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CHAPTER 11

AREA COURTS

An Edict to Establish and Regulate Area Courts in Gongola

[29 June 1988]

PART I—PRELIMINARY

1. This Edict may be cited as the Area Courts Edict.

2. —(1) In this Edict, unless the context otherwise requires:-

"Area Court" means a court established under, or have been so established and includes an Upper Area Court;

"cause" includes any action, suit or other original proceeding between a plaintiff and a defendant and also any criminal proceeding;

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

"District Court" means a District Court established under the District Courts Law;

"Governor" means the Governor of the State;

"High Court" means the State High Court of Justice established under the High Court Law;

"Inspector of Area Courts" or "Inspector" means an officer appointed under section 42 and includes any:-

(a) Chief Inspector;

(b) Deputy Chief Inspector; or

(c) Assistant Chief Inspector;

"Judicial Service Committee" means the State Judicial Service Committee established in

pursuance of the Constitution of the Federal Republic of Nigeria;
 "land cause" or "land matter" means a cause or matter relating to the ownership, occupation or possession of land;
 "legal practitioner" means a person entitled in accordance with the provisions of the provisions of the Legal Practitioners Decree to practice as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings;
 "Local Government" means a Local Government established under, or in pursuance of, the Local Government Law or deemed to have been so established;
 "Magistrates' Court" means a Magistrates' Court established under, or in pursuance of, the Criminal Procedure Code or deemed to have been so established;
 "matter" includes any proceeding in a court not in a cause; "mixed cause" or "mixed civil cause" means a cause in which two or more of the parties are normally subject to different systems of native law and custom;
 "Moslem personal law" has the same meaning assigned to it by the Sharia Court of Appeal Law;
 "party aggrieved" includes the prosecutor in a criminal cause; "prescribed" means prescribed by Rules of Court; "Rules of Court" means Rules of Court made under section 71;
 "Sharia Court of Appeal" means the court established under the Sharia Court of Appeal Law; "State" means the Gongola State of Nigeria; "State matter" means any matter which is within the legislative competence of the Governor.

(2) Without prejudice to the generality of section 10 of the Interpretation Law, references in any Law to a native court shall, unless the contrary intention appears, be construed as references to an Area Court as defined in subsection (1).

PART II—ESTABLISHMENT AND CONSTITUTION OF AREA COURTS

3.—(1) The Chief Judge may, by warrant under his hand, establish such Area Courts as he may think fit.

(2) Every Area Court shall exercise the jurisdiction conferred upon it by or under this Edict within such area and to such extent as may be specified in the warrant established in pursuance of this section such name as he may think fit.

(4) Every warrant shall be operative and effective from the date specified in the warrant.

(5) The Chief Judge shall cause the jurisdiction of each Area Court to be notified from time to time in the State Gazette.

(6) The Chief Judge may at any time suspend, cancel or vary any warrant establishing an Area Court or specifying the area within which, or the extent to which, the powers of an Area Court may be exercised.

4. For the purposes of section 3, there shall be two grades of Grade of Area Courts, namely:-

- (a) Upper Area Courts; and
- (b) Area Courts.

Upper Area Courts

5. —(1) An Upper Area Court shall consist of a sole Judge who shall preside over the Court.

(2) Where the office of a sole Judge is vacant or where the person holding the office is absent from the State or incapacitated by illness or any other cause from performing the functions of the office, then:-

- (a) until a person has been appointed to and has assumed the functions of that office; or

(b) until the person holding the office has resumed the performance of those functions, the functions shall be performed by a person to be designated from time to time in that behalf by the Judicial Service Committee from among the other Judges of the Area Courts.

(3) An appointment pursuant to subsection (2) shall cease to have effect after the expiration of 3 months from the date of such appointment, and the Judicial Service Committee shall not re-appoint a person whose appointment has lapsed.

6. No person shall be qualified for an appointment by the Judicial Service Committee to the office of an Area Judge of an Upper Area Court unless he is:-

(a) a Chief Magistrate or Senior Magistrate; or

(b) a legal practitioner.

7. —(1) An Area Court shall consist of:-

(a) an area Judge who shall be the President of the Court; and

(b) two other members.

(2) Subject to subsection (3) the composition of an Area Court shall be deemed to be lawful and the Court shall have power to discharge its functions notwithstanding the occurrence of any vacancy in its membership as prescribed by subsection (1).

(3) An Area Court shall be duly constituted for the dispatch of its business by not less than two members thereof.

(4) An Area Court Judge shall preside at the sittings of an Area Court, but where the office of the Judge of the Area Court is vacant or where the person holding the office is absent from the State or is incapacitated by illness or any other cause from performing the functions of the office, then:-

(a) until a person has been appointed to and has assumed the functions of that office; or

(b) until the person holding the office has resumed the performance of those functions, the functions shall be performed by the senior of the other two members of the Court.

(5) Any question of Islamic personal law shall be heard and determined by any one or more members of an Area Court learned in Islamic law.

(6) Where an area Judge and two other members of an Area Court are sitting for the determination of any question before the Court, the determination of such question shall be according to the opinion of the majority of the bench hearing the case.

8. —(1) No person, other than a legal practitioner, shall be qualified for an appointment by the Judicial Service Committee to the office of an area Judge of an Area Court unless he is a Magistrate posted to that Court.

