chief Judge for such necessary action as the Chief Judge may think expedient.

Use of evidence of part heard cause or matter.

3. Where a Judge is dead, retires, transferred to another Division, or howsoever ceases to be a Judge of the Court, and having part-heard a cause or matter which is being heard denovo, the evidence already given before the former Judge can be adopted at the rehearing subject to relevant provisions of the Evidence Act.

Order transferring proceedings from District to the High Court.

4. Where a Judge has in exercise of the powers conferred under the District Courts Law and the High Court Law ordered the transfer of any action or matter from a District Court to the High Court or to another District Court, a copy of the order duly certified by the Registrar shall be sent to the Registrar of the District Court who shall forthwith transmit to the High Court or the other District Court, as the case may be, the process and proceedings in every such case and an attested copy of all the entries in the books of that Court relating thereto and thereupon all proceedings in the action, cause or matter shall be taken in the Court to which the transfer is made as if the action, cause or matter had been commenced therein.

Payment of filing fees.

5. (1) On receipt by the Court of the documents mentioned in rule 4, 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 plaintiff, to attend at the Registry and pay the fees for filing the documents. Such payment shall be without prejudice to the question of how costs shall ultimately be borne.

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

Duties of Registrar.

6. (1) The Registrar shall on payment of the prescribed fees, in any case not later than 7 days, file the documents received from the lower Court and make an entry of the filing in the Cause Book.

(2) The Registrar shall then give notice to the parties to attend in person or by their Legal Practitioners before the Court 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 5.

Failure of party to attend.

7. (1) If the plaintiff fails to attend in compliance with a notice given under sub-rule (2) of rule 6, 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 6, the plaintiff may have judgment entered for him with costs or obtain the order prayed for in the transferred proceedings.

Construction of references to plaintiff and defendant in relation to proceedings.

8. The references in this Order to the plaintiff and the defendant shall, in relation to proceedings commenced otherwise than by writ of summons, be construed as references to the applicant or petitioner and the respondent.

Consolidation.

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

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

(3) An order to consolidate may be made where two or more actions are pending between the same plaintiff and the same defendant or between the same plaintiff and different defendants or between different plaintiffs and the same defendant or between different plaintiffs and different defendants:
Provided that where the same plaintiff brings actions against different defendants, they will not be consolidated without the consent of all parties unless the issues to be tried are identical.

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

ORDER 36

Application and Proceedings in Chambers

Representation in Chambers.

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

Business to be disposed of in Chambers.

2. The business which may be disposed of in Chambers by a Judge shall consist of the following matters, in addition to the matters which under any other rule or any enactment may be disposed of in Chambers:

(a) application to serve a writ or other processes out of the jurisdiction;
(b) application for substituted service of a writ or other process;
(c) application to have a case heard during vacation;
(d) application for enlargement of time;
(e) application for a writ of attachment or for a garnishee order;
(f) applications for payment or transfer to any person of any cash or securities standing to his credit in any cause or matter where there has been a judgment or order declaring the rights or where the title depends only upon proof of the identity of the birth, marriage or death of any person;
(g) application as to the guardianship and maintenance or advancement of infants;
(h) any matter relating to the adoption of children;
(i) applications connected with the management of property; and
(j) such other matters of an interlocutory nature as the Judge may think fit to dispose of in Chambers.

Procedure on application in Chambers.

3. The provisions of Order 11 with regard to interlocutory applications by way of motion in Court shall apply mutatis mutandis to applications to a Judge in Chambers.

Keeping of notes.

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

Drawing up of orders made in Chambers.

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

Effect of Order in Chambers.

6. Any order or direction made or given by a Judge in Chambers shall have the same effect as if that order or direction had been made or given in Court.

ORDER 37
Cause Lists

List of causes for hearing.

1. The Registrar shall keep a daily Cause List of all actions which are ready for trial or hearing.

Daily Cause Lists.

2. (1) The Registrar shall post up a daily Cause Lists which shall set out the arrangement of causes before the Judge.

(2) Nothing in this rule shall preclude the Judge from making special arrangements, whenever necessary or convenient, for the disposal of causes and matters whether or not included in the list.

ORDER 38
Proceedings at Trial

Attendance by proxy.

1. When any party who may not be represented by a Legal Practitioner is prevented by a good or sufficient cause from attending Court in person, the Judge may in his discretion permit any person who shall show that he has authority in that behalf to appear for such party.

Non-appearance of both parties.

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

Default of appearance by defendant.

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

Default of appearance by plaintiff.

4. 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 counterclaim, so far as the burden of proof lies upon him.

Re-listing struck out cause and setting aside default Judgment.

5. (1) Where a cause is struck out under rule 2 either party may apply that the cause be re-listed 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.

Application to re-list cause or set aside Judgment.

6. 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.

Adjournment of trial.

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

Time of commencement and termination of trial.

8. The Registrar or other proper officer present at any trial or hearing shall make a note of the time at which the trial or hearing commences and terminates respectively.

Order of proceeding.

9. The order of proceeding at the trial of a cause shall be as prescribed in rules 10 to 17 of this Order.

Burden of proof by party to begin.

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

Documentary evidence.

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

Additional witness.

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

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

Close of case of parties.

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

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

Exhibits during trial, listing of, etc.

14. (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 the exhibits put in by a party (or proved by a witness) are numbered in one consecutive series.

(2) The Registrar shall cause a list of all the exhibits in the action to be made.

(3) The list of exhibits when completed, shall form part of the record of the action.

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

(5) In this rule, a witness by whom an exhibit is proved, includes a witness in the course of whose evidence the exhibit is put in.

Rejected exhibit.

15. (1) Where a document or object is tendered as an exhibit and is rejected by the Court, it shall be marked "Rejected", and shall be retained along with accepted exhibits.

(2) Where more exhibits than one are rejected in the same action, they shall be numbered serially.

(3) If the case goes on appeal, a list of such exhibits shall be transmitted to the appeal Court.

Filing of written address.

16. At the conclusion of evidence, written addresses shall be filed in accordance with Order 40 of these Rules.

Custody of exhibit after trial.

17. (1) An exhibit shall not be released after the trial to the party who has put it in, unless the period during 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 that the:

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

(b) release of the exhibit will not in any way prejudice the 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 Appeal Court.

Office copy of list of exhibits

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

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

Indolent prosecution.

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

Notes of evidence and minutes of proceedings to be kept by Presiding Judge.

20. (1) In every cause or matter the Presiding Judge shall take down:

(a) in writing; or
(b) by electronic recording or device,

all oral evidence given before the Court and minutes of the proceedings and shall sign or authenticate the same at any adjournment of the case and at the conclusion thereof.

(2) No person shall be entitled, as of right to inspection of or to a copy of the records so kept as aforesaid save as may be permitted by the Court upon application.

(3) The record so kept as aforesaid or a copy signed and certified as a true copy by the Registrar shall at all times, without further proof, be admitted as evidence of such proceedings and of the statements made by the witness.

ORDER 39
Procedure Relating to Evidence

Facts and how proved.

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

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

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

Particular facts.

2. (1) A Judge may, at any stage of the proceeding, order or direct that evidence of any particular fact be given at the trial in such manner, including by electronic or other digital means, as may be specified by the order.

(2) The power conferred by sub-rule (1) 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;
(d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of fact; or
(e) by virtual examination of witnesses or other evidence.

Limitation of expert evidence.

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

Limitation on use of documentary evidence.

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

Revocation and variation

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

Admissibility in evidence of office copies of writs, etc.

6. Subject to the provisions of the Evidence Act, office copies of all writs, processes, records, pleadings and or documents filed in the Court, shall be admissible in evidence in all matters to the same extent as the original would be admissible.

Examination of witness abroad.

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

(a) the party obtaining such order shall file in the Registry an undertaking in Form 26, which Form may be varied as

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

(b) such undertaking shall be accompanied by:

i. a request in Form 27 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, and

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

Form of order for examination of a witness abroad. Form 28

8. Where an order is made for the examination of a witness or witnesses before the Nigerian Diplomatic Agent in any foreign country with which a Convention in that behalf has been made, the order shall be in Form 28, and the Form may be modified or varied as may be necessary to meet the circumstances of the particular case in which it is used.

Order for attendance of person to produce document.

9. The Judge may at any stage of any proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order:
Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing.

Disobedience to order for attendance.

10. 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.

Expenses of persons ordered to attend.

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

Contempt of Court.

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

Transmission of authenticated deposition to Registry.

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

Deposition not to be given in evidence without consent or leave of Court.

14. Except where this Order otherwise provides or a Judge so directs, no deposition shall be given in evidence at the hearing 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, in any of which case the depositions duly certified, shall be admissible in evidence saving all just exceptions, without proof of the signature to such certificate.

Administering of Oath by person Appointed to examine witness.

15. Any officer of the Court, or other person directed to take the examination of any witness or 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 foreign country, may administer oaths.

Attendance of witness under subpoena for examination or to produce document.

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

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

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

Special direction as to taking evidence.

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

Evidence in proceedings subsequent to trial.

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

Form of praecipe for a subpoena. Form 29

20. (1) Application for subpoena shall be in Form 29 with such modification as may be required.

(2) The application shall be accompanied with summary statement of fact of the witness evidence or document to be tendered.

(3) No subpoena shall be issued unless all Court fees have been paid (including fee for services) and unless sufficient conduct money is deposited to cover the first day's attendance.

Form of subpoena. Forms 30, 31 and 32

21. A subpoena shall be in one of Forms 30, 31 or 32 with such variations as circumstances may require.

Subpoena for attendance of witness in Chambers.

22. 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.

Correction of error in subpoena.

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

Personal service of subpoena.

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

Duration of subpoena.

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

Action to perpetuate testimony.

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

Examination of witness to perpetuate testimony.

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

Non-perpetuation of testimony.

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

Disallowance of irrelevant questions.

29. The Judge may in all cases disallow any question put in cross-examination which appears to him to be vexatious and not relevant to any matter proper to be inquired into in the action.

ORDER 40
Filing of Written Address

Power to order for written addresses.

1. The Court shall have the power to:

(a) order for the filing of written addresses in any case; and
(b) dispense with the filing of written addresses where the interest of justice so demands.

Written address by the other party.

2. Where the other party calls evidence, he shall within twenty-one days after the close of evidence file a written address.

Written address by the party beginning.

3. Upon being served with the other party's written address, the party beginning shall, within twenty-one days, file his reply address.

Right of reply.

4. The party who files the first address shall:

(a) have a right of reply on points of law only; and
(b) shall file the reply within seven days after service of the other party's address.

Content of written address.

5. (1) A written address shall be printed in black ink on high quality white opaque A4 size paper and set out in sub paragraphs numbered serially and shall contain:

(a) the claim or application on which the address is based;
(b) a brief statement of the facts with reference to the exhibit attached to the application or tendered at the trial;
(c) the issues arising from the evidence for determination; and
(d) a succinct statement or argument on each issue incorporating the purport of the authorities referred to with full citation of each authority.

(2) The Judge may guide counsel on the volume or limit of their address.

(3) Any written address shall be concluded with a numbered summary of the points raised and party's prayer.

(4) A list of all authorities referred to shall be submitted with the address.

(5) Where any unreported Judgment is relied upon, the Certified True Copy shall be submitted along with the written address.

Oral argument.

6. (1) An oral argument of not more than twenty minutes shall be allowed for each party.

(2) Except with the leave of the Court, no oral argument shall be heard on behalf of any party for whom no written address has been filed or in respect of a point not covered by the written address.

Address to be deemed adopted where parties absent.

7. (1) Where a final written address or written address in respect of any application under these rules has been filed and it comes 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 address be deemed adopted if it is satisfied that the parties had notice of the date for adoption.

(2) The Court shall be satisfied that party had notice of the date for adoption if on the previous date last given the party or his counsel was present in Court or was served with hearing notice.

Copies of written address.

8. Each party shall file two copies of his written address in Court and serve a copy on every party.

ORDER 41

Non-suit

Power of Court to non-suit.

1. The Court may, having first given the parties the opportunity of being heard on the point, non-suit the plaintiff in any suit where satisfactory evidence has not been given entitling either the plaintiff or defendant to the judgment of the Court.

ORDER 42

Judgment and Order

Delivery of Judgment in open Court.

1. The Judge shall, after trial, deliver judgment in open Court.

Notice when Judgment reserved.

2. If the Court reserves Judgment after the hearing, parties to the suit shall be served with notice to attend and hear Judgment, unless the Court after the hearing states the day on which Judgment will be delivered, in which case there shall be no further notice.

When parties deemed to have notice of decision.

3. Parties shall be deemed to have notice of the decision or Judgment if pronounced in open Court and all parties served with notice to attend and hear Judgment shall be deemed to have notice of the judgment when pronounced.

Effect of minute of Judgment.

4. (1) A minute of every Judgment, whether final or interlocutory, shall be made and every such minute shall be a decree of the Court and shall have the full force and effect of a formal decree.

(2) A formal decree or order may be drawn up on the application of either party.

Effective date of Judgment.

5. 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.

Date of Judgment directed to be entered.

6. When any Judgment is directed to be entered by any order made on application for Judgment, the Judgment shall be dated as of the day on which the order is made and take effect from that date.

Where set-off allowed.

7. (1) If the defendant has been allowed to set off any demand or counter-claim against the claim of the plaintiff, the Judgment shall state what amount is due to the plaintiff and what amount, if any, is due to the defendant, and shall be for recovery of any sum which appears to be due to either party.

(2) The Judgment of the Court, with respect to any sum awarded to the defendant, shall have the same effect and be subject to the same rules, as if that sum has been claimed by the defendant in a separate suit against the plaintiff.

Judge may direct time for payment or performance and interest.

8. 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 exceeding 10% per annum to be paid upon any judgment.

Payment by installments.

9. (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) The order may be made at the time of giving Judgment or at any time afterwards and may be rescinded upon sufficient cause shown at any time.

Time to be stated for doing any act: memorandum to be endorsed.

10. 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 and there shall be endorsed on the judgment or order a

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

Entry on production of affidavit document.

11. Where under any relevant law, it is provided that any Judgment may be entered upon the filing of any affidavit or production of any document, the Registrar shall submit the affidavit or document produced to the Judge and if it is regular and contains all that is required, the Judge shall signify his approval in writing and judgment shall be entered accordingly.

Judgment by consent.

12. (1) In any cause or matter where the defendant has appeared by 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

(2) Where the defendant has no legal Practitioner, such order shall not be made unless the defendant gives his consent in person in open Court.

Date of order, when drawn.

13. Every order when drawn up shall bear the day and date on which it was made and shall take effect accordingly.

What orders need not be drawn up.

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

(a) the issue of any writ other than a writ of attachment;
(b) the filing of any document; or
(c) 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 the order shall be costs in any cause or matter, shall not be deemed to be a special direction within the meaning of this rule.

Filing of Order. Form 33

15. (1) Orders, other than final Orders, shall not be entered after being drawn up but shall be filed and a note of the filing shall be made in a book kept for the purpose.

(2) Every order so filed shall be deemed to be duly entered and the date of filing shall be deemed the date of entry.

(3) An order shall be in Form 33 with such variations as circumstances require. It shall be sealed and shall be marked with the name of the Judge by whom it is made.

Signing of Judgment

16. The Judge shall before issuing copies of judgment to parties or for transmission of record of appeal, sign same.

ORDER 43

Writ of Execution: General

Definition of Writ of Execution.

1. In this Order, unless the context otherwise requires, "Writ of Execution" includes a writ of Fieri Facias, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs.

When leave to issue any Writ of Execution.

2. (1) A writ of execution to enforce a judgment or order may not be issued without the leave of the Court in the following cases, that is to say, where:

(a) three years or more have elapsed since the date of the Judgment or order;

(b) any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the Judgment or order;

(c) the Judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the Judgment or order and it is sought to issue execution against the assets;

(d) under the Judgment or order any person is entitled to relief subject to the fulfillment of any condition which it is alleged has been fulfilled; or

(e) any goods sought to be seized under a writ of execution are in the hands of a receiver appointed by the Court or a sequestrator.

(2) Sub-rule (1) is without prejudice to any enactment or rule by virtue of which a person is required to obtain the leave of the Court for the issue of a writ of execution or to proceed to execution on or otherwise to the enforcement of a judgment or order.

(3) Where the Court grants leave, whether under this rule or otherwise, for the issue of a writ of execution and writ is not issued within one year after the date of the order granting such leave, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

Leave required for issue of Writ in aid of other writs.

3. A writ of execution in aid of any other writ of execution shall not issue without the leave of the Court.

Application for leave to issue writ.

4. (1) An application for leave to issue a writ of execution may be made by motion ex-parte unless the Court directs it to be made by motion on notice.

