

CHAPTER H2 - HIGH COURT LAW

ARRANGEMENT OF SECTIONS

PART I

Preliminary

SECTION

1. Short title.
2. Interpretation.

PART II

Constitution of the High Court

3. Establishment of the High Court.
4. Constitution of the court.
5. Qualifications of judges.
6. Retiring age of judges.
7.
8. Powers of judges.
9.
10. Precedence of judges.
11.

Seal of the Court

12. Seal.

PART III

Jurisdiction and Law

13. General jurisdiction of High Court.
14. Specific subjects included in jurisdiction.
15. Jurisdiction excluded in certain respects.
16. Procedure for interpretation of Constitution in High Court cases.
17.
18.
19. Mandamus in an action, injunctions and receivers.
20. Relief against forfeiture for non-payment of rent.
21. Execution of instruments by order of court.
22. Reconciliation in civil cases.
23. Credit to Nigerians.

Prerogative Writs and Certain Other State Proceedings

24. Orders of *mandamus*, prohibition and *certiorari*.

SECTION

25. Injunction in lieu of *quo warranto*.
26. Application of law and practice in force in England to proceedings under sections 24 and
27. Jurisdiction of High Court limited in issue of prerogative orders.

Law to be applied

28. Extent of application of law of England.
29.
30. Law and equity to be concurrently administered.
31. Rules of equity to prevail.
32. Determination of matter completely and finally.

Probate

33. Law and practice in force to apply in probate cases.

Customary Law

34. Application of customary law.

Practice and Procedure

35. Practice and procedure generally.

References to Court of Resolution

PART IV

Special Provisions relating to Appellate Jurisdiction

37. Constitutions to prevail.
38. Jurisdiction of High Court in appeals and cases stated from lower courts.
39. Power of revision of decisions of District Courts or magistrates' courts.
40. Constitution of the High Court in its appellate jurisdiction.
41. Judgment of the High Court in criminal appeal cases.

Appeals from District Courts

42. Power of High Court in appeals from District Courts.
43. Procedure on appeal.
44. Appearance of appellant.

Appeals from Magistrates' Courts

45. Summary dismissal of criminal appeal.
46. Notice of time, place and hearing.
47. Determination of criminal appeals from magistrates.
48. Power of High Court in criminal appeals from magistrates.

- 49. Effect of wrong venue.
- 50. Appearance of appellant in criminal cases.

General Provisions relating to Appeals from District Courts and Magistrates' Courts

- 51. Defects in notice of appeal and recognisance.

SECTION

- 52. Objections to form of grounds for appeal.
- 53. Objections to complaint, charge, conviction or order.
- 54. Defects in proceedings under appeal.
- 55. Additional evidence.
- 56. Restriction on review.
- 57. Costs in appeals from District Judges and magistrates.
- 58. Notice of appeal and limitation of time.
- 59. Enlargement of time.
- 60. Finality of judgment.

Provision pending Appeal

- 61. Provisions pending appeal.

PART V

Appeals from Area Courts

- 62. High Court to hear appeals from upper area courts.
- 63.

- 64. Assessor in area court appeals.
- 65. English law not to be applied in cases governed by customary law. 65A. Summary dismissal of criminal appeal from area court.

PART VI

Divisions, Distribution of Business, Sessions, etc.

- 66. Court open throughout the year.
- 67. Divisions and distribution of business.
- 68. Regulation of sessions. 68A.
- 69. Power to dispense with holding of sessions.
- 70. Effect of judge's absence from a sitting.

Power of Transfer

- 71. Transfer of cause to District Court or magistrates' court.
- 72. Transfer of cause from one judge to another.
- 73. Power to cancel or vary order of transfer.
- 74. Telegram to have validity of order.

- 75. Effects of order of transfer.
- 76. Power to transfer cause to area court.
- 77. Order of transfer not subject to appeal.
- 78. Transfer to Sharia Court of Appeal.
- 79. Transfer from Sharia Court of Appeal.