(2) No person, other than a legal practitioner, shall be qualified to be appointed by the Judicial Service Committee as a member of an Area Court unless:-

(a) he is a graduate of a recognised University and possesses a certificate in advanced judicial course; or

(b) he is a holder of any of the following certificates awarded by a recognised University or institution:-

(i) Diploma in Law or equivalent;

(ii) Diploma in Sharia and Civil Law or equivalent.

(3) For the avoidance of doubt an equivalent of a diploma in Law or diploma in Sharia and Civil Law mean that the holder of such equivalent:-

(a) must have been qualified to be admitted to read for a Diploma in Law or Diploma in Sharia and Civil Law; and

(b) must have studied requisite subjects offered for obtaining a Diploma in Law or Diploma in Sharia and Civil Law.

9. —(1) An Area Court may sit with or without assessors.

(2) Assessors for each Area Court shall be appointed by the Court.

(3) Assessors appointed by the Court under subsection (2) shall act in an advisory capacity and shall have no vote in the decision of the Court.

Sessions

10. —(1) An Area Court shall hold its sessions at such places and at such times as the Chief Judge may direct.

(2) Subject to any direction of the Chief Judge and any written Law, an Area Court shall hold sessions at such places and at such times as may be necessary for the convenient and speedy dispatch of the business of the Court.

PART III—JURISDICTION AND LAW OF AREA COURTS

11. —(1) Subject to this Edict and any written Law, any person may institute and prosecute any cause or matter in an Area Court.

(2) Any person who institutes or prosecutes any cause or matter in an Area Court under subsection (1) shall in that cause or matter be subject to the jurisdiction of that Area Court and of any other court exercising jurisdiction in that cause or matter.

12.—(1) Subject to this Edict and any other written Law, the following persons shall be subject to the jurisdiction of Area Courts:-

(a) any person whose parents were members of any tribe or tribes indigenous to some part of Africa and the descendants of any such person;

(b) any person one of whose parents was a member of such tribe; and

(c) any other person in a cause or matter in which he consents to the exercise of the jurisdiction of the Area Court.

(2) The Governor may by order direct that any or all of the powers conferred by this Edict:-

(a) shall not be exercised by any Area Court over any persons or classes of persons designated in such order; or

(b) shall not be so exercised without the consent of the persons concerned.

(3) No Area Court shall, in contravention of any order made under subsection (2) exercise any jurisdiction conferred by this Edict.

13.—(1) Where at any stage of the proceedings before final judgment in any cause or matter (whether civil or criminal) in an Area Court a person alleges that he is not subject to the jurisdiction of Area Courts, such proceedings shall, on the application of such person to the High Court, be transferred to the High Court that shall inquire into and determine the truth of such person's allegations.

(2) Upon the determination as is mentioned in subsection (1), the High Court shall make such order for the trial of the proceedings in:-

(a) the High Court; or

(b) a Magistrates' Court; or

(c) a District Court; or

(d) an Area Court,

as in all the circumstances of the case may seem just.

(3) The applicant shall give notice to the Area Court of the application made by him under subsection (1) and such application shall operate as a stay of the proceedings in the Area Court until the High Court has made an order under subsection (2).

14.—(1) The powers and jurisdiction of an Area Court shall not, subject to subsection (2), exceed those prescribed in the First Schedule in respect of each grade.

(2) The Chief Judge may by order confer on any Area Court of any particular grade such additional powers or jurisdiction as he may think fit.

15. Every Area Court shall have power and jurisdiction to the extent set out in the warrant establishing it and, subject to this Edict and the Criminal Procedure Code Law.

(2) Any civil cause or matter, other than land cause, shall be tried and determined by an Area Court that has jurisdiction over the area:-

(a) in which the defendant is ordinarily resident; or

(b) in which the defendant was at the time when the cause of action arose.

(3) Subject to any written Law, any land cause shall be tried and determined by an Area Court having jurisdiction over the area in which the land, which is the subject-matter of the dispute, is situated and to the extent of the power and jurisdiction of such Court.

Law to be administered

17.—(1) Subject to this Edict and in particular to section 19, an Area Court shall in any civil cause or matter administered:-

(a) the customary Law:-

(i) prevailing in the area of the jurisdiction of the Court; or

(ii) binding between the parties;

(b) any written Law which the court may be authorised to enforce by any order made under section 21;

(c) any rule or order:-

(i) made under the Local Government Law; or

(ii) made under any legislation repealed or superseded by the Law; and

(d) any rule, order or bye-law made by a Local Government under any other written Law and in force in the area of the jurisdiction of the court.

(2) Nothing contained in this section shall be deemed to authorise the application by an Area Court of any customary Law or part thereof in so far as:-

(a) it is repugnant to:-

(i) natural justice;

(ii) the doctrines of equity; or

(iii) good conscience; or

(b) it is incompatible, either directly or indirectly, or by necessary implication, with any written Law for the time being in force.

(3) Nothing contained in this section shall be deemed to preclude the application by an Area Court of any principle of English Law which the parties to any civil case agreed or intended or may be presumed to have agreed or intended should regulate their obligations in connection with the transactions which are in controversy before the court.

18. In any criminal cause an Area Court shall administer:-

(a) the Penal Code Law, the Criminal Procedure Code Law or any subsidiary legislation made thereunder;

(b) any written Law which the court may be authorised to enforce by any order made under section 21;

(c) any rule or order:-

(i) made under the Local Government Law; or

(ii) made under any legislation repealed or superseded by the Law; and

(d) any rule, order or bye-law made by a Local Government under any other written Law and in force in the area of the jurisdiction of the court.