(2) Such an application shall be supported by an affidavit:

(a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due at the date of the application;

(b) stating, where the case falls within rule 2(1) (a), the reason for the delay in enforcing the Judgment or order;

(c) stating, where the case falls within rule 2(1)(b), of the change which has taken place in the parties entitled or liable to execution since the date of the judgment or order;

(d) stating, where the case falls within rule 2 (1) (c) or (d), that a demand to satisfy the judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so; and

(e) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.

(3) The judge hearing the application may grant leave in accordance with the application or may order that any issue, question or decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in any action may be tried and in either case, may impose such terms as to costs or otherwise as he thinks just.

Application for leave to issue writ of sequestration.

5. (1) Notwithstanding anything in rules 2 and 4 of this Order, an application for leave to issue a writ of sequestration shall be made to a judge by motion on notice.

(2) Subject to sub-rule 3(1), the notice of motion stating the grounds of the application shall be served personally on the person against whose property it is sought to issue the writ.

(3) An application for leave to issue a writ of sequestration may be made to a Judge in Chambers.

Issue of Writ of Execution.

6. (1) The issue of a writ of execution takes place on its being sealed by the Registrar.

Form 34

(2) A praecipe for the issue of a writ as in Form 34 shall be filed before the writ is issued.

(3) The praecipe shall be signed by the Legal Practitioner of the person entitled to execution or if the person is acting in person, by that person.

(4) No such writ shall be sealed unless at the time of the tender thereof for sealing:

(a) the person tendering it produces;

(i) the judgment or order on which the writ is to be issued to an office copy thereof;

(ii) where the writ may not be issued without the leave of the Court, the order granting the leave or evidence of the granting it;

the Registrar is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.

(5) Every writ of execution shall bear the day and date on which it is issued.

Duration and renewal of Writ of Execution.

7. (1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.

(2) Where a writ has not been wholly executed the Court may by order extend the validity of the writ from time to time for a period of 12 months at any time beginning with the day on which the order is made if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire or such later day, as the Court may allow.

(3) Before a writ the validity of which has been extended under this rule is executed, either the writ shall be sealed with the seal

of the Court showing the date on which the order extending its validity was made, or the applicant for the order shall serve a notice sealed as aforesaid on the sheriff to whom the writ is directed informing him of the making of the order and the date thereof.

(4) The production of a writ of execution or of the notice as is mentioned in sub-rule (3), purporting in either case to be sealed as mentioned in that sub-rule, shall be evidence that the validity of that writ, or as the case may be, of the writ referred to in that notice, has been extended under this rule.

Return of Writ of Execution.

8. (1) Any party at whose instance a writ of execution was issued may serve a notice to the Sheriff to whom the writ was directed requiring, within such time as may be specified in the notice, to endorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.

(2) If a Sheriff on whom such notice is served, fails to comply with it, the party by whom it was served may apply to the Court for an order directing the Sheriff to comply with the notice.

ORDER 44
Garnishee Proceedings

Attachment of debt due to Judgment debtor.

1. (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 a 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 creditor the amount of any debt due or accruing to 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 in the meantime attaching such debt as is mentioned in sub-rule (1) or so much thereof as is sufficient to satisfy the judgment or order.

(3) An order under this rule shall not require a payment which would reduce below N10,000.00 the amount standing in the name of the judgment debtor in an account with a bank or a credit union.

Application for order.

2. 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, stating the amount of the judgment or order, and the amount remaining 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 (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information or the grounds for his belief; and

(d) stating, where the garnishee is a bank or credit union 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.

Service and effect of order to show cause.

3. (1) Unless the Court otherwise directs, an order under rule 1 to show cause shall be served:

(a) on the garnishee personally, at least 10 days before the appointed day for further consideration of the matter; and

(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.

(2) An order under rule 1, shall bind in the hands of garnishee as from the service of the order on him of any debt specified in the order or so much thereof as may be so specified.

Non-appearance or dispute of liability by garnishee.

4. (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.

Dispute on liability of garnishee.

5. 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, if it orders trial before a matter, the need for any consent by the parties.

Claims of third person.

6. If 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 or 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.

Discharge of garnishee.

7. Any payment made by a garnishee in compliance with an order absolute under this Order and any execution levied against him in pursuance of such an order, shall be a valid discharge of liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose is reversed.

ORDER 45

Habeas Corpus Proceedings

Habeas corpus ad subjuciendum for release.

1. Where a person is alleged to be wrongfully detained, an application for an order of Habeas Corpus ad Subjiciendum be made for his release.

Mode of application

2. (1) An application under rule 1 shall be made to the Court, except that in vacation or at any time when no Judge is sitting in Court, it may be made to a Judge sitting otherwise than in Court.

(2) The application may be made ex-parte and shall be accompanied by an affidavit setting out the nature of the detention and the grounds on which the application is made.

Power to issue order of release.

3. (1) A Judge to whom the application is made may make an order forthwith for the release of the person detained.

(2) The Judge may adjourn the ex-parte application so that notice thereof may be given to the person against whom the order is sought.

(3) The Judge may order the person detained to be produced in Court and may discharge him immediately with or without conditions.

Service of notice.

4. (1) The 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.

Copies of affidavit.

5. Every party to the application shall file for service on the other party or parties' copies of the affidavits and written address which he proposes to use at the hearing of the application.

Service of order to release.

6. (1) The order or notice of motion may be served personally or where personal service cannot be effected, by courier on the person against whom the order is made 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 the detention.

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

Statement and Verifying affidavit.

7. Upon service of the order or notice of motion on the person against whom the order is made, 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 and the statement shall be verified by an affidavit.

Bringing up detainee to give evidence, etc.

8. (1) An application for a writ of Habeas corpus respondendum may be made to the Court and shall be supported by an affidavit.

(2) Every application for an order to bring up a detainee, 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 supported by an affidavit.

Form of Writ. Forms 35, 36 and 37

9. A writ of Habeas corpus shall be in Forms 35, 36 and 37, whichever is appropriate.

ORDER 46

Committal for Contempt of Court

Committal for contempt of Court.

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

(2) An order of committal may be made by the Court where contempt of Court:

(a) is committed in connection with;

(i) any proceedings before the Court,
(ii) proceedings in an inferior Court,

(b) is committed 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; or

(c) is committed otherwise than in connection with any proceedings.

Application to Court.

2. (1) An application for an order of committal shall be made to the Court by motion on notice stating the grounds of the application supported by an affidavit and a written address.

(2) The motion on notice and the accompanying documents shall be served personally on the person sought to be committed unless the Court orders otherwise.

Saving for power to commit without application for the purpose.

3. 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.

Provision as to hearing.

4. (1) Subject to sub-rule (2), the Judge hearing an application for an order of committal may sit in chambers 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 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; and

(d) where it appears to the Judge that in the interest of the administration of justice or for reasons of national security the application should be heard in chambers, but except as aforesaid, the application shall be heard in open Court.

(2) If the Judge hearing an application in chambers by virtue of sub rule (1) decides to make an order of committal against the person sought to be committed, he shall in open Court state:

(a) the name of that person;

(b) in general terms, the nature of the contempt of 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 the Judge hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the motion mentioned in rule 2.

(4) If on the hearing of the 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.

Contempt in face of Court: saving for.

5. The foregoing provisions of this Order are without prejudice to the powers of the Court to commit for contempt committed in the face of the Court.

Power to suspend execution of committal order.

6. (1) The Judge by whom an order of committal is made may by order direct that the execution of the order of committal be suspended for such period or on such terms or conditions as he may specify.

(2) Where 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 Judge otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order.

Discharge of person committed.

7. (1) The Judge may, on the application of any person committed to custody for any contempt of Court, discharge him.

(2) Where a person has been committed for failing 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 prejudice 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.

Procedure on disobedience of order of Court.

8. When an order enforceable by commitment 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, 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 custody.

Dated this……. day of…….20

……
REGISTRAR

Saving for other powers

9. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of Court or a person punishable by virtue of any enactment in like manner 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, so far as 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.

Return.

10. Every writ of attachment, issued in a case to which this Order applies, shall be made returnable before the Court. If a return of non est invetus (not found) is made, one or more writs may be issued on the return of the previous writ.

ORDER 47

Application for Judicial Review

Cases appropriate for application for judicial review.

1. (1) An application for:

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

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

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

(2) An application for a declaration or an injunction (not being an injunction mentioned in sub-rule (1) (b) may be made by way of an application for judicial review and 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.

`Joinder of claims for relief.

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

Mode of applying for judicial review.

3. (1) The application may be made by motion on notice or summons, which shall lie without leave, and shall be accompanied with:

(a) a statement setting out the name(s) and description of the applicant(s), the reliefs sought, and the grounds upon which the reliefs are sought;

(b) an affidavit setting out the facts upon which the application is made;

(c) list and copies of documents to be relied upon, if any; and

(d) a written address.

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

(3) The applicant may on being served with the respondent's written address, file and serve an address on points of law within 5 days of being served, and may accompany it with a further affidavit.

(4)The application shall be served on all persons directly affected and where it relates to any proceedings before a Judge and the object of the application is either to compel the Judge or an officer of the Court to do any act in relation to the proceedings or to quash them or any order made therein, the application shall also be served on the Clerk or Registrar of the Court and where an objection to the conduct of the Judge is to be made, on the Judge.

(5) The application shall be entered for hearing within 14 days.

(6) If on the hearing of the application, 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 application may be served on that person.

Amendment of statement and affidavit.

4. (1) The Court may on the hearing of the application, allow the applicant to amend his statement whether by specifying different or additional grounds of relief or otherwise on such terms as it thinks fit and may allow further affidavit to be used if it deals with new matters arising out of an affidavit of any other party to the application.

(2) 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 proposed amendment to every other party.

Claim for damages.

5. On an application for judicial review the Court may award damages to the applicant if:
(a) he has included in the statement in support of his application, a claim for damages; 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.

Interlocutory application.

6. Any interlocutory application in proceedings on an application for judicial review may be made to the judge.

Hearing of application for judicial review.

7. (1) On the hearing of any application, any person who desires to be heard on the application and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with the application.

(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, committal, conviction, inquisition or record unless before the hearing of the application, 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 application.

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

(4) Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the Court, tribunal or authority concerned, with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review, but might have been granted if it has been sought in an action begun by writ by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ.

Saving for persons acting in obedience to mandamus.

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

Consolidation of applications.

9. Where there is more than one application pending against several persons in respect of the same matter and on the same grounds, the Court may order the applications to be consolidated.

ORDER 48
Appeal from Area Courts, District Courts and Magistrate Courts.

Notice of appeal.

1. Every appeal shall be brought by notice of appeal which shall be filed at the Registry of the High Court within 30 days of the decision appealed from and served on all other parties affected by the appeal.

Contents of notice of appeal. Form 38

2. (1) The notice of appeal shall set the reference number of the proceedings in which the decision complained of was given, the names of the parties, the date of the decision, the grounds of appeal, their particulars and the relief sought.

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

(3) The notice of appeal shall give an address within the judicial division in which the lower Court appealed from is situated and to which notices may be sent for the appellant and the notices may be sent to him by registered post.

(4) The notice of appeal shall be in Form 38 and may be varied to suit the circumstances of the case.

Copies of proceedings.

3. (1) The Registrar of the lower Court shall, within 2 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.

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

(3) Where at the expiration of two months after the filing of the Notice of Appeal and following notification by the appellant, the Registrar has failed or neglected to compile the copies of proceedings in accordance with sub-rule (1) above, it shall become mandatory for the appellant to compile the record of all documents and exhibits necessary for his appeal and to transmit same and serve on all parties.

(4) Where any party to the appeal considers that there are additional records which may be necessary in disposing of the appeal, he shall be at liberty within fifteen days of service on him of the copy of proceedings to compile and transmit to the Court such records to be known as Additional Record.

Transmission of copies of proceedings to the High Court.

4. The Registrar of the lower Court shall within 7 days of preparing the copies of the proceedings, send them to the Registrar of the Court in the Judicial Division in which the lower Court is situated.

Respondent to be supplied with a copy of proceedings.

5. When notifying a party of the day fixed for the hearing of the appeal, the Registrar shall send him a copy of the proceedings.

Court's power to enlarge time

6. The time prescribed in rules 1 to 4 may be enlarged at any time by the Court on such terms as may seem fit, after notice has been given to the respondent by the appellant of his application for enlargement of time.

Expiration of time.

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

Constitution of Court hearing Appeal.

8. An appeal from lower Court may be heard by a Judge of the Court.

Written address in appeal.

9. (1) In an appeal, the appellant shall file his written address within 21 days upon receipt of records of proceedings from the Lower Court.

(2) The respondent shall file his written address within 21 days upon receipt of the appellant’s written address.

(3) The appellant may file an appellant’s reply address on point of law within 7 days upon receipt of respondents written address.

(4) The provisions of Order 40 shall apply with relevant modifications as may be necessary.

(5) A respondent who wishes to raise an objection to the hearing of an appeal shall file a notice of preliminary objection containing the grounds for objection while the argument on the objection shall be incorporated in the respondent's written address.

Time and place for hearing.

10. The appeal shall come up for hearing at such time and at such place as the Registrar shall notify the parties.

Non-appearance of appellant.

11. (1) If on the day of hearing or at any date of adjournment of the case the appellant does not appear, the appeal shall be struck out 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 in the discretion of the Court.

Where appellant appears.

12. If on the day of hearing and at any adjournment of the case the appellant appears, the Court shall, whether the respondent appears or not, proceed to the hearing or further hearing and determination of the appeal and shall give judgment according to the merits of the case without regarding any imperfection or defect of form; but if it appears or is proved to the Court that the appellant has not complied with the requirements precedent to the hearing of an appeal under this order, the Court shall strike out the appeal.

Appeal limited to grounds given in Notice.

13. On the hearing, it shall not be competent for the appellant to go into any other reasons for appeal than those set forth in his notice of grounds for appeal, but 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 the 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.

Request to confirm Judgment on other grounds.

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

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

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

Cross appeal.

15. (1) The respondent may cross appeal against any part of the judgment of the lower Court.

(2) The grounds of appeal, together with the particulars shall be filed by the respondent within 14 days of service on him of the appellant's notice of appeal and shall be served on the appellant or his Legal Practitioner before hearing.

Defects in proceedings under appeal.

16. On any appeal from a decision of a lower Court, no objection shall be taken or allowed to any proceeding in such Court for any defect or error which might have been amended by that Court, or to any complaint, summons, warrant, or other process of such Court for any alleged defect therein in substance or in form or for any variance between any complaint or summons and the evidence adduced in support thereof in such Court:

Provided that if any error, defect or variance mentioned in this rule appears to the Court at the hearing of any appeal to be such that the appellant has been thereby deceived or misled, the Court may refer the case back to the lower Court with directions to re-hear and determine it or to make such other order for disposing of the case as justice may require.

Defects in notice of appeal or recognizance.

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

Additional evidence.

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

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

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

Mode of taking evidence.

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

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

(3) Evidence taken in pursuance of rule 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 demeanor 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.

Stay of execution pending appeal.

20. Where any application is made to the Court for a stay of execution, stay of proceedings, or injunction pending appeal, under any judgment or decision appealed from, the application shall be made by notice of motion supported by affidavit setting forth the grounds for the application.

Power of Court to grant or refuse order for stay.

21. (1) The Court may make or refuse an order for a stay of execution or of proceedings or injunction pending appeal.

(2) An appeal shall not operate as a stay of execution under the decision or judgment appealed from, except so far as the lower Court or the Court may order, and no intermediate act or proceeding shall be invalidated except so far as either Court may direct.

(3) 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.

Formal order of Court.

22. 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.

Costs.

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

Security of costs.

24. (1) The Court may, in special circumstances, upon application on notice by motion supported by affidavit, order the appellant to deposit such sum or give such security as may seem fit for the respondent's costs of appeal including the costs incidental to the application.

(2) The order shall limit the time (not exceeding 30 days) within which the deposit of 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 abate.

(3) Where an appeal so abates, the respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such costs, may be stated in the order in anticipation or may be assessed at any time by the Court of its own motion or on application made ex-parte or on notice, as the Court may deem fit.

(4) 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 except where the net proceeds of execution levied on the appellant's goods are insufficient to satisfy the amount payable under the judgment or decision appealed from.

Order of High Court be certified to lower Court.

25. 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.

Enforcement of Judgment.

26. 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 respect as if such decision or judgment had been pronounced by itself.

Enforcement of order.

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

Interpretation.

28. In this Order:

(a) "The Lower Court" means the Court whose Judgment is appealed against and includes District Court, Area Court, an Arbitrator or a Referee:

(b) "Judgment" includes an order or a ruling.

ORDER 49

Stay of Execution Pending Appeal to The Court of Appeal

Stay of execution pending appeal.