PART VII

General Provisions relating to Trial, Practice and Procedure

Trial by Judge Alone

SECTION

- 80. Mode of trial in original jurisdiction.
- 81. Powers of single judge in court and in chambers.
- 82. Discharge of orders made in chambers.
- 83. Procedure where second action for same cause.

Keeping of Minutes

- 84. Notes of evidence and minutes of proceedings to be kept by presiding judge.

Inspection

- 85. Inspection.

Trial with a Jury or Assessors

- 86.
- 87. Trial with assessors.
- 88. Questions of foreign and customary law to be decided by judge alone.

Inquiries and Trials by Referees

- 89. Reference for report.
- 90. Reference for trial.
- 91. Powers and remuneration of referees and arbitrators.
- 92. Court to have powers as in submissions.
- 93. Power to order habeas *corpus ad testificandum* to issue.
- 94. Statement of case pending arbitration.
- 95. Power of court to impose terms as to costs.

Costs in Certain Cases

- 96. Disallowance of costs in certain cases.

Power to Arrest Debtor in Certain Cases

- 97. Power to arrest debtor quitting Nigeria or Kwara State.

Witnesses

- 98. Allowances to witnesses and method of payment.
- 99. Forfeiture for neglecting witness summons.

- 100. Persons in court may be required to give evidence though not summoned.
- 101. Evidence of prisoners.
- 102. Production of prisoner.

Saving of Rules of Evidence

- 103. Law not to affect rules of evidence or juries.

Representation of Parties

SECTION

- 104. Right of appearance of legal practitioners.
- 105. Representation of the State and Government departments.
- 106. Award of costs where public officer represented by law officer, etc.
- 107. Representation of local government.
- 108. Representation of first and second class chiefs.
- 109. Acting without authority contempt of court.

PART VIII

Officers of the Court and Rules of Court

- 110. Chief Registrar, Probate Registrar and other officers.
- 111. Negligence or misconduct of officers.
- 112. Restriction on officers of court buying property sold at execution.

Commissioners for Oaths

- 113. Appointment of commissioners for affidavits or for taking evidence.
- 114. Protection of commissioners from actions.

Protection of Judicial and Certain Other Officers

- 115. Protection of judges and persons executing warrants, etc.

Rules of Court

- 116. Power to make rules of court.

HIGH COURT LAW

A Law for the establishment of a High Court of Justice Kwara State and for other purposes
relating to the administration of justice.

[NN 1963, Cap. 49, NN 15 of 1965, KWS 1 of 1968, KWS 1 of 1970, KWS 2 of 1970, KWS 6
of 1970, KWS 4 of 1973, KWS 10 of 1984, KWS 6 of 1985, KWS 1 of 1990, KWS LN 1 of
1982, No. 4 of 2006.]

[Dates of Commencement: 3rd November, 1955;

1st December, 1955;

1st May, 1957]

PART 1

Preliminary

1. Short title

This Law may be cited as the High Court Law.

2. Interpretation

In this Law, unless the context otherwise requires—

[KWS LN 1 of 1982.]

"action" means a civil proceeding commenced by writ or in such other manner as may be prescribed by rules of court, but does not include a criminal proceeding;

"area court" means a court established, or deemed to have been established under the Area Courts Law;

[Cap. A9.]

"Attorney-General" means the Attorney-General of the State or, where the context shall require, means the Attorney-General of the Federation;

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

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

"Court" includes the High Court, and the Chief Judge and the judges of the High Court, sitting together or separately;

[KWS LN 1 of 1982.]

"Criminal Procedure Code" means the Criminal Procedure Code established under the Criminal Procedure Code Law;

[Cap. C23.]

"customary law" includes Islamic law;

"decision" includes judgment, decree, order, conviction, sentence or recommendation;

"defendant" includes every person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings in a civil cause, and also every person charged under any process of the court with any crime or offence;

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

[Cap. D4.]