Law to be applied in particular classes of causes

19.—(1) In any mixed civil cause, other than land cause, the customary law to be applied by an Area Court:-

(a) shall be the particular customary law or the combination of any two or more customary laws which the parties agreed or intended, or may be presumed to have agreed or intended, shall regulate their obligations in connection with the transactions which are in controversy before the court;

(b) shall, in the absence of any agreement or intention or presumption thereof, be:-

(i) the particular customary law; or

(ii) the combination of any two or more customary laws,

which it appears to the Court ought, having regard to the nature of the transaction and to all the circumstances of the case, to regulate the obligations of the parties in connection with the transactions which are in controversy before the Court,

but if, in the opinion of the Court, none of the paragraphs of this subsection is applicable to any particular matter in controversy, the Court shall be governed by the principles of natural justice, equity and good conscience.

(2) Subject to subsection (3), the customary law to be applied by an Area Court in any land cause or matter shall be the customary law in force in relation to land in the place where the land is situated.

(3) Customary law prohibiting, restricting or regulating the devolution on death to any particular class of persons of the right to occupy any land shall operate to deprive any person of any beneficial interest in such land (other than the right to occupy the land) or in the proceeds of sale thereof to which he may be entitled under the rules of inheritance of any other customary Law.

Guardianship

20.—(1) In any matter relating to the guardianship of children, the interest and welfare of the child shall be the first and paramount consideration.

(2) Where it appears to an Area Court that an order made by such Court should, in the interests of a child, be reviewed, the Court may:-

(a) of its own motion; or

(b) upon the application of any interested person, vary or discharge the order.

21. The Governor may by order confer upon any Area Court jurisdiction to enforce in respect of any State matter and within the local limits of the jurisdiction of such Court any written Law specified in the order and to impose penalties on any person subject to the jurisdiction of the Court who offends against the written Law, subject to such restrictions or limitations, if any, as may be specified in the order.

22. The Governor may by order confer or impose upon any Area Court in respect of any State matter any of the powers conferred or any of the duties imposed upon any other Court or upon:-

(a) any High Court Judge;

(b) any District Judge; or

(c) any Magistrate,

by any Act or Law specified in the order.

PART IV—PRACTICE AND PROCEDURE IN AREA COURTS

23.—(1) Subject to this Edict and to any other written law and to any rules which may be made under section 71, sections 17 and 19 shall apply in the regulation of the practice and procedure of

Area Courts in civil causes and matters.

(2) The practice and procedures of Area Courts in criminal causes shall be regulated in accordance with the Criminal Procedure Code Law.

(3) Notwithstanding any written law and, in particular, section 386 of the Criminal Procedure Code Law, Area Courts shall be bound by the Criminal Procedure Code law and the Evidence Law.

24. An Area Court shall, in exercising jurisdiction over any matter of inheritance, dispose of such matter within 90 days from the date on which the case was filed in Court.

25. Where an Area Court has jurisdiction in or over any cause or matter or over the parties thereto it shall not be necessary:-

(a) for the Court to state on the face of the record of its proceedings in such cause or matter that the Court has jurisdiction:-

(i) in or over the cause or matter; or

(ii) over the parties thereto; or

(b) for the jurisdiction of the Court:-

(i) in or over the cause or matter; or

(ii) over the parties thereto,

appear on or from the face of the record of its proceedings in the cause or matter.

26.—(1) An Area Court may permit:-

(a) the husband, wife, brother, sister, son, daughter, guardian, servant, master or any inmate of the household of any party, who shall give satisfactory proof that he has authority in that behalf; or

(b) a relative of a person administering the estate of a deceased person who was subject to the jurisdiction of an Area Court,

appear for any party before an Area Court.

(2) Subject to subsection (1), in the case of a prosecution by, or on behalf of, a Local Government or in any proceedings pending before an Area Court, a Local Government may be represented in Court at any stage of the proceedings by any member or officer of the Local Government who shall satisfy the Court that he is duly authorised in that behalf.

27.—(1) The room or place in which an Area Court shall sit to hear and determine any proceedings shall be an open and public court to which the members of the public shall have a right of access while they shall be of good behaviour and to the extent to which the capacity of the Court shall allow.

(2) Provision may be made by Rules of Court under section 71 for the exclusion of the public from any Area Court:-

(a) in cases in which persons under the age of seventeen years are involved; or

(b) in cases where the administration of justice would be rendered impracticable by the presence of the public.

PART V—TRANSFERS BY AREA COURTS

28. An Area Court may order the transfer of any cause or matter either:-

(a) before trial; or

(b) at any stage of the proceedings before judgment is given, to any other Area Court of competent jurisdiction and such other Area Court may take any course with regard to the cause or matter which it considers that justice requires.

29. An Area Court may either:-

(a) of its own motion; or

(b) upon the application of either party to a cause or matter, remit to any other Area Court of competent jurisdiction which is within the territorial jurisdiction of such other Area Court any cause or matter before it which in its opinion can for purposes of convenience or otherwise be more appropriately or expeditiously dealt with by such other Area Court, and, when remission is effected, the other Area Court shall hear and determine the cause or matter.