1. Where any application is made to the Court for a stay of execution or of proceedings or injunction pending appeal under any judgment or decision appealed from, the 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 and a written address in respect of the application.

Court may grant or refuse order for stay.

2. (1) The Court may make or refuse an order for a stay of execution or of proceedings or injunction pending appeal.

(2) An order for stay may be made subject to such conditions as shall appear just, including the deposit in Court of any money adjudged due to any party in the Judgment appealed from.

Formal order to be drawn.

3. 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 50

Foreclosure and Redemption

Originating Summons for foreclosure.

1. Any mortgagee or mortgagor, whether legal or equitable or any person entitled to or having property subject to a legal or equitable charge or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons, for such relief of the nature or kind following as may by the summons be specified and as the circumstance of the case may require, that is:

(a) payment of money secured by the mortgage or charge;

(b) sale;

(c) foreclosure;

(d) delivery of possession (whether before or after foreclosure) to the mortgagee or person having the property subject to the possession of the property;
(e) redemption;
(f) reconveyance; and
(g) delivery of possession by the mortgagee.

Forms 39, 40 and 41

2. Orders for payment and for possession shall be in Forms, 39, 40 and 41 with such variations as the circumstances of the case may require and the like forms shall be used under corresponding circumstances in actions for the like relief commenced by writ.

Service and execution of Judgment.

3. 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 51

Probate and Administration

Grant of Probate or Administration in General

Petition to be made to Probate Registrar.

1. (1) Subject to rules 44 and 45 of this Order when any person subject to the jurisdiction of the Court dies, all petitions for the granting of Letters of Administration of the estate of the deceased person, with or without a Will attached and all applications on other matters connected therewith shall be made to the Probate Registrar of the Court.

(2) In regard to any such application, the Chief Judge shall have power to request the Court of any Judicial Division to take measures and make such orders as may appear necessary or expedient for the interim preservation of the property of the deceased within such Judicial Division, for the discovery or preservation of the Will of the deceased or for any other purposes connected with the duties of the Court under this Order and every Court shall carry any such request as far as practicable and report to the Chief Judge.

(3) No grant of administration with the Will annexed shall issue within 7 days of the death of the deceased, and no grant of administration (not with the Will annexed) shall issue within 14 days of such death.

Preservation of property.

2. The Court shall, when the circumstances of the case appear so to require, forthwith on the death of a person, or as soon after as may be, appoint and 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.

Unauthorized persons intermeddling with property.

3. If any person other than the person named as executor, administrator, 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 a fine of not less than N20,000.00 as the Court, having regard to the condition of the person so interfering with the property and the other circumstances of the case, may deem fit to impose.

Production of testamentary papers.

4. Any person having in his possession or under his control, any paper or writing of any person deceased, being or purporting to be testamentary, shall forthwith deliver the original to the Probate Registry of the Court. If any person fails to do so within 14 days after having had knowledge of the death of the deceased, he may be liable to a fine of not less than N10,000.00 as the Court having regard to the condition of such person in default and other circumstances of the case may deem fit to impose.

Court may order production.

5. 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 upon an ex-parte application, whether a suit or proceeding respecting probate or administration is pending or not, order him to produce the paper and bring it into Court.

Examination in respect of papers.

6. Where it appears that there are reasonable grounds for believing that any person had knowledge of any paper being or purporting to be testamentary, although it is not shown that the paper is in his possession or under his control, the Court may, upon an ex-parte application, whether a suit or proceedings respecting probate or administration is pending or not, order that he be examined respecting the same in Court or on interrogatories and that he attends for that purpose and after examination that he produces the paper and bring it into Court.

Notice to executors to come and prove.

7. The Court may 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 14 days after notice, come in and prove or renounce accordingly.

Liability of executor neglecting to apply for probate.

8. 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 3 months after the death or after the termination of any suit or dispute respecting probate or administration, he may, independently of any other liability, be deemed to be in contempt of Court, and shall be liable to such fine not less than N20,000.00 as the Court deems fit to impose.

Identity.

9. 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, with regard to the identity of the deceased or of the applicant, or with regard to the relationship of the applicant to the deceased, or with regard to any person or persons in existence with a right equal or prior to that of the applicant or with 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.

Due notice to other interested persons before grant

10. 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 to be heard with 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.

Value of property.

11. Every applicant for a grant of Letters of Administration shall file in the Court a true declaration of all the personal property of the deceased and the value thereof:

Provided that for the purpose of the fees payable on Letters of administration, the value of the property in respect of which the grant is made shall be deemed not to include:

(a) any gratuity payable by the Government of the Federation of Nigeria, or of a State or Local Government to the estate of any person formerly employed by either of such Governments or by a Statutory Corporation; and

(b) any sum of money payable to an estate from a provident or pension fund established under the provisions of any applicable law.

Court's satisfaction before issue of Letters of Administration.

12. All inquiries the Court sees fit to institute shall be answered to the satisfaction of the Court before issue of Letters of Administration, but the Court shall afford as great a facility for the obtaining of Letters of Administration as is consistent with due regard to the prevention of error and fraud.

Forms of suits.

13. Suits respecting administration shall be instituted and carried on as nearly as may be in the manner and subject to the same rules of procedure as suits in respect of ordinary claims.

A. Custody of Will

Deposit of Will.

14. Any person may deposit his Will for safe custody in the Probate Registry, sealed up under his own seal and the seal of the Court.

Custody of will of which probate is given.

15. 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 to secure its due preservation and convenient inspection. A copy of every such Will and of the probate or administration shall be preserved in the Registry.

Will not to be given out without order of Court.

16. No original Will shall be given 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.

B. Probate or Administration with Will annexed.

Examination of Will as to its due execution.

17. (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 subscribed by two witnesses according to the applicable law and shall not proceed further if the Will does not appear to be so signed and subscribed.

(2) If the Will appears to be so signed and subscribed, the 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.

Evidence as to due execution of Will.

18. (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 probate, require an affidavit as to due execution from one or more of the attesting witnesses or if no attesting witness is conveniently available, from any other person who was present at the time the Will was executed.

(2) If no affidavit can be obtained in accordance with sub-rule (1) the Registrar may, if he deems fit having regard to the desirability of protecting the interest of any person who may be prejudiced by the Will, accept evidence on affidavit from any person he may deem fit to show that the signature on the Will is the handwriting of the deceased or 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 is:

(a) satisfied that the Will was not duly executed, he shall refuse probate and shall mark the Will accordingly; or

(b) doubtful whether the Will was duly executed, he may refer the matter to the Court by motion.

Evidence on failure of attesting witnesses

19. If both the subscribing witnesses are dead or if from other circumstances such an affidavit cannot be obtained from either of them, resort for such an affidavit shall be had to other persons (if any) present at the execution of the Will, but if no such affidavit can be obtained, proof shall be required for that fact and of the handwriting of the deceased and of the subscribing witnesses and also of any circumstance raising a presumption in favour of the due execution of the Will.

Evidence as to terms, conditions and date of execution of Will.

20. (1) Where in a Will, there is any obliteration, interlineation or other alteration which is not in the manner prescribed by law or by re-execution of the Will or by the execution of a codicil, the Registrar shall require evidence to show whether the alteration was present at the time the Will was executed and shall give directions as to the form in which the Will is to be proved:

Provided that this sub-rule shall not apply to any alteration which appears to the Registrar to be of no practical importance.

(2) If from any mark on the Will, it appears to the Registrar that some other documents have 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 with regard to the attaching or incorporation of the document as he may deem fit.

(3) Where there is doubt as to the date on which a Will was executed, the Registrar may require such evidence as he deems necessary to establish the date.

Attempted revocation of a Will

21. Any appearance of attempted revocation of a Will by burning, tearing or otherwise and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the Registrar's satisfaction.

Affidavit as to due execution, term, etc. of Will

22. The Registrar may require an affidavit from any person he may deem fit for the purpose of satisfying himself as to any of the matters referred to in rules 18, 20 and 21. In any such affidavit sworn by an attesting witness or other person present at the time of the execution of a Will, the deponent shall depose to the manner in which the Will was executed.

Wills of persons in military service and seamen.

23. If it appears to the Registrar that there is prima facie evidence that a Will is one to which the Wills Law applies, the Will may be admitted to probate if the Registrar is satisfied that it was made by the testator in accordance with the provisions of that section or enactment as the case may be.

Evidence of foreign law.

24. Where evidence of foreign law is required on any application for a grant, the Registrar may accept an affidavit from any person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably qualified to give expert evidence of the law in question.

Determination of person entitled to grant of probate

25. Where the deceased died after the commencement of this Order, the person or persons entitled to a grant of probate or administration with the Will annexed, shall be determined in accordance with the following order of priority:

(a) the executor;

(b) any residuary legatee or devisee holding in trust for any other person;

(c) any residuary legatee or devisee for life;

(d) the ultimate residuary legatee or devisee, including one entitled on the happening of any contingency or where the residue is 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 persons, provided that:

(i) unless the Registrar otherwise directs, a residuary legatee or devisee whose legacy or devise is vested in interest shall be preferred to one entitled on the happening of a contingency; and

(ii) where the residue is not in terms wholly disposed of, the Registrar may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made (subject to rule 68) to any legatee or devisee entitled to or to a share in the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the Will,

(e) any specific legatee or devisee or any creditor or subject to sub-rule (3) of rule 59, the personal representative of any such person or where the estate is not wholly disposed of by Will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an acceleration to it; and

(f) any specific legatee or the happening of any contingency, or any person having no interest under the Will who would have been entitled to a grant if the deceased had died wholly intestate.

Joinder of administrator.

26. In the absence of a proving executor, an application to join with a person entitled to a grant of administration with the Will attached:

(a) a person in a lower degree shall, in default of renunciation by all persons entitled in priority to the latter, be made to the Registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Registrar may require;

(b) a person having no right to it shall be made to the Registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Registrar may require,

Provided that there may without any such application be joined with a person entitled to administration with the Will attached:

(i) on the renunciation of all other persons entitled to join in the grant, any kin of the deceased having no beneficial interest in the estate;

(ii) unless the Registrar otherwise directs, any person whom the guardian of a minor may nominate for the purpose; and
(iii) a trust corporation.

Will of blind or illiterate testator.

27. Where the testator was blind or illiterate, the Court shall not grant administration with the Will annexed, unless the Court is first satisfied by proof or by what appears on the face of the Will that the Will was read over to the deceased before its execution or that he had at that time knowledge of its contents.

Interlineation, erasure, obliteration.

28. (1) The Court on being satisfied, that the Will was duly executed, shall carefully inspect it to see where there are any interlineations, alterations, erasures, or obliterations appearing in it and requiring to be accounted.

(2) Interlineations, alterations, erasures and obliterations are invalid unless they existed in the Will at the time of its execution or unless if made afterwards, they have been executed and attested in the mode required by the said enactments or unless they have been made valid by the re-execution of the Will or by the subsequent execution of some codicil thereto.

(3) Where interlineations, alterations, erasures or obliterations appear in the Will (unless duly executed or recited in or otherwise identified by the attestation clause), an affidavit in proof of their having existed in the Will before its execution shall be filed.

(4) 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.

Document referred to in a Will or annexed or attached.

29. (1) Where a Will contains a reference to any document of such a nature as to raise the question whether it ought or ought not to form a constituent part of the Will, the Court shall require the production of the document, with a view to ascertaining whether or not it is entitled to probate and if it is not produced, a satisfactory account of its non-production shall be proved. A document cannot form part of a Will unless it was in existence at the time when the Will was executed.

(2) If there are vestiges of sealing wax or wafers, or other marks on the Will leading to the inference that some document have been at some time annexed or attached thereto, a satisfactory

account of them shall be required and if it is not produced, a satisfactory account of its non-production shall be proved.

Executor dying without proving or not appearing.

30. Where a person appointed executor in a Will survives the testator but either dies without having taken probate or having been called on by the Court to take probate and does not appear, his right in respect of the executorship wholly ceases and without further renunciation, the representation to the testator and the administration of his property may go and be committed as if that person had not been appointed executor.

Marking of wills.

31. Every Will in respect of which an application for a grant is made shall be marked by the signatures of the applicant and the person before whom the oath is sworn and shall be exhibited to any affidavit which may be required under this Order as to the validity, terms, condition or date of execution of the Will:
Provided that where the Registrar is satisfied that compliance with this rule might result in the loss of the Will, he may allow a photocopy to be marked or exhibited in lieu of the original document.

Viva voce examination of person making affidavit.

32. 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 content of his affidavit. The examination may take place before any affidavit has been sworn or prepared if the Court deems fit.

C. Administration (not with Will)

Letters of Administration.

33. (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.

Administration bond.

34. (1) The person to whom administration is granted shall give a bond with two or more responsible sureties to the satisfaction of the Probate Registrar. The bond shall affirm that the administration shall be duly conditioned to collect, getting in and administering the personal property of the deceased.

(2) The Court may, if it deems fit, take one surety only where the gross value of the estate does not exceed N500,000.00 or where a corporation is proposed as a surety.

(3) The bond shall be in form of a penalty, which is twice the sum value of the estate of the deceased unless the Court deems it expedient to reduce the amount

(4) The Court may also in any case direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the Court deems reasonable.

Guarantee Form

35. (1) The Registrar shall not require a guarantee as a condition of making a grant where it is proposed to make it:

(a) by virtue of rule 25 (e) to a creditor or the personal representative of a creditor or to a person who has not immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;
(b) under rule 61 to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate be entitled to his estate;
(c) under rule 63 to the attorney of a person entitled to a grant;
(d) under rule 64 for the use and benefit of a minor;
(e) under rule 66 for use and benefit of a person who by reason of mental or physical incapacity is incapable of managing his affairs;
(f) to an applicant who appears to the Registrar to be resident elsewhere than in the State; or
(g) except where the Registrar considers that there are special circumstances making it desirable to require a guarantee.

(2) Notwithstanding that it is proposed to make a grant as aforesaid, a guarantee shall not be required, except in special circumstances, on an application for administration where the applicant or one of the applicants is the Administrator-General or a trust corporation.

(3) Every guarantee entered into by a surety for the purpose of the Order, shall be in Form 42 with such variations as circumstances may require.

Form 42

(4) Except where the surety is a corporation, the signature of the surety on every such guarantee, shall be attested by an authorized officer, Commissioner for Oaths or other person authorized by law to administer an oath.

(5) Unless the Registrar otherwise directs:

(a) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed N500,000.00 or a corporation is a proposed surety, and in those cases, one will suffice;
(b) no person shall be accepted as a surety unless he is resident in the State;
(c) no officer of the judiciary shall be a surety;
(d) the limit of the liability of the surety or sureties under a guarantee shall be the gross amount of the estate as sworn on the application for the grant;
(e) every surety other than a corporation, shall justify his eligibility.

(6) Where the proposed surety is a corporation, there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed the guarantee in the manner prescribed by its Constitution and containing sufficient information as to the financial position of the corporation to satisfy the Registrar that its assets are sufficient to satisfy all claims which may be made against it under any guarantee which it has given or is likely to give.

Assignment of bond.

36. The Probate Registrar may, on being satisfied that the condition of the bond has been broken, assign to some person and that person may thereupon sue on the bond in his own name as if it has 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.

D. Administration of Property.

Administration: summons.

37. Any person claiming to be a creditor, legatee, the next of kin or one of the next of kin of a deceased, may apply for and obtain summons from the Court, requiring the executor or administrator (as the case may be), of the deceased to attend Court and show cause why an order for the administration of the property of the deceased should not be made.

Order for administration.

38. (1) On proof of service of the summons or 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 deems 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 in respect of

the carriage or execution of it and in the case of applications for such an order by two or more different persons or classes of person, to grant the same to such one or more of the plaintiffs or classes of plaintiffs as the Court deems fit.

(3) If the Court deems fit, the carriage of the order may subsequently be given to such person and on such terms as the Court may direct.

Order relating to property.

39. On making such an order or at any time afterwards the Court may, if it deems fit, make any further or other order which may appear requisite to secure the proper collection, recovery for safe-keeping and disposal of the property or any part thereof.

Grant of administration to officer.

40. In a case of intestacy, where the special circumstances of the case appear to the Court to require, the Court may if it deems 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.

Officer to act under the direction of Court.

41. (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 3 months.

Appointment of person as Administrator by Court.

42. Where a person has died intestate as to his personal estate or leaving a Will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate or where the executor shall, at the time of the death of such person, be resident out of the jurisdiction and it shall appear to the Court to be necessary or convenient in any such cases to appoint some person as administrator of the estate of the deceased or of any part thereof, the Court may appoint such person as it shall deem fit to be such administrator upon his giving such security, if any as the Court shall direct and every such administration may be limited as the Court shall deem fit.

Remuneration of Administrator.