"division" means a judicial division of the High Court;

"execution creditor" includes every person having title to enforce a judgment or order by process of execution;

"existing" shall mean existing at the date appointed for the commencement of this Law;

"Federation" means the Federation of Nigeria;

"first class chief" means a head chief duly graded as first class under the provisions of the Chiefs (Appointment and Deposition) Law;

[Cap. C9.]

"former Supreme Court" means the Supreme Court of Justice for Nigeria established by section 3 of the Supreme Court Ordinance;

[Cap. 211 (1948).]

"Governor" means the Governor of the State;

"High Court" means the High Court of Justice of the State;

"judge" includes the Chief Judge and a judge of the High Court;

[KWS 1 of 1970.]

"judgment" includes a decree;

"judgment debtor" includes every person ordered by a judgment or order in a civil cause or matter to pay money, or to do or abstain from doing any act;

"mandamus"—

(a) for the purposes of section 19 means the order of mandamus made in an action as defined in subsection (4) of that section;

(b) for the purposes of section 24 and 27, means the order of mandamus by which the prerogative writ of mandamus has been replaced;

"matter" includes every proceeding in court not in a cause;

"oath" shall include solemn affirmation and statutory declaration;

"office copy" means a copy either made under direction of the court or produced to the proper officer of the court for examination with the original, and examined by him therewith, and in either case certified by him as correct;

"order" includes a rule;

"party" includes every person served with notice of or attending any proceeding, although not named on the record;

"person aggrieved" may include the State and any public officer;

"petitioner" includes every person making any application to the court, either by petition, motion or summons, otherwise than as against any defendant;

"plaintiff" includes every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the proceeding is by action, suit, petition, motion, summons or otherwise;

"pleading" includes any petition or summons, and also includes the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant;

"prescribed" means prescribed by rules of court;

"reference" means a reference under an order made by the court under the provisions of Part VII;

"registrar" includes the Chief Registrar and all other registrars and deputy registrars of the court;

"second class chief " means a head chief duly graded as second class under the provisions of the Chiefs (Appointment and Deposition) Law;

[Cap. C9.]

"Sharia Court of Appeal" means the Sharia Court of Appeal established under the Sharia Court of Appeal Law;

[Cap. S4.]

"State" means the Kwara State of Nigeria;

"suit" includes action;

"Supreme Court" means the Supreme Court of Nigeria established by section 210 of the

Constitution;

"upper area court" means an upper area court established or deemed to have been established, under any Area Courts Law.

[Cap. A9.]

PART II

Constitution of the High Court

3. Establishment of the High Court

(1) There shall be established a High Court of Justice for the State.

[KWS LN 1 of 1982.]

(2) The name of such court shall be the High Court of Justice of Kwara State of Nigeria.

4. Constitution of the court

(1) In addition to the Chief Judge the court shall consist of not less than two other judges.

(2) The court shall be deemed to be duly constituted notwithstanding any vacancy in the office of the Chief Judge or of any judge thereof.

[KWS 2 of 1970.]

5. Qualifications of judges

The qualifications for appointment to the office of judge of the High Court shall be such as are prescribed by the Constitution.

6. Retiring age of judges

A judge shall vacate his office when he attains the age of sixty-five years.

7.

[KWS LN 1 of 1982.]

8. Powers of judges

(1) All the judges of the court shall have in all respects, save as is herein expressly otherwise provided, equal power, authority and jurisdiction under this Law.

(2) Any judge of the court may, subject to the other provisions of this Law and of any rules of court, exercise all and any part of the original jurisdiction, civil and criminal, vested by this Law in the court, and for such purpose shall be and form a court.

9.

[KWS LN 1 of 1982.]

10. Precedence of judges

(1) The Chief Judge shall take precedence over all other judges.

(2) The other judges shall take precedence after the Chief Judge in order, according to

the date of their respective appointments and, in the case of two or more appointments having been made on the same day, according to their date of call to the Nigerian Bar.

[No. 4 of 2006.]

11.

[No. 4 of 2006.]