30.—(1) An Upper Area Court may either:-

(a) of its own motion; or

(b) upon the application of either party, whenever it is satisfied that a cause or matter before an Area Court is from its nature beyond the jurisdiction of the Area Court, order that such hearing be stayed and thereupon such cause or matter shall be discontinued in such Area Court accordingly.

(2) Where a hearing is stayed and the cause or matter discontinued under subsection (1), the Upper Area Court shall either:-

(a) hear or determine the cause or matter; or

(b) order the transfer of the cause or matter to such other Area Court within its territorial jurisdiction as the Upper Area Court may think fit and thereupon such Area Court shall hear and determine the cause or matter.

31.—(1) Where any cause or matter is transferred to an Area Court under this Part, such Court may take any course with regard to the cause or matter which it considers that justice requires, subject, nevertheless, to any directions which may be given by the Court by which the order of transfer is made.

(2) The powers conferred by this section include the power to increase a sentence, but not the power to try a person for an offence in respect of which he has already been acquitted.

PART VI—ANCILLARY POWERS OF AREA COURTS

32. Every person sentenced or committed by an Area Court to imprisonment shall be detained in a place established as a prison under any written Law.

33. In any proceedings, and at any stage thereof, an Area Court may either:-

(a) of its own motion; or

(b) upon the application of any party to a cause or matter, summon any person within the State to attend to give evidence and may examine that person as a witness.

34. Any person present in an Area Court, whether a party or not in the proceedings before the Court, may be compelled by the Court to give evidence as if he had been summoned to attend and give evidence, and may be punished in like manner for any refusal to obey the order of the Court.

35.—(1) If in any cause or matter an Area Court considers that the interests of justice require that the evidence of a person not within the area of jurisdiction of the Area Court should be obtained before any other Court or any officer thereof, the Area Court may make an application to a Judge of the High Court requesting that the evidence of such person may be taken before any other Court or officer thereof in the place in which such person is.

(2) Where an application is made to a Judge under subsection (1), the Judge, if in his discretion he thinks fit so to do, may make an order in respect of the taking of the evidence of the person.

36. Any judgment or order given or made by an Area court in a civil cause or matter may be enforced:-

(a) by seizure and sale of the property of the person condemned in the judgment or order;
or

(b) by such other methods of enforcing judgments and orders as may be prescribed by Rules of Court made under section 71.

37. Any Area Court shall carry into execution any decree or orders of

- (a) the Supreme Court;
- (b) the Federal Court of Appeal;
- (c) any High Court;
- (d) any Magistrates' Court;
- (e) the Sharia Court of Appeal;
- (f) the Customary Court of Appeal;
- (g) any District Court;
- (h) any Area Court established under or in pursuance of this Edict or deemed to have been so established; and
- (i) any area Court of any other part of the Federal Republic of Nigeria, which may be lawfully directed to such Area Court, and shall execute any warrant and serve any process issued by any of the Courts referred to in paragraphs (a) to (h) and directed to such Area Court for execution or service, and shall generally give such assistance, as may be required, to any of the Courts referred to in paragraphs (a) to (h).

38. If in any cause or matter before an Area Court in which, pending final determination thereof, it shall be shown to the satisfaction of the Area Court that any property which is in dispute in the cause or matter is in danger of being wasted, damaged, alienated or otherwise injuriously dealt with by any party to the cause or matter, then the Area Court:-

- (a) may issue an injunction to such party commanding him to refrain from doing the particular act complained of; or
- (b) may take and keep such property in custody pending the determination of the cause or matter.

39. —(1) An Area Court may, whenever it shall think it necessary so to do for the preservation, proper custody, or management of any property in dispute in a cause or matter, appoint any person and as a receiver or manager:-

- (a) to receive and take charge of the property; and
- (b) to deal with such property in such manner as shall be directed by the Area Court.

(2) Any person appointed as a receiver or manager under subsection (1):-

- (a) shall be responsible to the Area Court for all things done as such receiver or manager; and
- (b) shall account for or pay to the Area Court all moneys received in respect of any property referred to in subsection (1).

(3) An Area Court may make such order as it shall think fit in regard to the remuneration of any person appointed as a receiver or manager under subsection (1) and shall pay to the party entitled thereto all moneys in the custody of the Area Court due in respect of any property referred to in subsection (1).

40. In any cause or matter it shall be lawful for an Area Court, on its own motion or on the application of either party:-

- (a) to make such order as the Court may think fit for the inspection by the Area Court, the parties or any witness of any movable or immovable property the inspection of which may be material to the proper determination of the question in dispute; and
- (b) to give such direction as the Court may think fit respecting such inspection.