43. 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 deem fit not exceeding 10% on the amount of the realized property or when not converted into money, on the value of the property duly administered and accounted for him:

Provided that where the Court shall be satisfied that by reason of exceptional circumstances the administration of the property has required an extraordinary amount of labour to be bestowed on it, the Court may allow in respect of such property a higher rate of remuneration.

Securing and collection of estate.

44. Where any citizen of any foreign country dies within the jurisdiction without leaving within the jurisdiction a widower, widow or next of kin, the Probate Registrar shall collect and secure all moneys and other property belonging to the deceased and shall then inform the nearest Consular Officer of such country of the death and transmit to him a list of the money and property of the deceased.

Application by Consular, Officer or person authorized by him to administer estate.

45. 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 deem fit and vary such order when and so often as it is expedient.

E. Administration Generally

Accounts to be filed.

46. (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 file in Court the accounts of his administration every 6 months from the date of the grant or the appointment until 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 a penalty of N400.00 for every day of default. Every such fine, shall on non- payment be enforceable by distress, and failing sufficient distress, by detention for a term not exceeding 6 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 shall require the person filing the account to remedy such defects as there may be within such time as the Court may deem reasonable for the purpose and on failure to remedy such defects is deemed to have failed to file an account within the

meaning of this rule and proceedings may be taken against such person accordingly.

(4) It shall be 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.

(5) The Court may, on the motion of any party interested, or suo motu, summon any executor or administrator failing as aforesaid, to show cause why he should not be punished.

(6) The Court may for good cause shown extend the time for such filing of accounts.

(7) Any executor or administrator who has been granted an extension of time to file such accounts, and who fails within such extended time to file such accounts, shall be liable to the penalty set out in sub-rule (2) above and the procedure for bringing him before the Court shall be as set out in same sub-rule (2).

(8) Such accounts shall be open to the inspection of all persons satisfying the Probate Registrar that they are interested in the administration.
(9) In this rule, the word "accounts" shall mean and include an inventory, an account of the administration, the vouchers in the hands of the executor or administrator relating thereto and affidavit in verification.

Refusal of application to review.

47. The Court may refuse to entertain any application under rule 86 (1) if it considers that there has been unreasonable delay by the applicant in making the application.

Grant to be signed by Probate Registrar.

48. The grant of Letters of Administration under this Order shall be signed by the Probate Registrar on behalf of the Court.

II: Probate (Non-Contentious) Procedure

Application of some rules.

49. In this Part, rules 1, 4, 5, 6, 7, 8, 11, 12, 14, 15, 16, 17, 19, 26, 27, 28, 29, 30, 31, 71(1) and 72(1) or (4) of this Order shall also apply.

Application for grant through Legal Practitioner.

50. Every Legal Practitioner through whom an application for a grant is made shall give the address of his place of business within the jurisdiction.

Personal application.

51. (1) An applicant for a grant may apply in person.

(2) A Personal applicant may not apply through an agent, whether paid or unpaid and may not be represented by any person acting or appearing to act as his adviser.

(3) No personal application shall be received or proceeded with if:

(a) it becomes necessary to bring the matter before the Court by motion or by action;

(b) an application has already been made by a Legal Practitioner on behalf of the applicant and has not been withdrawn; or

(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.

Duty of Registrar on receiving application for grant.

52. (1) The Registrar shall not allow any grant to issue until all inquiries which he may deem fit to make have been answered to his satisfaction.

(2) The Registrar may require proof of the identity of the deceased or of the applicant for the grant beyond those contained in the oath.

Oaths in support of grant.

53. (1) Every application for a grant shall be supported by an oath in the form applicable to the circumstances of the case, which shall be contained in an affidavit sworn by the applicant and by such other papers as the Registrar may require.

(2) Unless otherwise directed by the Registrar, the oath shall state where the deceased was domiciled at the time of death.

Grant in additional name.

54. Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the oath the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name, or as to any other reason that there may be for the inclusion of the other name in the grant.

Engrossment for purposes of records.

55. (1) Where the Registrar considers that in any particular case a photocopy of the original Will would not be satisfactory for purposes of record, he may require that an engrossment suitable for photo reproduction be lodged.

(2) Where a Will contains alterations, which are not admissible to proof, there shall be lodged an engrossment of the Will in the form in which it is to be proved.

(3) 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) 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.

Grant to attesting witnesses, etc.

56. Where a gift to any person fails by reason of the fact that he is an attesting witness or the spouse of an attesting witness, such person shall not have any right to a grant as beneficiary named in the Will, without prejudice to his right to grant in any other capacity.

Right of assignee to a grant.

57. (1) Where all the persons entitled to the estate of the deceased under a Will have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace in order of priority for a grant of probate the assignor or if there are two or more assignors, the assignors with the highest priority, in the absence of a proving executor.

(2) Where there are two or more assignees, probate may be granted with the consent of the others to anyone or more (not exceeding four) of them.

(3) In any case where probate is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the Registry.

Additional personal representative.

58. (1) An application to add a personal representative shall be made to the Registrar and shall be supported by an affidavit by the personal applicant, the consent of 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 grant of the addition of a further personal representative or he may impound or revoke the grant or make such order as the circumstances of the case may require.

Grants where two or more persons entitled to same degree.

59. (1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same degree.

(2) A dispute between persons entitled to a grant in the same degree shall be brought by application before the Registrar.

(3) If an application under this rule is brought before the Registrar, he shall not allow any grant to be sealed until such application is finally disposed of.

(4) Unless the Registrar otherwise directs, 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 persons not under disability in preference to an infant entitled in the same degree.

Prevention of grant.

60. (1) Nothing in rules 57 or 62 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 sub-rule (1) shall not apply where the deceased died domiciled outside the State, except in a case to which the provision of rule 63 applies.

Grant to person having beneficial interest.

61. When the beneficial interest in the whole estate of the decease 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 has

died intestate, administration may be granted to such person or one or more (not exceeding four) of such persons:

Provided that a surviving spouse shall not be regarded as person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate, whatever its value may be.

Grant where deceased was domiciled outside the State.

62. Where the deceased was domiciled outside the State, the Registrar may order that a grant should issue:

(a) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the deceased died domiciled;

(b) to the person entitled to administer the estate by the law of the place where the deceased died domiciled;

(c) if there is no such person as is mentioned in paragraph (a) or (b) or if in the opinion of the Registrar circumstances so require, to such person as the Registrar may direct;

(d) if a grant required to be made to, or if the Registrar in his discretion considers that a grant should be made to, not less than two administrators, to such person as the Registrar may direct jointly with any such person as is mentioned in paragraph (a) or (b) or with any other person:

Provided that without any such order as aforesaid:

(a) probate of any Will which is admissible to proof may be granted, if:

(i) the Will is in English or in the local vernacular, to the executor named therein,

(ii) the Will, described the duties of a named person in terms sufficient to constitute him executor according to the tenor of the Will, to that person,

(b) where the whole of the estate in the State consists of immovable property, a grant limited thereto may be made in accordance with the law that would have been applicable if the deceased had died domiciled in the State.

Grant to attorney.

63. (1) Where a person entitled to a grant resides outside the State, a grant may be made to his lawful attorney for his use and benefit, until such person shall obtain a grant or in such other way as the Registrar may direct:

Provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any.

(2) Where the Registrar is satisfied by affidavit, that it is desirable for a grant to be made to the lawful attorney of a person entitled to a grant and resident in the State, he may direct the grant to be made to the attorney for the use and benefit of such person, until such person obtains a grant or in such other way as the Registrar may direct.

Grant on behalf of minors.

64. (1) Where the person to whom a grant would otherwise be made is a minor, a grant for his use and benefit until he attains the age of 18 years shall, subject to sub-rules (3) and (5) be granted:

(a) to both parents of the minor jointly or to any guardian appointed by a Court of competent jurisdiction; or

(b) if there is no such guardian able and willing to act and the minor has attained the age of 16 years to any next of kin nominated by the minor or where the minor is a married woman to any such next of kin or to her spouse if nominated by her.

(2) Any person nominated under sub-rule (1) (b) may represent any other minor whose next of kin he is, being a minor below the age of 16 years entitled in the same degree as the minor who made the nomination.

(3) Notwithstanding anything in this rule, administration for the use and benefit of the minor until he attains the age of 18 years may be granted to any person assigned as guardian by order of a Court in default of or jointly with or to the exclusion of any such person as is mentioned in sub-rule (1) and such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and if required by the Court, an affidavit of fitness sworn by a responsible person.

(4) Where a grant is required to be made to not less than two persons and there is only one person competent and willing to take a grant under the foregoing provisions of this rule, a grant may, unless the Registrar otherwise directs, be made to such person jointly with any other person nominated by him as a fit and proper person to take the grant.

(5) Where a minor who is sole executor has no interest in the residuary estate of the deceased, administration with the Will attached for the use and benefit of the minor until he attains the age of 18 years shall, unless the Registrar otherwise directs, be granted to the person entitled to the residuary estate.

(6) A minor's right to administration may be renounced only by a person assigned as guardian under sub-rule (3) and authorized to renounce by the Registrar.

Grant where minor is co-executor.

65. (1) Where one of several executors is a minor, probate may be granted to the adult executors, with power reserved for making the like grant to the minor on his attaining the age of 18 years and administration for the use and benefit of the minor until he attains the age 18 years may be granted under rule 64 if and only if the adult executors renounce or, on being cited to accept or refuse a grant, fail to make an effective application.

(2) A minor executor's right to probate on attaining the age of 18 years shall not be renounced by any person on his behalf.

Grant in case of mental or physical incapacity.

66. (1) Where the Registrar is satisfied that a person entitled to grant is by reason of mental or physical infirmity incapable of managing his affairs, a grant for his use and benefit during his incapacity may be made:

(a) in the case of mental incapacity, to the person authorized by the Court to apply for the grant;

(b) Where there is no person so authorized or in the case of physical incapacity, if:

(i) the person incapable is entitled as executor and has no interest in the residuary estate of the deceased, to the person entitled to such residuary estate;

(ii) the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate, or to such other person as the Registrar may by order direct.

(2) Unless the Registrar otherwise directs, no grant shall be made under this rule unless all persons entitled in the same degree as the person incapable have been considered and excluded.

(3) In the case of mental incapacity, notice of intended application for a grant under this rule shall, unless the Registrar

otherwise directs, be given to the person alleged to be so incapable.

Renunciation of probate and administration.

67. (1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to a grant of administration in some other capacity unless he expressly renounces such right.

(2) Unless the Registrar otherwise directs, no person who has renounced a grant in one capacity may obtain a grant in some other capacity.

(3) A renunciation of probate or administration may be retracted at any time on the order of the Registrar:

Provided that only in exceptional circumstances may leave be given to an executor to retract a renunciation of probate after a grant has been made to such other person entitled in a lower degree.

Notice to the state of intended application for grant.

68. 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 of the State and the Registrar may direct that no grant shall issue within a specified time after the notice has been given.

Resealing:

69. (1) An application for the resealing of probate or administration with the Will attached granted by Court outside 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 Affidavit shall be lodged as if the applications were one for a grant in the State;

(b) the application shall be advertised in such manner as the Registrar may direct and shall be supported by an oath sworn by the person making the application.

(3) On an application for the resealing of such a grant:

(a) The Registrar shall not require sureties except where it appears to him that the grant is made to a person or for a purpose mentioned in paragraphs (a) to (f) of rule 35(1) or except where he considers that there are special circumstances making it desirable to require sureties;

(b) Rule 35(2), (4), (5), (6) and 51(4) shall apply with any necessary modifications; and

Form 43

(c) a guarantee entered into by a surety shall be in Form 43 with such variations as circumstances may require.

(4) Except by leave of the Registrar, no grant shall be resealed unless it was made to such a person as is mentioned in paragraph (a) or (b) of rule 62 or to a person to whom a grant could be made under a proviso to that rule.

(5) No limited or temporary grant shall be resealed except by leave of the Registrar.

(6) Every grant lodged for resealing shall include a copy of any Will to which the grant relates or shall be accompanied by a copy certified.

Amendment and revocation of grant.

70. If the Registrar is satisfied that a grant shall be amended or revoked, he may make an order accordingly:
Provided that except in special circumstances no grant shall be amended or revoked under this rule except on the application or with the consent of the person to whom the grant was made.

Notice to prohibit evocation of grant.

71. (1) A notice to prohibit a grant of administration may be filed in Court.

(2) Any person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat in the Registry.

Form 44

(3) Any person who wishes to enter a caveat (in this rule called "the Caveator") may do so by completing Form 44 in the appropriate book at the Registry and obtaining an acknowledgement of entry from the proper officer or by sending through the post at his own risk a notice in Form 44 to the Registry in which he wishes the caveat to be entered.

(4) Where the caveat is entered by a legal Practitioner on behalf of the Caveator, the name of the Caveator shall be stated in Form 44.

(5) Except as otherwise provided by this rule, a caveat shall remain in force for 3 months from the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveator caveats.

(6) The Registrar shall maintain an index of caveats entered in the Registry and on receiving an application for a grant in the Registry, he shall cause the index to be searched and shall notify the applicant in the event of any caveat having been

entered against the sealing of a grant for which application has been made.

(7) The Registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect thereof:
Provided that no caveat shall operate in the sealing of a grant on the day on which caveat is entered.

Form 45

(8) A warning in Form 45 may issue from the Registry against a Caveator at the instance of any person interested ("the person warning") which shall state his interest and if he claims under a Will, the date of the Will and shall require the Caveator to give particulars of any contrary interest which he may have in the estate of the deceased, and every warning or copy thereof shall be served on the Caveator.

Form 46

(9) A Caveator having an interest contrary to that of the person warning may, within 8 days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under sub-rule (12), enter an appearance in the Registry by filing Form 46 and making entry in the appropriate book, and shall forthwith thereafter serve on the person warning a copy of Form 46 sealed with the seal of the Registry.

(10) A Caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the Registry and the caveat shall then cease to have effect and if he has been warned, the Caveator shall forthwith give notice of withdrawal of the caveat to the person warning.

(11) A Caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to that person may, within 8 days of service of the warning upon him inclusive of the day of such service or at any time thereafter if no affidavit has been filed under sub-rule (12), issue and serve a summons for directions, which shall be returnable before the Registrar.

(12) If the time limited for appearance has expired and the Caveator has not entered an appearance, the person warning may file in the Registry an affidavit showing that the warning was duly served and that he has not received a summons for directions under sub-rule (2) and thereupon the caveat shall cease to have effect.

(13) Upon commencement of a probate action, the Probate Registrar shall, if a caveat is in force (other than a caveat entered by the plaintiff) give to the Caveator notice of the commencement of the action and, upon the subsequent entry of a caveat at any time when the action is pending, shall likewise notify the Caveator of the existence of the action.

(14) Unless the Registrar otherwise directs:

(a) any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to sub-rule (10), 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 (13), shall cease to have effect

(15) Except with the leave of the Registrar, no further caveat may be entered by or on behalf of any Caveator whose caveat has ceased to have effect under sub-rule (12) or (14).

Citation.

72. (1) Notice in the nature of citation shall be given in such manner as the Court directs.

(2) Every citation shall be settled by the Registrar before being issued.

(3) Every averment in a citation and such other information as the Registrar may require shall be verified by an affidavit sworn to by the person issuing the citation (in this Order called "The Citor") or if there are two or more Citors, by one of them:

Provided that the Registrar may in special circumstances accept an affidavit sworn to by the Citor's Legal Practitioner.

(4) The Citor shall enter a caveat before issuing a citation.

(5) Every citation shall be served personally on the person cited unless the Registrar, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

(6) 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.

Form 46

(7) A person who has been cited to appear may, within 8 days of service of the citation upon him inclusive of the day of such service, or at any time thereafter if no application has been made by the Citor under sub-rule (5) of rule 35 or sub-rule (2) of rule 69, enter an appearance in the Registry by filing Form 46 and making an entry in the appropriate book, and shall thereafter serve on the Citor a copy of Form 46 sealed with the seal of the Registry.

Citation to accept or refuse a grant.

73. (1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the Will or the executors of the last survivor of deceased executors who have so proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant, may be issued at the instance of any person interested in the estate at any time after the expiration of 6 months from the death of the deceased:
Provided that no citation to take a grant shall issue while proceedings as to the validity of the Will are pending.

(4) A person cited who is willing to accept or take a grant may apply ex-parte to the Court 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, in the case of a citation under:

(a) sub-rule (1), apply to the Court for an order for a grant to himself;

(b) sub-rule (2), 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) sub-rule (3), apply to the Court by summons (which shall be served on the person cited) for an order requiring such person to take a grant within a specified time or for a grant to himself or some other person specified in the summons.