Seal of the Court

12. Seal

(1) The court shall have and use, as occasion may require, a seal, bearing the inscription "The High Court of Justice of Kwara State of Nigeria". The seal of the court shall be kept by the Chief Judge, and a duplicate thereof shall be kept by each judge. The Chief Judge and judges may entrust the seal or duplicates to such officers of the court from time to time as they may respectively think fit.

[KWS LN 1 of 1982.]

(2) Such seal shall be the seal of the court for all purposes for which it may be required under the provisions of the rules of court.

PART III

Jurisdiction and Law

13. General jurisdiction of High Court

(1) The High Court shall be a superior court of record, and in addition to any other jurisdiction conferred by the Constitution, this Law or any other written law shall, within the limits and subject as in the Constitution and in this Law mentioned.

[KWS LN 1 of 1982.]

(2) The jurisdiction conferred upon the High Court by the provisions of this Law and of any other written law shall be exercised subject always to the limitations imposed by the Constitution.

14. Specific subjects included in jurisdiction

Subject to the provisions of the Constitution and in particular to such of them as are reproduced in sections 15 and 16 hereof the jurisdiction vested in the Court shall include—

(a) the judicial hearing and determination of matters in difference;

[KWS LN 1 of 1982.]

(b) the review of cases reported to it under section 48 (2) (c) of the Area Courts Law;

[Cap. A9.]

(c) the administration or control of property and persons; and

(d) all criminal jurisdiction which at the commencement of this Law was, or at any time afterwards may be exercisable within the State for the repression or punishment of crimes or offences or for the maintenance of order.

15. Jurisdiction excluded in certain respects

The Court shall not have jurisdiction in any disputes or matters or in respect of any questions in relation to which its jurisdiction is excluded by the provisions of the Constitution or by any legislation replacing the same.

16. Procedure for interpretation of Constitutions in High Court cases

If any question as to the interpretation of the Constitution arises in any proceedings in the High Court or in any other court established for the State such question shall be determined in the manner or manners respectively prescribed by the Constitution or by any legislation replacing the same.

[KWS LN 1 of 1982.]

17.

[No. 4 of 2006.]

18.

[No. 4 of 2006.]

19. Mandamus in an action, injunctions and receivers

(1) The court may grant a mandamus (as defined in subsection (4)) or an injunction, or appoint a receiver by an interlocutory order in all cases in which it appears to the court to be just or convenient so to do.

(2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.

(3) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the court thinks fit, whether the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

(4) For the purposes of this section "mandamus" means the order of mandamus made in an action, commanding the fulfilment by a person of a quasi-public duty in which another person has a personal and private interest.

20. Relief against forfeiture for non-payment of rent

In the case of any action for a forfeiture brought for non-payment of rent, the court shall

have power to give relief in a summary manner, and subject to the same terms and conditions in all respects as to payment of rent, costs and otherwise as can be imposed by the High Court of Justice in England, and if the lessee, his executors, administrators or assigns are so relieved they shall hold the demised premises according to the terms of the lease and without the necessity of any new lease.

[KWS LN 1 of 1982.]

21. Execution of instruments by order of court

Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes as valid as if it had been executed or endorsed by the person originally directed to execute or endorse it.

22. Reconciliation in civil cases

Where an action is pending the court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

23. Credit to Nigerians

The court shall not enforce against a Nigerian living in any area specified by Order under this section, which order the Governor is hereby empowered to make, any obligation incurred by him towards a non-Nigerian in respect of a commercial transaction, so far as it is based on credit, if it appears to the court in its discretion that it was not reasonably probable that the Nigerian was fully aware of the nature of the obligation and the consequences of failure to perform the same.

[KWS LN 1 of 1982.]

Prerogative Writs and Certain Other State Proceedings

24. Orders of *mandamus*, prohibition and *certiorari*

The prerogative writ of mandamus requiring any act to be done or an order of prohibition prohibiting any proceedings, or matter, or an order of certiorari removing any proceedings, cause or matter into the High Court for any purpose may be issued by the Court in accordance with the rules and procedure applicable in the Court or where the rules do not make any provision in accordance with a provision which the Court thinks just and reasonable.