PART VII—CONTROL OF AREA COURTS GENERAL SUPERVISION OF AREA COURTS

General Supervision of Area Courts

- 41.** —(1) Every Area Court shall be subject to the general supervision of the High Court.
- (2) Without prejudice to the generality of subsection (1), if it shall appear to the High Court:-
- (a) that it is necessary for the purpose of securing, as far as possible, a fair and impartial trial of any cause or matter; or
 - (b) that it is expedient in the interests of justice generally, that a particular cause or matter which is within the jurisdiction of an Upper Area Court should not be tried at first instance by any other Area Court having jurisdiction to do so,
- the High Court may order that such cause or matter shall be tried by the Upper Area Court.
- (3) The powers of the High Court under this section may be exercised by it either:-
- (a) on its own motion; or
 - (b) on the application of any party to a cause or matter in an Area Court.
- 42.** —(1) For the purposes of this Edict, the Judicial Service Committee shall appoint inspectors.
- (2) The inspectors appointed under subsection (1) shall be of the following grades:-
- (a) Chief Inspector,
 - (b) Deputy Chief Inspector;
 - (c) Assistant Chief Inspector; and
 - (d) Principal Inspector.
- 43.** An inspector may require an Area Court to submit a report to him of any case tried in the Court.
- 44.** An inspector shall at all times have access to any Area Court within the State and to the records and proceedings of the Court.
- 45.** —(1) An inspector shall have power at any stage of the proceedings before final judgment either:-
- (a) on his own motion; or
 - (b) on the application of any party to a cause or matter before an Area Court,
- by order to stay the hearing of any cause or matter on such terms as he may consider just for a period not exceeding 14 days.
- (2) Where an order has been made under subsection (1), the inspector may, in his discretion, adopt one or other of the following courses:-
- (a) if the cause or matter appears to be within the jurisdiction of an Area Court, other than that referred to in subsection (1), he may by the same or another order direct that the cause or matter be inquired into, tried and determined by such Area Court as shall appear to have jurisdiction over the cause or matter;
 - (b) he may direct in like manner that such cause or matter shall be inquired into, tried and determined:-
 - (i) by a Magistrates' Court; or
 - (ii) by a District Court; or
 - (c) if the cause or matter be one which, in his opinion, ought for any reason to be transferred from an Area Court to the High Court, he may report the case to the High Court except that no cause or matter which has been transferred by:-
 - (i) the High Court; or
 - (ii) a Magistrates' Court; or
 - (iii) a District Court,

to an Area Court may be reputed to the High Court or transferred to the High Court or any other Magistrates' Court of a District Court under this section.

(3) The Court to which the cause or matter is transferred shall be informed in writing of the reasons for making the order of transfer and may thereafter take any course with regard to the cause or matter which it considers that justice requires.

(4) Where a cause or matter is reported to the High Court under paragraph (c) of subsection (2), the High Court shall direct in what mode and in what Court the cause or matter shall be heard and determined.

(5) Where a cause or matter is transferred from an Area Court to any other Court under this section, no summons fee shall be payable in the Court to which the cause or matter is transferred if the appropriate summons fee has been paid in the Area Court from which the cause or matter is transferred.

46. Every order of transfer shall operate as a stay of proceedings before the Area Court from which the proceedings are ordered to be transferred in any cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and a certified true copy of the record shall be transmitted to the Court to which the proceedings shall be transferred and thenceforth all proceedings in the cause or matter shall be taken in such Court as if the cause or matter had been commenced in such Court.

(2) Every report made under paragraph (c) of subsection (2) of section 45 shall operate to suspend the proceedings the subject of such report until the directions of the High Court have been given under subsection (4) of section 45.

(3) The Inspector may, if it appears expedient, in the first instance transmit by telegram the contents of any order made by him under subsection (1) and such telegram shall, until the receipt of the order, have the same validity and effect as if it were the order.

Inspector to report case before Area Court to which he has access to court to which appeal of case would lie if there is miscarriage of justice.

47.—(1) An inspector, if in his opinion there has been a miscarriage of justice in any case before an Area Court to which he has access under section 44 may:-

(a) on his own motion; or

(b) in his discretion, on the application of any person concerned,
report that case to the Court to which an appeal in such case would lie.

(2) Any report made under subsection (1) shall be made in writing and shall record the particulars of the judgment or the order or the case and the reason for its being reported and be accompanied by a copy of the record of the case.

(3) An inspector who has reported any case to a Court under this section shall have power to make an interim order suspending the operation of any sentence or order made by the lower Court in such case, or admitting to bail any person sentenced to imprisonment therein by the lower Court.

48.—(1) The Court to which a case has been reported under section 47 shall review such case and may:-

(a) reverse, vary or confirm the decision given;

(b) make such order or pass such sentence in the proceedings as the lower Court could have made or passed; and

(c) make such further order, which may include an order that a person sentenced to imprisonment therein be released on bail, as may be necessary or as the justice of the case may require except that:-

(i) no sentence of fine or imprisonment or other sentence in a criminal proceeding shall be increased; and
(ii) no order in a civil proceeding to the prejudice of any party thereto shall be made,
without an opportunity being given to the convicted person or such party being heard;
(d) set aside the conviction and sentence or judgment or other order of the lower Court; and
(e) order, when the Court considers it desirable, the case to be retried either by:-
(i) the same Court; or
(ii) any other Area Court of competent jurisdiction; or
(iii) any Magistrates' Court; or
(iv) any District Court; or
(f) if the case is one that appears proper to be heard by the High Court, report the case to the High Court.

(2) In exercise of its powers of review under this section, a Court may hear such additional evidence as it considers necessary for the just disposal of the case.

49. No inspector shall exercise the powers conferred upon him by this Part in any case where a party aggrieved by the decision of the Area Court has appealed therefrom or otherwise instituted any appeal proceedings in respect thereof.

Special pleas in bar

50. Where any proceedings are quashed and an order for hearing is made under this Part, no plea of:-

(a) *res judicata*; or

(b) *autrefois acquit*; or

(c) *autrefois convict*,

shall be entertained in respect of such proceedings in any subsequent proceedings.