(6) An application under sub-rule (5) shall be supported by an affidavit showing that the citation was 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) or has failed to prosecute his application with reasonable diligence, the Citor may, in the case of a citation under:

(a) sub-rule (1), apply by summons to the Registrar for an order for a grant to himself;

(b) sub-rule (2), 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 mentioned in paragraph (b) of sub-rule (5);

(c) sub-rule (3), apply by summons to the Registrar for an order requiring the person cited to take a grant within a specific time, for a grant to himself, or some other person specified in the summons. The summons shall be served on the person cited in each case.

Citation to propound a Will.

74. (1) A citation to propound a Will shall be directed to the executors named in the Will and to all persons interested thereunder and may be issued at the instance of any Citor having any interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired the Citor may, in the case:

(a) where no person cited has entered an appearance, apply to the Registrar for an order for a grant as if the Will were invalid;
(b) of a citation under sub-rule (2) of rule 73, apply by summons to the Registrar for an order striking out the appearance and for endorsement on the grant of such a note as mentioned in paragraph (b) of sub-rule (5) of rule 73, of this Order;
(c) of a citation under sub-rule (3) of rule 73, 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 persons specified in the summons, and the summons shall be served on the persons cited in each case.

Address for service.

75. All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

Application for order to bring or to attend for examination.

76. (1) An application for an order requiring a person to bring in a Will or to attend for examination may, unless a probate action has been commenced, be made to the Court by summons, which shall be served on every such person as aforesaid.

(2) An application for the issue by the Court of a subpoena to bring in a Will shall be supported by an affidavit setting out the grounds for the application and if any person served with the subpoena denies that the Will is in his possession or control, he may file an affidavit to that effect.

Limited grant.

77. An application for an order for a grant limited to part of an estate may be made to the Court and shall be supported by an affidavit stating:

(a) whether the application is made in respect of the real estate only or any part thereof or real estate together with personal estate or in respect of a trust estate only;
(b) whether the estate of the deceased is known to be insolvent;
(c) that the persons entitled to a grant in respect of the whole estate in priority to the applicant have been considered and excluded.

Grant ad colligenda bona.

78. An application for an order for grant of administration ad colligenda bona may be made to the Registrar and shall be supported by an affidavit setting out the grounds of the application.

Application for leave to swear to death of a person.

79. An application for leave to swear to the death of a person in whose estate a grant is sought, may be made to the Registrar and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance effected on the life of the presumed deceased.

Grant in respect of codicils and copies of Will.

80. (1) An application for an order admitting to probate 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 probate 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;
(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.

Grant Durante absentia

81. 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 by a motion.

Notice of election by surviving spouse to redeem life interest. Form 47

82. (1) Where a surviving spouse who is the sole personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to the Registrar by filing a notice in Form 47 with such variations as circumstances may require.

(2) A notice filed under this rule shall be notice on the grant and the record shall be open to inspection.

Photocopy of Wills or other documents may be certified and sealed.

83. (1) Where copies are required of original Wills or other documents deposited under the provisions of any enactment, such copies may be photocopies sealed with the seal of the Registry and issued as office copies and where such office copies are available, copies certified under the hand of a

Registrar to be true copies shall be issued only if it is required that the seal of the Court be affixed thereto.

(2) Copies, not being photocopies of original Wills or other documents deposited as aforesaid shall be examined against the documents of which they purport to be copies if so required by the person demanding the copy and in such case, the copy shall be certified under the hand of a Registrar to be a true copy and may in addition be sealed with the seal of the Court.

Power to require application to be made by motion.

84. The Registrar may require any application under this Order to be made by motion.

Duties and powers to be performed and exercised by Probate Registrar.

85. The duties imposed and powers conferred upon the Court by rules 5, 6, 7, 9, 10, 11, 12, 15, 16, 17, 19, 31, 34, 45 and 46(1), (3), (4), (6) 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.

Exercise of power of Judge.

86. (1) Any person aggrieved by a decision or requirement of the Registrar may by summons apply to a Judge for that decision or requirement to be reviewed.

(2) If in the case of a summons for review under sub-rule (1) any person besides the applicant appeared or was represented before the Registrar from whose decision or requirement the application for review is brought, the summons shall be issued within 7 days thereof for hearing on the first available day and shall be served on every such person concerned.

(3) On such review, the Judge shall have power to cancel or amend anything which may have been done by the Probate Registrar.

Undue delay: refusal of application.

87. The Court may refuse to entertain any application under rule 86 if it considers that there has been unreasonable delay by the applicant in making his application.

Service of notice of motion.

88. (1) A Judge or the Registrar may direct that a notice of motion 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) Whereby the provisions of this Order or by any direction given under sub-rule (1) a notice of motion is required to be served on any person, it shall be served not less than 5 days before the hearing of the motion.

Notices, etc, required to be served.

89. Unless the Court otherwise directs or this Order provides, any notice or other document required to be given or served on any person may be given or served by leaving it at or by sending it by courier to that person's address for service or if he has no address for service, his last known address.

Affidavit.

90. Every affidavit used in non-contentious probate business shall satisfy the requirements of Order 13.

Time.

91. The provisions of Order 10 shall apply to the computation, enlargement and abridgement of time under this Order.

Application.

92. Subject, in any particular case, to any direction given by the Court, this Order shall apply to any proceeding which is pending on the date on which these Rules come into operation as well as in any proceeding commenced on or after that date:

Provided that where the deceased died before the commencement of these Rules, the right to a grant shall, subject to the provisions of any enactment, be determined by the principles and rules in accordance with which the Court would have acted at the date of the death.

Contentious probate: Form of suit.

93. Suits in respect of probate shall be instituted and carried on as nearly as possible in the like manner and subject to the same rules of procedure as suits in respect of civil claims.

III. Proceedings Generally

Probate action.

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

Service of writ of summons.

95. In a probate action, service of a writ of summons may by leave of the Court be allowed out of Nigeria.

Pleadings and further action.

96. In a probate action a party shall state with regard to every defence which is pleaded, what is the substance of the case on which it is intended to rely, and further where it is pleaded that the testator was not of sound mind, memory and understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial and, except by

leave of the Court no evidence shall be given of any other instances at the trial.

Where defendant's interest is disputed.

97. In a probate action where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

Notice in probate action.

98. In a probate action 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 Court finds that there was no reasonable ground for opposing the Will.

Inquiry as to outstanding personal estate.

99. Every judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for any inquiry as to what parts (if any) of such personal estate are outstanding or undisposed of, unless the Court shall otherwise direct.

Discretion order costs.

100. Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of such 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 of the mortgaged property, as the case may be, and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

Originating Summons relating to deceased person.

101. 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 interests of the person claiming to be creditor, beneficiary, next of kin or heir-at-law or cestui que trust;
(b) the ascertainment of any class of creditors, beneficiary, next of kin or heirs;
(c) the furnishing of any particular accounts by the executors or administrators or trustees and the vouching (when necessary) of such accounts;
(d) the payment into Court of any money in the hands of the executors or administrators or trustees;
(e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees,
(f) the approval of any sale, purchase, compromise or other transaction;
(g) the determination of any question arising in the administration of the estate or trust.

Order for administration of estate of deceased and of trust.

102. Any of the persons named in rule 101 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 Court could have ordered to be done or taken if any such administration order as aforesaid had previously been made.

Persons to be served with Summons.

103. The persons to be served with the summons under rules 101 and 102 in the first instance shall be the following:

(1) Where the summons is taken out by an executor or administrator or trustee -

(a) for the determination of any question under paragraphs (a), (c), (f), or (g) of rule 101, the persons or one of the persons, whose rights or interests are sought to be affected;
(b) for the determination of any question under paragraph (b) of rule 101, any member or alleged member of the class;
(c) for the determination of any question under paragraph (c) of rule 101, any person interested in taking such account;
(d) for the determination of any question under paragraph (d) of rule 101, any person interested in taking such money;

(e) for relief under paragraph (a) of rule 102, the residuary legatees or next of kin or some of them or the residuary devisees, or heirs, or some of them, as the case may be;
(f) for relief under paragraph (b) of rule 102, the Cestui que trust or some of them;
(g) (g) if there are more than one executor or administrator or trustee and they do not all concur in taking out the summons, those who do not concur.

(2) Where the summons is taken out by any person other than the executors, administrators or trustees the said executors, administrators or trustees or some of them must be served.

Court not bound to order administration.

104. It shall not be obligatory on the Court to pronounce or make judgment or order, whether on summons or otherwise for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined without such judgment or order.

Order to be made on application for administration or execution of trust.

105. 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 Court 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 applicant a proper statement of their accounts, with an intimation that if this is not done, they may be made to pay the costs of the 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 Court.

Interference with discretion of trustee.

106. The issue of a summons under rule 101 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.

Application by motions.

107. Any of the following applications may be made by motion:

(a) an application for the appointment of a new trustee with or without a vesting or other consequential order;

(b) 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;
(c) an application relating to a fund paid into Court.

Interpretation.

108. (1) The provisions of the Interpretation Law shall apply to the interpretation of this Order.

(2) In this Order, unless the context otherwise requires**:**
"authorized officer" means any officer of the Registry who is for the time being authorized by law to administer any oath or 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;
"Registry" or **"Probate Registry"** means the Probate Registry of the Court; and
"Will" includes a codicil and any testamentary document or copy or reconstruction of it.

(3) Unless the context otherwise requires, any reference in this Order to any rule or enactment shall be construed as a reference to that rule or enactment as amended, extended or applied by any other rule or enactment.

ORDER 52

Summary Proceedings for Possession of Landed Property Occupied Without the Owner's Consent

Claim for possession of land: proceedings to be by originating summons.

1. Where a person claims possession of land which he alleges, is occupied by a person not being:
(a) a tenant;
(b) a tenant holding over after termination of his tenancy;
(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;

proceedings may be brought by originating summons in accordance with the provisions of this Order.

Form of originating summons. Form 48

2. The originating summons shall be in Form 48 and no acknowledgment of service shall be required.

Affidavit in support.

3. The plaintiff 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 other person occupying the land who is not named in the summons.

Service of originating summons.

4. (1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit in support shall be served on him:

(a) personally;

(b) by leaving a copy of the summons and a copy of the affidavit or sending them to him at the premises; or

(c) in such other manner as the Court may direct.

(2) The summons shall, in addition to being served on the named defendants if any, in accordance with sub-rule (1) be served, unless the Court otherwise directs, by affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises.

Application by occupier to be made a party.

5. Without prejudice to rule 16 of Order 14, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made, may apply at any stage of the proceedings to be joined as a defendant.

Order of possession. Form 49

6. (1) An order for possession in proceedings under this Order shall be in Form 49 with such variations as circumstances may require.

(2) Nothing in this Order shall prevent the Court 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.

Writ of Possession.

7. 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 Court. An application for leave may be made ex-parte, unless the Court otherwise directs.

Setting aside of order.

8. (1) The Court may, on such terms as it deems fit, set aside or vary any order made in proceedings under this Order.

(2) In this Order "landed property" means land with or without building thereon.

ORDER 53
Proceedings in Forma Pauperis

Who may sue or defend in forma pauperis forma

1. The Court 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 maybe.

Conditions to be fulfilled.

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

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

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

Fees and costs.

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

Procedure to be followed.

4. (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 for the action taken or defended thereunder.

(2) If the applicant pays or agrees to pay any money to any person whatsoever either in connection with his application or

the action taken or defended thereunder, the order appointing the Legal Practitioner shall be revoked.

(3) If the Legal Practitioner assigned to the applicant discovers that the applicant is possessed of means beyond those stated in the affidavit, if any, he shall at once report the matter in writing to the Registrar.

Revocation of order, discontinuance, etc.

5. (1) The Chief Judge may at any time revoke the order granting 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 Court.

Payment to Legal Practitioner.

6. (1) The Court may order payment to be made to the Legal Practitioner out of any money recovered by the applicant or may charge in favour of the Legal Practitioner upon any property recovered by the applicant, such sum as in all the circumstances may seem fit.

(2) Where no payment is made to the Legal Practitioner pursuant to sub-rule (1), he may apply to the Chief Judge for payment by the Court of a brief fee which is to be access in accordance with Rule of Professional Conduct for Legal Practitioners.

Duty of Legal Practitioner.

7. Every process, 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.

Appeal: only by leave.

8. No person shall be permitted to appeal in forma pauperis except by leave of the trial or the appellate Court.

ORDER 54
Costs

Principle to be observed in fixing costs.

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

(2) When costs are ordered to be paid, the amount of such costs shall, if practicable, be summarily determined by the Judge.

Security for costs.

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

Security for costs by plaintiff temporarily within Jurisdiction.

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

Action founded on Judgment or Bill of Exchange.

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

Bond as security for costs.

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

Costs at Court's discretion.

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

Costs out of fund or property.

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

Stay of proceedings till costs paid.

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

When costs to follow the event.

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

(2) In addition to any penalty payable for default under these Rules, the costs of and occasioned by any application to extend the time fixed by the rules or any direction or order thereunder,

for delivering or 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.

State of proceedings at which costs to be dealt with.

10. Costs may be dealt with by the Judge at any stage of the proceedings and any order of the judge for the payment of any costs may, if the Judge deems fit and the person against whom the order is made is not a person to whom Order 54 applies, require the costs to be paid forthwith notwithstanding that the proceedings have not been concluded.

Matters to be taken into account in exercising discretion.

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

Costs arising from misconduct or neglect.

12 (1) Where in any cause or matter anything is done or omission is made improperly or unnecessarily by or on behalf of a party, the Judge may direct that any costs that 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), the Judge shall for the purpose of that sub-rule have regard in particular to the following matters, that is to say:

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

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

(c) any unnecessary delay in the proceedings.

Personal liability of Legal practitioner for costs.

13 (1) Subject to the following provisions of this rule, where in any proceeding 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 clients;

(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) 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 of 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.

Taxation of costs.

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

Notice to other party.

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

Power of taxing officers.

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

Supplementary power of taxing officers.

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

(a) take an account of any dealings in money made in connection with 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.

Extension of time.

18. (1) A taxing 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, if any, 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.

Power of taxing officers to set off and delay issue of certificate.

19. (1) 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 of the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

Mode beginning proceedings for Taxation.

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

(2) A notice under sub-rule (1) 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.

Provisions as to bills of costs.

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

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

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

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

Provisions as to taxation proceedings.

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

(2) The taxing officer conducting any taxation proceedings may, if he deems it necessary to do so, adjourn those proceedings from time to time.

Certificate of taxing officer.

23. 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.

Fees on taxation.

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

Application for review.

25. 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 the Court for an order to review the taxation as to that item.

Application by summons.

26. (1) An application under the preceding rules shall be made by summons at any time within 14 days after the taxing officer's certificate.

(2) Unless the Court 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, except as aforesaid, on the hearing of any such application the Court 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 Court 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 to amount only, order the item to be remitted to the same or another taxing officer for taxation.

ORDER 55
Proceedings Under the Legitimacy Law

Definition

1. In this Order "petitioner" means a person applying for a Legitimacy declaration, and "petition" has a corresponding meaning.

Practice and rules.

2. The practice and rules of the Court shall so far as practicable, govern all proceedings under the Legitimacy Law, subject nevertheless to the particular provisions of this Order.

Matters to be stated.

3. (1) A petition shall be headed "In the matter of the Legitimacy Law", and "In the matter of (the person to be declared legitimate)", and shall be according to the prescribed form, with such variation and additions as the circumstances may require, and shall state among other matters:

(a) the place and date of the marriage concerned (if applicable);

(b) the status and residence of each of the parents and the occupation and domicile of the father of the person whose legitimacy the Court is asked to declare:

(i) at the date of his birth;

(ii) at the date of the marriage (if applicable);

(c) whether there are other living issues of the parents of such person as aforesaid and the respective names and dates of the birth of all such issues;

(d) the person (if any) affected by the legitimation of such person as thereby involve;

(e) whether any and if so what previous proceedings under the Legitimacy Law, or the validity of the marriage leading to his legitimation have been taken in any Court; and

(f) that there is no collusion.

(2) A petition shall also include an undertaking by the petitioner, if not an infant or person of unsound mind, to pay the cost of the respondent if the Court shall so direct.

Petitioner resident outside the state.

4. If the petitioner does not reside in the State, the petition shall provide an address within the State at which the petitioner may be served with any summons, notice, order of Court or other process.

Security for costs: petitioner resident outside the state.

5. Where it appears on the presentation of a petition that the petitioner does not reside in the State, the petition shall not be filed until security for costs, by deposit of money or otherwise, has been given to the satisfaction of the Court.

Persons to be respondents.

6. The respondent to a petition shall be all persons whose interests may be affected by the legitimacy declaration asked for, and the Court may at any time direct any persons not made respondents, to be made respondents and to be served with the petition and affidavit, and may adjourn the hearing of the petition for that purpose on such terms as to costs or otherwise as it may think just.

Affidavit of verification.

7. The petition shall be accompanied by an affidavit made by the petitioner, or by his next friend, if any, verifying the facts of which he has personal knowledge and deposing as to his belief in the truth of the other facts alleged in the petition, and the affidavit shall be filed with the petition.

Copies of petition to be filed.

8. (1) There shall be filed with the petition as many copies of the petition and the affidavit as there are respondents to be served and also two copies for the use of the Court.

(2) There shall be lodged with the petition, every document intended to be relied upon at the hearing, which may include birth, death or marriage certificate.

Personal Service on other respondents.

9. Before the hearing of the petition, a copy of the petition and affidavit shall be served on every respondent personally, unless the Court otherwise directs.

Filing of answers.

10. (1) A respondent may within Thirty days after service of the petition upon him, file an answer to the petition.

(2) Every answer which contains matters other than a simple denial of the facts stated in the petition shall be accompanied by an affidavit made by the respondent verifying such other

matter as far as he has personal knowledge thereof, and deposing to his belief in the truth of the rest of such other matter.

(3) There shall be filed with the answer as many copies of the answer and the affidavit, if any, as there are other parties to be served and also two copies for the use of the Court.

(4) The Registrar shall within forty-eight hours of receiving them, serve a copy of the answer and the affidavit, if any, on the petitioner and any respondent(s).

Evidence.

11. Evidence on the hearing of the petition shall be given orally: Provided that the Court or a Judge in Chambers may, on application made before or at the hearing, for good cause shown, direct that any particular fact or facts alleged in the petition or answer may be proved by affidavit.

Costs.

12. The Court may make such orders as to costs as it shall think just.

Copy of order be to supplied.

13. A copy of the order made on the hearing of a petition shall be supplied by the Registrar to any party to the proceeding on payment of the prescribed fee.

ORDER 56
Miscellaneous Provisions

What orders to be made.

1. Subject to particular rules, the Court may in all cases 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.

Recovery of penalties and costs.

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

Publication of Notice.

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

How process is addressed.

4. All warrants and orders of whatever description shall be sufficiently addressed for execution by being directed to the

Sheriff; but this provision shall not prevent any order or warrant from being addressed to a person by name or to a person named and to officers of Court generally or to a Local Government authority.

Framing of new forms.

5. In proceedings for which Forms are not prescribed by these Rules, the Chief Registrar may, subject to the approval of the Chief Judge, frame the forms required.

Fees. Form 54

6. (1) The fees payable under these Rules shall be as set out in Form 54.

(2) No fees are to be taken in respect of any matter where such fees would be payable by the Government or any Government Department:

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

Regulations.

7. The Regulations in Form 53 shall govern the payment and disposal of fees and the duties of Court officers in regard thereto.

Rules of Court Advisory Committee.

8. (1) There shall be constituted a body to be known as the Rules of Court Advisory Committee consisting of:

(a) two Judges of the Court, one of whom shall be the Chairman;
(b) two Judges of the Lower Courts;
(c) One Law Officer nominated by the Attorney-General; and
(d) two Legal Practitioners, nominated by the Nigerian Bar Association.

(2) It shall be the duty of the Committee to advise the Chief Judge from time to time in the exercise of the powers conferred upon him under the Constitution to make rules for regulating or making provisions with respect to practice and procedure of the Court.

(3) Every member of the Committee shall remain a member thereof for such period as the Chief Judge may prescribe at the time of the appointment of the member or at any time thereafter.

Savings.

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

ORDER 57
Powers of the Chief Judge to Amend Rules and Issue Practice Directions

Powers of Chief Judge over new Rules

1. Where any additional provision is made to these Rules or any part of it is amended or modified, the Chief Judge may issue a directive for addition, publication or reprint of the supplement to these Rules.

Publication of new rules.

2. Where 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 where necessary.

Chief Judge's Power to issue practice directions, etc.

3. 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.

practice directions, etc, to be published.

4. The practice direction, protocol, directive and guidance shall be published and be given effect towards the realization of the fundamental objective of these Rules.

ORDER 58
E-Filing

NCMS

1. Save as otherwise expressly exempted under these rules or other relevant laws, with respect to all cases and matters after the commencement of these Rules, only documents received through, and stored in, the NCMS are proper records of the courts, and Judges, Parties and all Registry Staff shall consider and treat them accordingly.

E-filing.

2. Where, under these rules, a party is required to file any document, application or any process, such document, application, or process shall henceforth be filed via the NCMS E-Filing portal and no other mode of filing by a legal practitioner shall be valid.

Affidavits and witness statements on oath.

3. Where, in filing any court process under these Rules, a party is required to accompany such process with an affidavit or any statement on oath, it shall suffice to file an Electronic Affidavit or a scanned copy via the NCMS E-Filing portal, and hand in the original at the Registry of the Court handling the matter, to be kept along with originals of uploaded documentary evidence.

Under payment of filing fees.

4. A party filing a process or an application for which fees are chargeable under these rules, shall fully and accurately disclose information and input all the data required for the purpose of assessment. Where failure to do so results in under assessment by the automated system, the party shall be liable upon detection to pay thrice the fee payable.

E-Signing and Sealing.

5. Where these rules or practice directions require a document to be signed or sealed, it shall suffice to file documents electronically signed or sealed, or such documents scanned and filed in accordance with the parameters allowed by the NCMS E-Filing portal.

Sealing for the purpose of issuance and validity.

6. Notwithstanding any other provision of this rules, every originating process filed through the NCMS E-Filing portal is deemed properly sealed for the purpose of issuance and validity.

Service on Legal Practitioner by Legal Mail

7. Notwithstanding any other provision of this rules, where service may be made on a Legal Practitioner, it shall be sufficient to serve via the Legal Mail.

Process deemed filed in case of technical failure.

8. Where an e-filed process or document is considered filed out of time arising from a technical failure or system outage on the part of the filing system of the Court, any process or document so filed may be deemed filed and the party may seek appropriate relief from the Court.

System outage or technical failure in preventing compliance.

9. Where a system outage or technical failure prevents the party from complying with an order as to time, the party may seek further direction from the Court.

FORM 1
(Order 2, rule 3)
General Form of Writ of Summons
In the High Court of Taraba State

(Here put the letter and number (see note (a) following this form).
In the…….…… …Judicial Division

Suit No……...
Between:
A.B…… Plaintiff
and
C.D ……...Defendant
To C. D. of ……. in the ……..……of ……..……
You are hereby commanded that within 30 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 plaintiff may proceed therein and judgment may be given in your absence.

DATED this …….. day of …… 20.....

By order of the Court.

……..
Registrar

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 date of such date and not afterwards.

The defendant may enter appearance personally or by legal practitioner either by handing 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.

Endorsement to be made on the Writ before issue thereof.

The plaintiff claim is for…….…….

This Writ was issued by G. H. of…….…….....whose address for service is

(c)……..… agent for…… of ……Legal Practitioner for the said plaintiff who resides at (d)……..…

(mention the City, town or district and also the name of the street and number of the house of the plaintiff's residence if any).

Endorsement to be made on copy of 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)……

NOTE:

(a) 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 probate actions, "In the Estate of AB, deceased." A Writ of summons claiming administration of a trust or settlement may be instituted "In the matter of the (Trust or settlement)"

(b) Endorsement of claim-if the plaintiff sues, or defendant is sued, in a representative capacity, the endorsement must state in what capacity the plaintiff sues or the defendants is sued. If the claim is for a debt or liquidated demand only the endorsement, even though not special, must strictly comply with the provisions of Order rule 4.

(c) Address for service-The address must be within the jurisdiction

(d) Address of plaintiff - In the case of a company in liquidation the plaintiffs address should thus it……. plaintiff's who are a company in liquidation. The liquidator is (name of liquidator), of (address of liquidator)"

In the case of a foreign corporation within the meaning of relevant provisions of the Companies and Allied Matters Act, 2020 the plaintiffs address should run thus" plaintiffs who are a foreign corporation within the meaning of the Companies and Allied Matters Act, 2020. The registered name and address of the person to be served are (here add registered name and address).

(e) Endorsement of service - See Order 7 rule 13.

(f) Probate Actions - In these actions the endorsement of claim must show the nature of the plaintiff's interest under which he claims (Order 5 rule 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 Taraba State

In the ……. Judicial division

A sufficient affidavit in verification of the endorsement on this Writ to authorize the sealing thereof has been produced to me

This ……..... day of ……. 20……

……..
Registrar

FORM 2

(Order 2, rule 4)
Writ for service out of the jurisdiction

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) 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 in the.……Judicial Division of the High Court of Taraba State in an action at the suit of A B, and take notice, that in default of your so doing the plaintiff 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 months from the date of the last renewal, including the date 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 defendant or 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 serve 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 provisions of Order 4 rule 4, including a claim for cost.

See also notes to Form No. 1, supra

FORM 3
(Order 2, rule 8)
General Form of Originating Summons

In the High Court of Taraba State
In ……..Judicial Division
Suite No…….
(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…… Plaintiff
and
C.D. and E.F. ……Defendants
Let…….of ……
In ……within 30 days after service of this Summons on him, inclusive of the day of such service, cause an appearance to be entered for him
to this Summons which is issued upon the application of…… of. ……... who claims (state the nature of the claim), for the determination of the following questions:

DATED this……day……20……..
THIS Summons was taken out by …….legal practitioner for the above named ……

FORM 4
(Order 2, rule 8)
Originating Summons

Suit No ……

In the High Court of Taraba State
In the …….. Judicial Division
In the matter of A.B. a Legal Practitioner (Re Taxation of costs etc.) (or as maybe).

Let A. B. of…… attend the Court (or Chief Registrar's Office) High Court of Taraba State on the …….day of ……..…20…….. at 9.0'clock in the forenoon (on the hearing of an application on the part of…….) (State relief sought). (If for leave to enforce award under the Arbitration and Mediation Act, add. "And that the respondent do pay the cost of this application to be taxed".

DATED this……..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
Order 2, rule 8
Form of Ex-Parte Originating Summons

In the High Court of Taraba State

In 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 of Taraba State, at the time specified in the margin hereof, on the hearing of an application on the part of the above-named AD, an infant, by C. D. his guardian, that (state relief sought).

This Summons was taken out by……of …… agents for……of ……..Legal Practitioner for the applicant.

FORM 6
(Order 6, rule 6(2)
Form of Memorandum for Renewed Originating Process
(Title as in Form No.1)

Seal renewed originating process in this action endorsed as follows:

(Copy original originating process)

The originating process renewed on the……. day
Of ……20…….
pursuant to order of Court made the……. day of……..…….20…… for 3 months.

……
Registrar

FORM 7
(Order 8, rule 3(1)(a)
Request to Minister of Foreign Affairs to Transmit
Notice of Writ to Foreign Government
(Title as in Form No.4)

The Chief Judge of Taraba State presents his compliments to the Minister of Foreign Affairs and encloses herewith, a Notice of Writ of Summons issued in an action ……. versus …… Pursuant to Order out of the..... Judicial Division of the High Court of Taraba State for transmission to the Ministry of Foreign Affairs in (name of Country) with the request that the same may be served personally upon (name of defendant to be served)
against whom proceedings have been taken in the …… Judicial Division of the High Court of Taraba State and with the further request that such evidence of the service of the same upon the said defendant may be officially certified to the High Court of Taraba State or declared upon Oath or otherwise, in such manner as is consistent with the usage or practice of the Court of the (name of Country) in proving service of legal process.

The Chief Judge further requests that in the event of efforts to effect personal service of the said notice of writ proving ineffectual, the government or Court the said country be requested to certify the same to the High Court of Taraba State.

FORM 8

(Order 8, rule 3(1)(b)

Praecipe Request for Service Abroad

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 of such expenses I (or we) undertake to pay the same into the High Court Registry for transmission to the Permanent Secretary of the Ministry of Foreign Affairs.

FORM 9

(Order 8, rule 3(1)(d)

Letter Forwarding Request for Substituted Service

The Chief Judge of Taraba State presents his compliments to the Minister of Foreign Affairs and encloses herewith a Writ of Summons in the case of ……. versus…… in which the plaintiff has obtained an Order of the ……Judicial Division of the High Court of Taraba State (which is also enclosed) giving leave to make a request that the said Writ may be served by substituted service on the defendant ……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 the 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 of practice of the Courts of (name of Country) for service of legal process where personal service cannot be effected, and with the further request that the same may be officially certified to the …… Judicial Division of the High Court of Taraba 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 10
(Order 8, rule 4(1)(a)
Request for Service Abroad
(Title as in Form No.1)

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 of such expenses I (or we) undertake to pay the same into the High Court Registry for transmission to the Permanent Secretary of the Ministry of Foreign Affairs.

DATED this day of …….20…….

……
Legal Practitioner

FORM 11
(Order 12, rule 12)
Receiver's Security by Undertaking
In the High Court of Taraba State

In the ……Judicial Division
Suit No……
Between:

Re……
Versus……..

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 such receiver (or manager) or for which I may be held liable and to pay the balances from time to time found from me and to deliver any property received by me as such receiver (or manager) at such times in such manner in all respects as the Court or a judge shall direct.

And we……. hereby 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 such receiver (or manager) and upon such default to pay to any person or persons or otherwise as the Court or a judge shall direct any sum or sums not exceeding in the whole ₦…….

that may from time to time be certified by a Registrar of the High Court to be due from the said 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…….

……. ……..
Receiver Surety

In the case of a surety being a company, it must be sealed or otherwise duly executed.

FORM 12

(Order 12, rule 12)

Form of Guarantee for the Acts and Defaults of a Receiver

In the High Court of Taraba State

In the ……..Judicial Division

Suit No……

Between

Re:……

Versus……...

Guarantee for N……...

Annual Premium N…….

This Guarantee is made the. ……Day of…….20……...

Between (xyz) of …….

(hereinafter called "the Receiver") of the first part, and the above named ……

The Registered office of which is at …… in ……

(hereinafter called "the Surety") of the second part and ……

the Governor of Taraba State

By an order of the High Court of Taraba 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 …….

And whereas the Surety has agreed at the request of the Receiver to issue this Guarantee in consideration of the annual premium above mentioned (the first payment of which the Surety hereby acknowledges) which Guarantee has been accepted by the Judge as a proper security pursuant to the said order in testimony whereof one of the registrars of the High Court, has signed an allowance in the margin thereof.

NOW this Guarantee witnesses as follows:

1. The Receiver and the Surety hereby jointly and severally covenant with the Governor of Taraba State that the Receiver shall duly account for all moneys or property he has received as such Receiver (and Manager) at such times and in such manner in all respects as the Court may direct.

2. Provided always that it is hereby mutually agreed as follows:

(a) If the Receiver shall not for every successive twelve months to be computed from the date of his appointment as such Receiver as aforesaid or within fifteen days after the expiration of such twelve months pay at the office of the Surety the annual premium or sum of N…….. then the Surety shall be at liberty to apply by summons in the said action to be relieved from all further liability as such Surety under this guarantee save and except in respect of any damage or loss occasioned by any act or default of the Receiver in relation to his duties as such 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 Taraba 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 Governor of Taraba State against the Receiver and surety or either of them or by the 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 Governor of Taraba State to take any legal or other proceedings against the Receiver for the recovery thereof and without any further or other 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 Registrar of the High Court may by his signature to the endorsement on this

Guarantee (in the form printed thereon) reduce the said liability of the Surety still further or (but only with the consent of the surety by an instrument in writing duly executed) increase such liability as may be necessary and upon such endorsement this Guarantee shall continue in full force but in that case the premium shall be correspondingly reduced or increased.

3. It is hereby further agreed between the Receiver and the Surety as Follows:
(a) The Receiver will, on being discharged from his office or on ceasing to act as such Receiver (and manager) as aforesaid, forthwith given written notice thereof to the Surety by registered 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 and will at all times hereafter indemnify the Surety and its property and funds against all losses, damages, 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 whereof the Receiver has hereunder set his hand and seal and the Surety has caused its Common Seal be affixed the …… day of ……20…….. in the matter of ……..… increased Liability.

To be attached by way of Endorsement to Guarantee.
The liability of the Surety under the within Guarantee has, with the consent of the Receiver and the Surety, been increased from N …… to…… in respect of any acts or omissions to which the within written Guarantee relates committed by the Receiver subsequent to the date hereof the total liability of the Surety in respect of both the within written 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 thereof 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 hereunto affixed in the presence of…….

FORM 13

(Order 12 rule 15)

Receiver's Account

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 ……....

REAL ESTATE-RECEIPTS

No Of item	Date when Received	Tenant's Name	Description of Premises	Annual Rent	Arrears due at	Amount due at	Amount Received	Arrears Remaining due	Observation

FORM 14

(Order 12, rule 16)

Affidavit Verifying Receiver's Account

In the …….Judicial Division

Suit No ……..