PART VIII—APPEALS

Appeals from Area Courts

51. Any party aggrieved by a decision or order of any Area Court may appeal therefrom to the Upper Area Court having jurisdiction in the area in which such Area Court is situated.

Appeals from Upper Area Courts

52. Any party aggrieved by a decision or order of an Upper area court may appeal to:-

(a) the Sharia Court of Appeal in cases involving questions regarding Islamic Personal Law;

(b) the Customary Court of Appeal in cases involving questions regarding customary law; and

(c) the High Court in all other cases.

*General provisions relating to appeals from Area Courts and
Upper Area Courts*

53. Subject to the Constitution of the Federal Republic of Nigeria, no appeal shall lie from the lower Court at the instance of any party at whose request a case has been reported to a Court under section 48.

54. Leave to appeal out of time to any Court may be given by such Court upon such terms as the Court shall consider just.

Powers of appellate Courts in criminal matters

55.—(1) Any Court exercising appellate jurisdiction in any criminal matter under this Edict may, where the appellant is the person who was accused before the Court of first instance, in the exercise of that jurisdiction:-

- (a) if the Court considers that there is no sufficient ground for interfering with the decision appealed against, confirm that decision and dismiss the appeal;
- (b) if the Court considers that there is sufficient ground for interfering with the decision appealed against, set aside the decision and either:-
 - (i) acquit the appellant; or
 - (ii) order the retrial of the appellant before a Court of competent jurisdiction on the same charge or accusation which might have been laid on the facts as disclosed by the evidence; or
 - (iii) after hearing the whole case or not and whether in whole or in part substitute any other decision which the Court of first instance would have made but so that, by the decision so substituted, the appellant shall not be found guilty of any offence of which he was not accused before the Court of first instance, unless the appellate Court is satisfied that the defence of the appellant before the Court of first instance would not have been substantially affected if he had been so accused.

(2) Any Court exercising appellate jurisdiction in any criminal matter under this Edict, may, where the appellant is a person other than the person who was accused before the Court of first instance, in the exercise of that jurisdiction:-

- (a) if the Court considers that there is no sufficient ground for interfering with the decision appealed against, confirm that decision and dismiss the appeal;
- (b) if the Court considers that there is sufficient ground for interfering with the decision appealed against, set aside that decision and either:-
 - (i) order the retrial of the respondent before a Court of competent jurisdiction on the same charge or accusation which might have been laid on the facts as disclosed by the evidence; or
 - (ii) after hearing the whole case or not, and whether in whole or in part, substitute any other decision which the Court of first instance could have made but so that, by the decision so substituted, the respondent shall not be found guilty of an offence of which he was not accused before the Court of first instance, unless the appellate Court is satisfied that the defence of the respondent before the Court of first instance would not have been substantially affected if he had been so accused.

Powers of appellate Courts in civil matters

56.—(1) Any Court exercising appellate jurisdiction in any civil matter under this Edict may, in the exercise of that jurisdiction:-

- (a) after rehearing the whole case or not, reverse, vary or confirm the decision of the Court from which the appeal is brought and may make any such order or exercise any such power as the Court of first instance could have made or exercised in such case or as the appeal Court shall consider that the justice of the case requires;

(b) quash any proceedings and thereupon, where it is considered desirable, order such case to be retried before:-

- (i) the Court of first instance; or
- (ii) any other Court of competent jurisdiction.

(2) In the exercise of its powers under this section, a Court may hear such additional evidence as it considers necessary for the just disposal of the case.

Inspection of records and books

57. Where an appeal lies from an order or decision of an Area Court, the Court to which the appeal is brought shall have power to inspect the records or books of the Area Court relative to the appeal.

Technicalities

58. No proceedings in an Area Court and no summons, warrant, process, order or decree issued or made thereby shall be varied or declared void upon appeal or revision solely by reason of any defect in procedure or want of form, but every Court or authority established in and for the State and exercising powers of appeal or revision under this Edict shall decide any matter according to substantial justice without undue regard to technicalities.

PART IX—OFFICERS OF AREA COURTS

59. Every area Judge or member or registrar or clerk or other officer of an Area Court shall be appointed by the Judicial Service Committee.

60. A registrar or clerk appointed to an Area Court shall perform such duties in the execution of the powers and authorities of the Court as may be assigned to him by Rules of Court or by any special order of the Court and in particular he shall:-

- (a) prepare for issue all warrants and writs;
- (b) register all orders and judgments of the Area Court; and
- (c) enter an account of all moneys received or paid by the Area Court.

61. A registrar or clerk may with the consent of the Area Court delegate any of the duties assigned to him to any other servant of the Court, and in every such case such servant shall be governed in respect of his duties by the orders and directions of the registrar or clerk.

62.—(1) Such bailiffs or messengers as may be required shall be appointed to every Area Court.

(2) Any person appointed under subsection (1) shall:-

- (a) effect the service and execution of writs and other process which he may receive from the Area Court to which he attached;
- (b) make all necessary returns in relation to the writs and process;
- (c) carry out such other duties as may be prescribed by rules made under this Edict; and
- (d) at all times when he is not engaged in duties which necessitate his absence from the Area Courts attend the Area Court and obey all the lawful directions of the Court.