Between

A. B. …… Plaintiff

And

CD and E. F ……Defendants

I, ……of.....the receiver appointed…… ……. in this cause, make oath and say as follows:

1. The document now shown to me marked A is, as it purports to be 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 15

(Order 16 rule 1(1)

Memorandum of Appearance

In the High Court of Justice of Taraba State

In the.....Judicial Division

Suit No ……..

Between

…. …… Plaintiff

And

…….……Defendants

Please enter an appearance for

1(a)……

sued as

1(b)……

……In this Action.

DATED this…….. day of ……20……

Signed ……..

Whose address for service is.

N.B:

Additional notes for the guidance of defendants seeking to enter an appearance are given on the back. Please read carefully."

Additional Notes:

1. (a) A defendant appearing in person must give his residence or some other place within the Judicial Division of Taraba State to which communications for him should be sent. Where he appears by a legal practitioner, the Legal Practitioner's place of business
   (b) The defendant must give his or her full name
1. (c) Give name by which the defendant is described in the writ if it differs from defendant's full name, otherwise delete words "sued as"
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 plaintiff claim the entry of appearance will delay judgment and may increase the cost payable by the defendant
7. Acknowledgment of service shall be as follows –
   I, ……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 Writ of Summons/Originating Summons
DATED this.....Day of ……20……..

…….
Signature

FORM 16
(Order 18, rule 2(1)
Warrant to Arrest Absconding Defendant
(Title as in Form No.1)

WHEREAS there is probable cause for believing that the defendant (name of defendant) is about to leave (or has) (or is about to) dispose of or remove (some part of) his property from 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 hereby commanded to bring the said defendant before this Court forthwith, in order that he may show cause why he should not give bail bond 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 this …….day of ……20……...

……
Judge

To the Sheriff and Bailiff's of Court
Fee on issue of this warrant is N

Note:

If the defendant gives bail bond before Magistrate in the sum of N …… with sufficient surety (for his appearance as aforesaid) (or for the satisfaction of the judgments) or if he Deposits with you for transmission to the Court the sum of N or other property of the same or greater value, he shall thereupon, in respect of this warrant, be discharged out of your Custody

FORM 17

(Order 19, rule 3)

Warrant of Interim Attachment (Title as in Form No.1)

WHEREAS it has been shown to the satisfaction of the Court that the defendant (name of defendant) with intent to obstruct or delay the execution of any judgment that may be given against him in this suit, is about to dispose of (or remove from..... State) or that the defendant is absent from State (or that there is probable cause to believe that the defendant is concealing himself to evade service) and that the plaintiff is beneficially entitled to the debts or the property hereinafter specified,

AND WHEREAS on the ……day of ……20……. it was ordered that the said property should be attached forthwith, pending the defendant's appearance (or furnishing such security) (or the said period of days has expired and the defendant has failed appear and has not furnished such security;

These are, therefore, to require and order you forthwith to seize, take into your hands (enter upon) and attach (such portion of) the defendant's property specified on the back of this warrant (as may be of the value N ……....) wheresoever it may be found within The …… Judicial Division (except the wearing apparel and bedding on him and his family and the tools and implements of his trade to the value of N…….) and to hold the same until the further order of the Court and to make return of what you have done under this warrant immediately on the execution thereof

DATED this……day of ……20…

……

Judge

To the Sheriff's and Bailiffs of the Court Fees on issue of this warrant

N : K

Application was made to the Registrar for this warrant at ……minutes past the hour …….in the forenoon of the day last mentioned above

…….....

Registrar

Endorsement

SPECIFICATION OF PROPERTY TO BE ATTACHED

Number	Description	Estimated Value	Where to be found	Name of the defendant or person in control of defendant's property

FORM 18

(Order 20, rule 1(3)

Form of Order to Account and Inquiries

In the High Court of Justice of Taraba State In the

In the…… Judicial Division

Suit No…….

BETWEEN

A. B. …… Plaintiff

And

CD and E.F and G.H……Defendants

This Court hereby orders that the following accounts and inquiries be taken and made that is to say:

1. ……
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……..

…….

JUDGE

FORM 19

(Order 21, rule 3)

Form of Order Referring Proceedings to Arbitrator.

This Court with the consent of all parties hereby orders that the proceedings be referred to Arbitration of whose award to be made, shall be entered as the judgment in this action (Add any further direction given by the judge)

DATED this …….day of ……..20…….

…….

JUDGE

FORM 20

(Order 31, rule 1(6)

Notice of Payment into Court

In the High Court of Justice of Taraba State

In the …….Judicial Division

Suit No……..

BETWEEN

A. B. …… Plaintiff

And

CD and E.F and G.H……Defendants

Take notice that the defendant……

has paid into Court N……..... and says that (part of) that sum is enough to satisfy the plaintiff's claim for N……, the other part of that sum is enough to satisfy the plaintiff claim for N……

DATED this ……. day ……of ……20…….

PQ Legal Practitioner for the defendant C. D.

To X Y, the plaintiffs Legal practitioner and to Mr. R.S. Legal Practitioner for the defendant EF

(To be filled in by the Cashier, High Court)

Received the above sum of ……Naira…… Kobo into Court in this action

DATED this…….day……..of ……..20…….

FORM 21

(Order 31, rules 2(1) and 4(4)

Acceptance of Sum Paid into Court

In the High Court of Justice of Taraba State

In the…….Judicial Division

Suit o……

A. B. …… Plaintiff

And

CD and E. F and GH ……Defendants

Take notice that the plaintiff accepts the sum of N…… paid by the defendant (CD) into Court in satisfaction of the claim in respect of which it was paid in (and abandons his other claims in this action)

DATED this…… .day of……..20…….

……..

XY plaintiffs 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 22

(Order 31, rule 4(2))

Acceptance of Sum Paid into Court by one of Several Defendants

In the High Court of Justice of Taraha State

In the ……. Judicial Division

Suit No……..

BETWEEN

A. B. …… Plaintiff

And

CD and EF and GH ……Defendants

Take Notice that the plaintiff accepts the sum of N ……... paid by the defendant CD into Court in satisfaction of his claim against the defendant CD

DATED this……day of ……20……

…….

XY plaintiffs Legal Practitioner

To:

Mr. P. O Legal Practitioner for the defendant CD and Mr. R. S. Legal Practitioner for the defendant EF

FORM 23

(Order 34, rule 2)

Interrogatories

In the High Court of Taraba State

In the ……... Judicial Division

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 is required to answer the interrogatories numbered ……)

Dated the ……. Day of ……., 20……..

FORM 24

(Order 34, rule 6)

Answer to Interrogatories

In the High Court of Justice of Taraba State

In the …….. Judicial Division

Suit No……..

BETWEEN

A. B. …… Plaintiff

And

CD and EF and GH ……Defendants

The answer of the above-named defendant EF to the interrogatories for his examination by the above-named plaintiff

In answer to the said interrogatories, I the above-named E.F. make oath and say as follows.

1 ……

2 …… e.t.c

I, the above-named defendant E.F. do hereby solemnly swear by Almighty God that this is my name and hand writing and that the facts deposed by me in this affidavit are the truth, the whole truth and nothing but the truth

……

Deponent

Sworn to at High Court Registry, this day…..of……..20……

Before me:

…….

(Commissioner of Oath)

…….

Commissioner for Oaths

FORM 25

(Order 34, rule 8(3))

Affidavit as to Documents

In the High Court of Taraba State

In the ……. Judicial Division

Suit No……..

BETWEEN

A. B. ……

Plaintiff

And

CD and EF 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 parts 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.
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 (state when, and what has become of them and in whose possession, they now are)
5. To the best of my 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 person or persons on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document or any other document whatsoever relating to the matters in question in this suit or any of them or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

Dated this day of…….20……

…….

Deponent

(ILLITERATE JURAT

……..

……..

……..

FORM 26

(Order 39, rule 7(a))

Undertaking as to Expenses

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 and on receiving due notification of the amount of expenses undertake to pay the 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.

Plaintiff Agent…….of ……...

Defendant's

Agent…….of……..

DATED this……..day of……...

…….……

Signature of Applicant/Legal Practitioners

FORM 27

(Order 39, rule 7(b)

Letter of Request to take Evidence Abroad

(Convention Country)

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 Taraba State, Nigeria, in Which……..is the plaintiff and……is the defendant

And in the said action the plaintiff 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 to say …….. of……and……..of……

…… and it appears that such witnesses are resident within your jurisdiction.

Now, I the Judge of the High Court of Taraba 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 as the agents of the

said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such 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 you will cause such witnesses to be examined (upon the interrogatories which accompany this letter or request and viva voce) touching the matters in question in the presence of the agents of the plaintiff and defendant or such of them as shall, on due notice given, attend such examination

And I further have the honour to request that you will permit the agents of both the said plaintiff 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 witness for examination liberty to re-examine him 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 the same together with (the interrogatories and cross-interrogatories and) a note of the charges and expenses payable in respect of the execution of this request, through the Ministry of Foreign Affairs from whom the same was received for transmission to the said High Court of Taraba State

And I further 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…….

…….

Chief Judge of Taraba State, Nigeria

This refers to a notice given by the Legal Practitioner having conduct of the action

FORM 28

(Order 39, rule 8)

Order for Appointment of the Nigerian Diplomatic Agent as Special Examiner

(In Convention Country)

Upon hearing the Legal Practitioners on both sides and upon reading the affidavit Of…….. dated……

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 the……. 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 Taraba State of Nigeria High Court Civil Procedure. The ……legal Practitioners to give the ……. Legal Practitioners…….. days notice in writing of the date on which they propose to send out this order to……..for execution and that ……days after the service of such notice the Legal Practitioners for the plaintiff and defendants.

Respectively do exchange the names of their agents 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 hereunder 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 take together with any documents referred to therein or certified copies of documents or of extracts there from, be transmitted by the examiner, under seal to the Chief Registrar of the High Court, Taraba 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 this action be stayed until the filing of such depositions. That the cost of and incident 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, this requirement must be complied with

……

Judge

FORM 29

(Order 39, rule 20)

Form of Praecipe for subpoena

In the High Court of Justice of Taraba State

In the ……. Judicial Division

Suit No……..

BETWEEN

A. B. ……

Plaintiff

And

CD and EF and GH

……Defendants

Seal writ of subpoena……..on behalf of the ……..directed to.....returnable……

DATED this……. day of……20…….

(Signed)…….

(Address)……

Legal Practitioner for the……

……

Judge

FORM 30

(Order 39, rule 21)

Subpoena Ad Testificandum

In the High Court of Taraba State

In the ……. Judicial Division

Suit No……..

BETWEEN

…… Plaintiff

And

……Defendants

To……..of…….……

You are commanded in the name of the Governor of Taraba 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 31

(Order 39, rule 21)

Habeas Corpus Ad Testificandum

In the High Court of Taraba State

In the ……. Judicial Division

Suit No……..

BETWEEN

…… Plaintiff

And

……Defendants

To……..of…….……

You are commanded in the name of the Governor of Taraba State to have

……who it is said is detained in your custody in custody, at

……. before the Court at……..

On……..the …….day of ……20……

at …….. O'clock in the forenoon and so from day to day until the above action is tried, to give evidence in in the above-named cause and immediately after the said shall have so given his evidence you shall duly conduct him to the custody from which he has been brought

DATED this day of……..

20……

……..

Judge

FORM 32

(Order 39, rule 21)

Subpoena Duces Tecum

In the High Court of Taraba State

In the ……. Judicial Division

Suit No……..

BETWEEN

……..…… Plaintiff

And

……Defendants

To……..of…….……

You are commanded in the name of the Governor of Taraba State to attend the Court at…… on ……. The ……..day of ……20……..at the hour of 9 O'clock in the forenoon and so from day to day until the above action is tried, to

give evidence on behalf of the ……. and also to bring with you and produce at the time and place aforesaid……
(specify documents to be produced)

DATED this ……day of ……20……..

……

Judge

Form 33

(Order 42, rule 15)

General Form

(Title as in Form 1.)

In the High Court of Taraba State

In the ……. Judicial Division

Suit No……..

BETWEEN

…….…… Plaintiff

And

……Defendants

Upon hearing……. and upon reading the affidavit

…….…….…….. filed on the ……. day of ……..20…..

it is ordered ……and that the defendant…… do pay the plaintiff…… cost (or cost to be taxed).

The above costs have been taxed and allowed at N……..

as Appears by a taxing officer's certificate dated the ……day of …….20……

DATED this……. day of …….……20……

……..

Judge

FORM 34

(Order 43, rule 6(2))

Praccipe of Writ of Execution

Plaintiff's name in full……

His residence and occupation or description…….

Full names and addresses (or other sufficient identification) of all defendants with their occupations, if known ……..

……

name of defendant against whom order of commitment was made……

Note: A separate order or warrant must be issued against every defendant required to be arrested His addresses and occupation or description …….

……

……

apply for the issue of ……..

……

I am aware that if I do not prove to the satisfaction of the Court at the hearing that the defendant has or has had since the date of judgment order, the means to pay the sum in respect of which he has made default, I may have to pay the costs of this summons

…….

Judgment Creditor/Legal Practitioner for

Judgment/Creditor/Legal Practitioner's Address

To be filled up by the Registrar if payment has been ordered through the Court-

Ledger Folio: Date of Judgment Order

Committed on…….for……...

Order suspended for…….. on payment of ……

Subsistence allowance ……....per diem…….to be paid before issue of warrant.

Date and time of application, the……..day of ……..…20……

at……h……

Sum in payment of which defendant has made default at the time of the issue of the Judgment summons…….

Amount for which writ to issue by leave of Court…….

Fees and costs on issue and hearing of judgment summons……

Drawn amount paid since issue of judgment summons …….

Fees on issue of this process …….

Traveling expenses to be paid or tendered to defendant……

Total amount for which. ……is to be issued

Unsatisfied cost of execution not included above and not payable out of moneys paid into Court except under the execution against the goods of the defendant.

FORM 35

(Order 45, rule 9)

Writ of Habeas Corpus Subjucciendum

To the Director of the Custody at ……..……

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 his being taken and detained, by whatsoever name he may be called therein, that the Court may then and there examine and determine whether such cause is legal and have you there then this writ

……..……..

Judge of the High Court of the State

Dated this…….day of ……..20…….

ENDORSEMENT

By order of Court (or of Honourable Justice……)

This writ was issued by …….of ……legal Practitioner for……...

FORM 36

(Order 45, rule 9)

Notice to be served with Writ of Habeas Corpus ad Subjuciendum

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 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, be moved to commit you to custody for your contempt in not obeying the said writ (or if in vacation, application will then 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 this…….day of
……..20…….

……..……..
Judge of the High Court of the State

FORM 37

(Order 45, rule 9)

Writ of Habeas Corpus ad testificandum

To the Director of the custody at ……..
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 committed and detained in the Federal Custody at ……..under your custody, as is said, then and there to testify to the truth and give evidence on behalf of ……..against……..for ……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 custody under your custody and cause him to be detained therein under safe custody, until he shall be from thence discharged by due course of law

…….……
Judge Magistrate

By order of……..
This writ was issued by ……of……Legal Practitioner for……

FORM 38

Order 48, rule 2(4)

Notice of Appeal

In the High Court of Taraba State

Suit No……..

AB……..
Vs
CB……...
Take notice that the plaintiff (or defendant as the case may be) AB (or C D name the party who is appealing) appeals from the judgment (or order, or decision)
dated the…….day of ……20…….in the above proceedings
And further take notice that his grounds of appeal are:
……

……
……
Dated this…….day of ……..20……
……..
AB (or CD) (or the Legal Practitioner acting for him)

TO CD (or ABJ)
Of……
Note
This notice must be filed with the Registrar of the High Court within a month of the decision appealed from and served on all parties affected by the appeal within that period
The grounds of appeal should be given in full

FORM 39
(Order 50, rule 2)
Order for Payment of Principal Money or Interest Secured by Mortgage or Charge.

It is ordered that the plaintiff do recover against the defendant N…… secured by a mortgage (or charge) dated the ……of……
20……. (being the total of the principal sum of N…….and N…… for interest thereon at……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 plaintiff the moneys ordered to be recovered and all other moneys (if any) secured to the plaintiff by the said mortgage (or charge) the plaintiff (subject and without prejudice to the due exercise of any power of sale for the time being vested in him) do release 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.
Dated this…….day of
……..20…….

FORM 40

(Order 50, rule 2)

Order for Possession of Property Forming a Security for Payment to the Plaintiff of any Principal Money or Interest

It is ordered that the defendant do give the plaintiff possession on or before the……..day of ……. 20 ……..of the land hereinafter described and comprised in mortgage (for charge) dated the…… day of ……..20…….. that is to say…….. (description of the property)

AND it is ordered that the plaintiff do recover against the defendant the sum of N…… for costs (or his cost of this summons to be taxed) AND it is ordered that upon the defendant paying to the plaintiff the moneys remaining due to the plaintiff upon the security of the said mortgage (or charge) the plaintiff (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 mortgage (or charge).