(3) An Area Court may authorise a police officer to perform all or any of the duties mentioned in subsection (2) in so far as they relate to the criminal jurisdiction of the Court and any police officer who shall be in possession of any criminal process shall be presumed to be authorised to execute such process unless the contrary is shown to be the case.

63. Every area Judge or member or registrar or clerk or other officer of an Area Court shall be a public officer in the public service of the State, and for this purpose the code of conduct for Public officers set out in the Constitution of the Federal Republic of Nigeria shall apply to every such public officer appointed under Edict.

64. Any Area Judge or other member of an Area Court:-

- (a) who shall appear to have abused his power or to be unworthy or incapable of exercising the power justly; or
- (b) for any other sufficient reason may be suspended or dismissed by the Judicial Services Committee.

(2) Upon his dismissal or during the period of his suspension an Area Judge or other member of an Area Court shall be disqualified from exercising any powers or jurisdiction unless and until he is expressly reinstated.

Protection of Area Judges, members and other officers

65. —(1) No Area Judge or member of an Area Court appointed under this Edict to act as such Judge or member shall be liable for any act done by him or ordered by him to be done in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, provided that he at the time, in good faith, believed himself to have jurisdiction to do or order to be done the act in question.

(2) No officer of any Area Court or other person bound to execute any lawful warrant or order issued or made in the exercise of jurisdiction conferred by this Edict shall be liable in any action for damages in respect of the execution of such warrant or in order unless it be proved that he executed the warrant or order in an unlawful manner.

Transfer of service

66. Where a Senior Magistrate is posted to an Upper Area Court as an Area Judge such Magistrate shall be regarded to be on duty posting and shall be entitled to full salary and other fringe benefits attached to that office.

67. For the purpose of determining the rights of pension or gratuity on retirement, the service of:-

- (a) a Chief Magistrate; or
- (b) a Senior Magistrate,

posted to an Upper Area Court as an Area Judge shall be regarded as continuous from the time he was appointed as a Magistrate or to the bench.

PART X—OFFICES AND TRIAL COURTS

68.—(1) Any person who:-

- (a) shall exercise or attempt to exercise any judicial power within the area of the jurisdiction of a duly constituted Area Court, except in accordance with any written Law; or
- (b) shall sit as member of such Court without authority, commits an offence under this Edict and shall, on summary conviction before the High Court, a Magistrates' Court of competent jurisdiction, an Upper Area Court or an Area Court, be liable to a fine not exceeding ₦ 200.00 or to a term of imprisonment not exceeding 12 months or to both.

(2) Nothing contained in this section shall be deemed to prohibit any person from adjudicating as an arbitrator upon any civil matter in dispute where the parties thereto have agreed to submit the dispute to his decision.

(3) No prosecution under this section shall be instituted without the consent in writing of the State Attorney-General.

69.—(1) Any officer of an Area Court:-

- (a) who has a duty to perform under subsection (2) of section 62; and
- (b) who wilfully or by neglect or omission,

loses the opportunity of performing such duty commits an offence under this Edict and shall, on summary conviction, be liable to a fine not exceeding ₦ 500.00 or to a term of imprisonment not

exceeding 6 months or to both.

(2) In addition or as an alternative to any penalty imposed under subsection (1), a Court may, if it thinks fit, order an officer convicted of an offence under that subsection to pay the whole or a part of any damages sustained by any person as a result of such offence, and the order shall be enforced as an order directing the payment of money.

(3) Any person (not being a duly appointed bailiff or messenger or a police officer acting under subsection (2) of section 62) who shall carry out or purport or attempt to carry out any of the duties specified in subsection (2) of section 62 commits an offence under this Edict and shall, on summary conviction, be liable to a fine not exceeding ₦500.00 or to a term of imprisonment not exceeding 6 months or to both.

70. Subject to section 69, any proceedings arising under this Part may be brought in:-

- (a) the High Court; or
- (b) a Magistrates' Court; or
- (c) an Area Court of competent jurisdiction.

PART XI—RULES OF COURT

71.—(1) The Chief Judge may make Rules of Court generally for the carrying into effect of this Edict.

(2) Without prejudice to the generality of subsection (1), the Chief Judge may make Rules of Court:-

- (a) prescribing and providing for:-
 - (i) the maximum fees which may be charged in Area Courts of first instance and of appeal and appeals from such Area Courts and generally;
 - (ii) the reduction of such maximum fees in respect of all or any Area Courts or in respect of all or any proceedings;
 - (iii) the remission in whole or in part of any maximum or reduced fee and the manner in which the persons or Area Courts by whom or by which such remission may be made;
- (b) for the disposal and application of fines and fees received by Area Courts;
- (c) for the practice and procedure of Area Courts in their original jurisdiction, on review and appeal;
- (d) for the time within which any act, matter or thing shall be carried out or performed for the purposes of this Edict and the time within which notice of appeal shall be given from the decision of any Area Court;
- (e) for the recording and perpetuation of the decisions of Area Courts in land cases by reference to plans and the fixing of landmarks;
- (f) prescribing the fees which may be charged by surveyors for any work done for the purposes of any rules made under paragraph (e);
- (g) providing for:-
 - (i) the carrying into execution of the decrees or orders of Area Courts or any class of Area Courts, whether such Area Courts are established under this Edict or under any other written Law; and
 - (ii) the execution of the warrants and the service of the process of such Courts or class of Courts, where such decrees or orders are made or such warrants or process are issued in respect of persons or property not within the area of the

jurisdiction of the Area Court making the decrees or order or issuing the warrants or process;

(h) prescribing the Courts or authority by which the decrees, orders, warrants or process mentioned in subparagraph (ii) of paragraph (g) shall be carried into execution, executed or served;

(i) for the exclusion of the public from an Area Court in accordance with subsection (2) of section 27;

(j) for the procedure of Area Courts in relation to applications for the interpretation of the Constitution of the Federal Republic of Nigeria.

(3) Any rules made under this section may apply to all Area Courts or to any class of Area Courts or to any particular Area Court or to such Area Courts or particular Area Courts as may be determined under the rules.

PART XII—GENERAL

72.—(1) The fees, fines or other moneys taken by Area Courts shall be paid into, and form part of, the State Consolidated Revenue Fund.

(2) No Area Court shall in any matter of inheritance deduct any money or take any part of the estate of the deceased in the form of *ushra*.

73.—(1) All Upper Area Courts established under or in pursuance of the Area Courts Law 1968 or deemed to have been so established shall be deemed to be Upper Area Courts established under or in pursuance of this Edict.

(2) All Area Courts established under or in pursuance of the Area Courts Law, 1968 or deemed to have been so established shall be deemed to have been so established under or in pursuance of this Edict except that the Area Courts established under or in pursuance of this Edict shall be without any grades.

(3) Any person who immediately before the coming into force of this Edict holds office by virtue of the Area Courts Law 1968 in force immediately before the coming into force of this Edict shall be deemed to be duly appointed to that office by virtue of this Edict or by any authority by whom appointments to that office fall to be made in pursuance of this Edict, subject to such person being:-

(a) a graduate of a recognised University and possessing a certificate in an advanced judicial course; or

(b) a holder of any of the following certificates awarded by a recognised University or institution:-

(i) Diploma in Law;

(ii) Diploma in Sharia and Civil Law.

74. Any cause or matter begun and pending immediately before the coming into force of this Edict in any Area Court constituted under the Area Courts Law 1968, whether as of first instance or of appeal, may be continued and concluded in the appropriate Area Court established under this Edict and every judgment, order or sentence in any such cause or matter may be enforced in the same manner and the same appeal, if any, shall lie therefrom as if it were a judgment, order or sentence in a cause or matter originally instituted in the appropriate Area Court established under this Edict.

75. Any appeal from an Area Court constituted under the Area Courts Law 1968, which appeal may immediately before the coming into force of this Edict be pending before any Court, shall be continued and concluded by such Court in like manner as if the appeal were from an Area Court constituted or deemed to have been constituted under this Edict and every judgment, order

or sentence given, issued or passed in such appeal may be enforced in such manner as if it were a judgment, order or sentence in an appeal from an Area Court constituted or deemed to have been constituted under this Edict.

76.—(1) The following enactments are hereby repealed to the extent to which they apply to the State:-

- (a) the Area Courts Law No. 1 of 1968;
- (b) the Area Courts (Registration of Deaths) Law No. 1 of 1969;
- (c) the Area Courts (Amendment) Law No. 9 of 1971; and
- (d) the Area Courts (Amendment) Law 1979.

(2) Notwithstanding the repeal by this section of the Area Courts Law 1968, any subsidiary legislation made thereunder and in force immediately before the coming into force of this Edict shall continue under this Edict except in so far as it is inconsistent with this Edict or has been revoked by subsidiary legislation made under this Edict.

(3) Nothing in this Edict shall be deemed to affect:-

- (a) the powers and functions of:-
 - (i) the High Court; or
 - (ii) a Magistrates' Court,
 in the exercise of its criminal jurisdiction; or
- (b) any right or power in any officer or person to institute criminal proceedings in any of the Courts referred to in paragraph (a).

Section 14.

FIRST SCHEDULE

LIMITS OF JURISDICTION OF GRADES OF AREA COURTS

PART I—CRIMINAL CAUSES

<i>Upper Area Court</i>	<i>Area Court</i>
Limited only by absence of jurisdiction in homicide cases; otherwise unlimited	Imprisonment for five years or a fine of one thousand Naira.

Courts of all grades have power subject to the provisions of section 3 of the Penal Code (Northern Region) Federal Provisions Act 1960, to award a sentence of caning and of symbolic or Haddi lashing in accordance with the provisions of the Penal Code and the Criminal Procedure Code.

PART II—CIVIL CAUSES

<i>Type of Causes</i>	<i>Upper Area Court</i>	<i>Area Court</i>

1. Matrimonial causes, matters between person married under native law and custom or arising from or connected with a union contracted by native law and custom other than those arising from or connected with a Christian marriage as defined in section 1 of the Criminal Code. (Chapter 42 of 1958 Laws)	Unlimited	Unlimited
2. Suits relating to the custody of children under native law and custom	Unlimited	Unlimited
3. Civil actions in which the debt, demand or damages do not exceed the amounts specified in the respective columns hereof	Unlimited	Unlimited
4. Causes and matters relating to the succession to property and the administration of estates under native law and custom where the value of the property does not exceed the amounts specified in the respective columns hereof	Unlimited	₦ 20,000.00
5. Causes and matters concerning the ownership, possession or occupation of land in which the value of the subject matter does not exceed the amounts specified in the respective columns hereof	Unlimited	₦ 10,000.00
	=Where the Court is of competent jurisdiction under section 16(3)	