AND it is ordered that all parties be at liberty to apply to the Court as they may be advised

Dated this…….day of ……..20…….

…….

Judge

FORM 41

(Order 50, rule 2)

Order for Payment of Principal Money or Interest Secured by Mortgage or Charge and for possession of property Comprised Therein.

It is ordered that the plaintiff do recover against the defendant N…… secured by mortgage for charge) dated the……day of ……20……..(being the total of the principal sum of N…… and N …….. for interest therein at ……. percent per annum less tax to the ……day of (date of order), and N……. for cost (or his costs of this summons to be taxed).

AND it is ordered that the defendant do give the plaintiff 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 plaintiff the money's hereby ordered to be recovered and all other moneys (if any) secured to the plaintiff by the sand mortgage (or charge) the plaintiff (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 mortgage (or charge)

AND it is ordered that all parties be at liberty to apply to the Court as they may be advised

Dated this…….day of ……..20…….

FORM 42

(Order 51, rule 35(3)

Surety's Guarantee

In the High Court of Taraba State

Suit No……..

Probate Registry

In the Estate of ……..…….. deceased

Whereas……..…..of……died on the……day of……20…… and…….. (and…….)

(hereinafter called "the Administrators" is/are the intended administrator(s) of his estate

Now therefore

1. I/We……of……(and ……..of…….)h ereby (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 fall inventory of the estate and when so required, to render an account of the estate, or
   (C) when so required by the Court to deliver up the grant to the Court
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 continuing 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 named in the presence of ……..…….. a commissioner for oaths (or other person authorized by law administer an oath)

The common seal of ……..……..was hereunto affixed in the presence of……

……

(Signed)

FORM 43

(Order 51, rule 69(3) (c)

Surety's Guarantee on Application for Resealing

In the High Court of Justice of Taraba State

Suit No…….

Probate Registry

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 and under the Succession Law

Now therefore

1. I/We……. of……..……

(And……of……

……(and…….....of……)

hereby (jointly and severally) 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 which is situated in the state and administer it according to law, and

(b) when required to do so by the Court, to exhibit on oath in the Court a full inventory of the estate which is situated in the state and when so required, to render an account of the estate

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 continuing 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 named in the presence of ……

a commissioner for oaths (or other person authorized by law to administer an oath)

(The common seal of ……was hereunto affixed in the presence of…….)

……..

Signed

FORM 44

(Order 51, rule 71 (3) and (4)

Caveat

In the High Court of Justice of Taraba State

Suit No…….

Probate Registry

Let no grant be sealed in the estate of…….…….late of ……deceased, who died on the…… of ……20…….at……. without notice to……...

DATED this ……..day of ……20…….

(Signed) ……Legal Practitioner for the said caveator whose address for services is…….……...

FORM 45

(Order 51, rule 71 (8))

Warning to Caveator

In the High Court of Justice of Taraba State

Suit No…….

Probate Registry

To……

of……..….a party who has entered a caveat in the estate of ……deceased

You are hereby warned within 8 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……..... named setting forth what interest you have in the estate of the above named……...late Of…….deceased, contrary to that of the party at whose instance this warning is issued; or

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 notwithstanding your caveat.

DATED 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 arose) 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 46

(Order 51, rule 71 (9))

Appearance to Warning or Citation

In the High Court of Justice of Taraba State

Suit No……..

Probate Registry

Caveat No…….dated this……day of……..20……

Citation dated the……day of……20……..

Full name and address of person warning (or citor)…….....

…….…….

Interest of person warning (or citor)……..

Full name and address of Caveator (or 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……..

Signed…….

Whose address for service is:

……

…….....

…….

Legal Practitioner (or'in person')

FORM 47

(Order 51 rule 82)

Notice of Election to Redeem Life Interest.

In the High Court of Justice of Taraba State

Suit No……..

Probate Registry

In the Estate of……deceased

Whereas …….……..of ……..died on the……day of ……...20…… wholly/partially intestate leaving his/her lawful wife/husband……. 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 transaction

DATED this…….....day of……..…….20……..

…….

(Signed)

(To the Probate Registrar)

FORM 48

(Order 52, rule 2)

Originating Summons for Possession

In the High Court of Justice of Taraba State

In the……. Judicial Division

Suit No……

BETWEEN

A.B……plaintiff

And

CD and E.F and

GH……Defendants

(if any) whose name is known to the Plaintiff

To (CD and) every (other) person in occupation of……

Let all persons concerned attend before…… at the High Court of the …… Judicial Division, Taraba State on the……. day of ……. 20…… at…….. O'clock in the forenoon for the hearing of an application by A. B. for an order that he does recover 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 plaintiff whose address is ……..(or this summons was taken

out by…….. of…… for…… of ……..Legal practitioner for the said Plaintiff whose address is…….

(or when the plaintiff acts in person)

This summons was taken out by the said plaintiff who resides at…… and is (state occupation) and (if the plaintiff 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 a 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 above mentioned, such order will be made as the Court may think just and expedient.

FORM 49

Order 52, rule 6(1)

Order for Possession

(Title as in Form No.1)

Upon hearing……..and upon reading the affidavit of ……filed on the ……day of……. 20…… it is ordered that the plaintiff 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 costs (or costs to be taxed)

(The above costs have been taxed and allowed at N …… as appears by a taxing officer's certificate dated the ……day of ……
20……)

DATED this…….day of ……..20……..

……..

Judge

FORM 50

Certificate of the Chief Registrar

PARTIES

Pursuant to the directions given to me by Hon Justice……

I hereby certify that the result of the accounts and inquiries which has been taken and made in pursuance of the judgment (or order) in this cause dated the……..…day of ……..is as follows:-

1. The defendants ……of ……..... ……..have received the amount of N……. and they have paid or are entitled to be allowed on account thereof, sums to the amount of ……. leaving a balance due from (or to) them of ……on that account

2 The particulars of the above receipts and payments appear in the account marked…… ……verified by the affidavit of……. Filed on the …….. ……day of……..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 I have disallowed the items of disbursement in the said account numbered …….and ……..(or in cases where a transcript has been made)

3 The defendants ……have brought in an account verified by the affidavit of…….. filed on the…….day of……..and which account is marked…….. and is to be filed with this certificate

The account marked…….. and which is also to be filed with this certificate, is a transcript of the account as altered and passed

FORM 51
REGISTRAR'S PROCESS BOOK

High Court of the…….. Judicial Division

No. Of Suit	Plaintiff	Defendant	Nature of process	Issued for	Issued against	Date	Time (hour/ minute)	am p.m.	Registrar's Signature

N.B.:

The above numbers are to correspond with the number in the order after each statement the evidence produced is to be stated as follows:

The evidence produced on this account (or inquiry) consists of the following document ……filed on……day of ……..20…… of the affidavit of
C.D …….filed …….

FORM 52
(Order 43)
Writ of Attachment and Sale against Immovable Property.

To CD, of…….
AND WHEREAS no movable property of the defendant (or plaintiff) can with reasonable diligence be found sufficient to satisfy the judgment (or order)
AND WHEREAS upon the application of the plaintiff (or defendant) it was ordered on the ……..day of ……..20 that writ of attachment and sale should issue against immovable property of the defendant (or plaintiff) for the sum of ₦……. (being part of the sum of.....
(Judgment debt or part thereof ordered to be levied or plaintiff's cost, or as the case may be)
remaining unpaid. These are therefore to require and order you forthwith to make the levy the
said sum of ₦…….…… together with the costs of this writ and the cost of executing it, by entering upon the attaching the immovable property of the defendant (or plaintiff) wheresoever it may be found within the.....Judicial
Division and by selling it and to bring what you shall have so levied into Court and to make return of what you have done under this writ immediately upon the execution thereof
Note:
The immovable property is not to be sold until after the end of 14 days next following the day on which the attachment has been made.

……
…
Registrar

FORM 53
(Order 56, rule 9)
Regulations Regarding Fees

1. No process shall, except by special order of Court, be issued until:

a. all fees payable thereon shall have been paid, and

b. an account thereof, initialed as received, shall have been set forth by the officer issuing the process both in the margin and in the counterfoil thereof

2. All such fees shall be carried to account immediately the process is issued.

3. Every document for or in respect of which any fee or fees shall have been paid, shall bear an endorsement initialed by the Registrar or 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 specified the fees thereof, it shall be sufficient for the Registrar or other officer to initial the amount of such fees appearing thereon, and to quote the number of the receipt

4. Every Registrar or other officer submitting any writ of summons or other process whatever for signature by a judge shall at the same time produce, the stump of the receipt given for the fees of such process.

5. No document in respect whereof a fee is payable shall be used in any legal proceeding, unless it shall have been initialed as aforesaid by the Registrar or other officer or unless the Court shall at the same time produce the stump of the receipt given for the fees of such process.

6. All fees for service, execution and mileage shall be paid into revenue.

7. No hearing fees or other fee shall be returned except upon a Voucher, payable at the Registry, in favour of the party entitled to receive the same and prepared at the direction of the judge before whom the cause or matter is set down and comes on for hearing.

FORM 54

(Order 56, rule 8 (1))

Fees Payable at the High Court

		N : K
1.	For the recovery of a specified sum:	
	a. not exceeding N1000,000.00	3,000.00
	b. exceeding N1000,000.00 but not above 3,000,000.00	5,000.00
	c. exceeding N3,000,000.00 but not above 5,000,000.00	10,000.00
	d. exceeding N5,000,000 but not above N10,000,000.00	20,000.00
	e. exceeding N10,000,000.00 per 1,000,000 excess	1000.00
	f. maximum fee	50,000.00
	g. Claim in foreign currency shall be converted into the local currency and assessed as above	
2.	For set off or counter-claim: the same as payable under Item 1.	
3.	For the recovery on an unspecified sum, the fee payable is the same as the maximum payable per relief.	
4.	For an account to be taken and payment of the sum found due.	
	a. Initial fee	2,000.00
	b. Second fee (payable before setting down for Judgment) per N100,000.00 or part thereof found due in excess of N200,000	2,000.00
	c. Maximum fee	10,000.00
5.	Originating Summons:	
	a. Originating summons	2,000.00
	b. Oaths	1,000.00
	c. Filing	1,000.00
	d. Double sealing	500.00
	e. Each exhibit	300.00
	f. Service as per distance but not less than	1,000.00
6.	Motion on Notice	
	a. Motion on Notice	400.00
	b. Oaths	1,000.00
	c. Filing	1,000.00
	d. Sealing	250.00
	e. Each exhibit	300.00
	f. Service as per distance but not less than	1,000.00

7.	Motion Ex-parte	
	b. Motion Ex-parte	400.00
	c. Oaths	1,000.00
	d. Filing	1,000.00
	e. Sealing	250.00
	f. Each exhibit	300.00
	g. Service as per distance but not less than	1,000.00
8.	For possession of property, as between landlord and tenant	
	a. Where the rent value does not exceed N100,000.00	2,000.00
	b. Where the rent value exceeds N100,000.00	
	per N10,000.00 or part thereof	200.00
	Maximum fee	5,000.00
9.	For a declaration of title to land and for possession of land other than between landlord and tenant	3,000.00
10.	For the administration of the property of a deceased person where there is no dispute regarding succession or distribution	
	a. Where the gross value of the property does not exceed N500,000.00 or part thereof	5,000.00
	b. Exceeding N500,000.00 per N500,000.00 or part up to N5,000,000.00	3,000.00
	Maximum fee	50,000.00
11.	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 be dead or alive	
	a. Where the gross value of the property of the deceased or of the property under trust does not exceed N500,000.00	2,000.00
	b. Where it exceeds N500,000 per N100,000.00 or part	400.00
	c. Where no gross value can be specified	12,000.00
	d. Maximum fee	20,000.00

MATRIMONIAL CAUSES

12.	For any petition other than alimony	2,000.00
13.	For the first citation	400.00
14.	For any subsequent citation	400.00
15.	For a petition for alimony	400.00
16.	For the Registrar's certificate	1,000.00
17.	For any application for decree absolute	1,000.00
18.	For reducing a petition and affidavit to writing	400.00
19.	For setting down the case for hearing	1,000.00

PROBATE AND ADMINISTRATION

20.	On drawing up an administration decree	200.00
21.	For drawing up order on further consideration where the	
22.	property administered exceeds N500,00	400.00
23.	For filing application for probate or administration	400.00
24.	For filing oath of execution or administration	400.00
25.	For taking justification or sureties for each surety	400.00
26.	For filing administration bond	400.00
27.	For entering a caveat	1,000.00
28.	For every warning to caveat	400.00
29.	For probate or letters of or order for administration:	
	Where the value of the property affected by the grant or order:	
	a. does not exceed N500,000.00	1,000.00
	b. exceeds N500,000.00 but not exceeding N1,000,000.00	1,500.00
	c. exceeds N1,000,000.00 for each additional 500,000.00 or part thereof	400.00
30.	For re-sealing a grant as to bring into force in Taraba State a fee reckoned under item 26 on the value of the property in Nigeria affected by the re-sealing	2,000.00
31.	For inventory taken by a Court official	2,000.00
32.	For application to search index to grants or wills or to inspect a grant or Will	400.00
33.	For deposit of Will for safe custody	5,000.00
34.	For application for a Writ of Habeas Corpus	1,000.00
35.	For filing any other application:	
	(a) If on notice	400,00
	(b) if ex-parte	400.00
	(c) if accompanied by other papers, same as payable under items 4, 5 and 6	
36.	For filing an affidavit	1,000.00
37.	For filing a security bond	400.00
38.	For filing any other paper	200.00
39.	For justification of sureties: for each surety	400.00
40.	For the issue of warrant to detain an absconding defendant	1,000.00
41.	For issue of a Writ of Habeas Corpus	400.00
42.	For the drawing up of any order or judgment	1,000.00
43.	For an inquiry by a Court official where so ordered for each sitting	400.00
44.	For an account taken by a Court official where so ordered per N50,000.00 or part thereof found to have been received	100.00
45.	For taking down a person's statement where so ordered as the Court may direct but not exceeding	1,000.00
46.	For searching the archives: for each period of six months or or part thereof	2,000.00
47.	For drawing up a bill of costs where so directed	1,000.00

48.	For taxing costs where so ordered: N1,000.00 or part thereof	50.00
49.	For every subpoena	200.00
50.	For commission to take evidence	2,000.00
51.	For warrant for detainee to give evidence	400.00
52.	For attesting the execution or signature of an instrument (other than instrument regarding payment of pension by Government) not otherwise provided for	200.00
53.	For sealing any document not in proceedings	200.00
54.	For certifying a copy as a true copy	1,000.00
55.	For certifying a record of proceedings	1,000.00
56.	For payment into Court (except when ordered by the Court or proceeds of execution)	500.00
57.	For appointment of Commissioner to administer Oaths and take declaration (not being a Government official)	10,000.00
58.	For sealing a letter of request	2,000.00
59.	For transfer of foreign judgment	2,000.00
60.	For certificate of service of foreign process (where not disallowed by convention)	5,000.00

TRANSFER OF CASES

61.	For application to transfer a case from one Court to another	2,000.00

APPEAL

62.	For filing notice of appeal	3,000.00

ALLOWANCES TO WITNESSES

63.	Allowances to witnesses: as per distance (Allowances of witness shall be borne by the party on whose behalf the witness gives evidence)	

NOTARIES FEES OF OFFICE

1.	Noting protest on bill or note	400.00
2.	Extending protest on bills of exchange or promissory note	400.00
3.	Attestation to any document	400.00

TRANSLATIONS

4.	For every page	400.00
5.	Attestation to translation	400.00

FEES FOR REGISTRATION OF JUDGMENTS

6.	Registration of certificate of judgment of High Court	5,000.00
7.	Registration of certificate of a judgment of any other Court	5,000.00

REGISTRATION OF A CAVEAT

8. For filing a caveat	1,000.00

Made at Jalingo on the ..... day of .....20…...

……

HON. JUSTICE J. F. AGYA

CHIEF JUDGE

TARABA STATE

On the 25th day of October, 2024, The Honorable Chief Judge of Taraba State, Hon. Justice *Joel F. Agya* appointed a six-man Committee to revise the Taraba State High Court (Civil Procedure) Rules, 2011.

The members are:

1. Hon. Justice Nuhu S. Adi - Chairman
2. Hon. Justice D. N. Buba - Member
3. Barr. I. M. Nurudeen - Member
4. Dr. D.P Saredau, Esq. - Member
5. H/W Auwal Abdulmumini - Member
6. H/W Useini Galadima - Secretary/Member