25. Injunction in lieu of *quo warranto*

(1) Information in the nature of *quo warranto* are hereby abolished.

(2) In any case where any person acts in an office in which he is not entitled to act and any information in the nature of *quo warranto* would immediately before the commencement of this Law have lain against him, the High Court may grant an injunction restraining him from so acting and may (if the case so requires) declare the office to be vacant.

(3) No proceedings for an injunction under this section shall be taken by a person who would not immediately before the commencement of this Law have been entitled to apply for an information in the nature of *quo warranto* to the former Supreme Court.

(4) Proceedings under this section shall be deemed to be civil proceedings whether for purposes of appeal or otherwise.

26. Application of law and practice in force to proceedings under sections 24 and 25

The jurisdiction conferred upon the court by sections 24 and 25 shall, subject to the provisions of this Law and to rules of court, be exercised by the court in conformity with the law and practice for the time being in force.

27. Jurisdiction of High Court limited in issue of prerogative orders

No order of mandamus, of prohibition or of certiorari and no injunction under the provisions of section 25 shall be made or granted by the High Court in respect of any proceedings in an area court or in the Sharia Court of Appeal save such as may be necessary in the exercise of its powers under the Constitution of the Federation or in accordance with the Court's rules of procedure.

Law to be applied

28. Extent of application of law of England

Subject to the provisions of any written law and in particular of this section and of sections 26, 33 and 35 of this Law—

(a) the common law;

(b) the doctrines of equity,

shall, in so far as they relate to any matter in respect of which the State is for the time being competent to make laws, be in force within the jurisdiction of the Court.

29.

[KWS 1 of 1990.]

30. Law and equity to be concurrently administered

Subject to the express provisions of any written law, in every civil cause or matter commenced in the High Court, law and equity shall be administered by the High Court concurrently.

[KWS LN 1 of 1982.]

31. Rules of equity to prevail

Subject to the express provisions of any written law, in all matters not particularly mentioned in this Law in which there was formerly or is any conflict of variance between the rules of equity and the rules of the common law with reference to the same matter

'Sections 28 to 34 are currently subject to review throughout the Federation to dispense with the currency of the Statutes of general application and Imperial Laws. See Cap. 8 – Applicable Laws (Miscellaneous Provisions) Law– WS 1 of 1990.

the rules of equity shall prevail in the court so far as the matters to which those rules relate are cognisable by the court.

32. Determination of matter completely and finally

The High Court in the exercise of the jurisdiction vested in it by this Law shall, in every cause or matter pending before the court, grant, either absolutely or on such terms and conditions as the court thinks just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.

Probate

33. Law and practice in force to apply in probate cases

The jurisdiction of the High Court in probate cases and proceedings may, subject to the provisions of this Law and especially of section 34, and to rules of court, be exercised by the court in conformity with the law and practice for the time being in force.

[No.4 of 2006.]

Customary Law

34. Application of customary law

(1) The High Court shall observe, and enforce the observance of customary law which is not repugnant to natural justice, equity, and good conscience, not incompatible either

directly or by implication with any law for the time being in force, and nothing in this law shall deprive any person of the benefit of any such customary law.

[KWS LN 1 of 1982.]

(2) Such customary law shall be deemed applicable in causes and matters where the parties thereto are Nigerians and also in causes and matters between Nigerians and non-Nigerians where it may appear to the court that substantial injustice would be done to either party by a strict adherence to the rules of English law.

(3) No party shall be entitled to claim benefit of any customary law, if it shall appear either from express contract or from the nature of the transactions out of which any suit or question may have arisen, that such party agreed that his obligations in connection with such transactions should be regulated exclusively by English law or that such transactions are transactions unknown to customary law.

(4) In cases where no express rule is applicable to any matter in controversy, the court shall be governed by the principles of justice, equity and good conscience.

Practice and Procedure

35. Practice and procedure generally

Subject to the other provisions of this Law the jurisdiction vested in the High Court shall be exercised, so far as regards practice and procedure, in the manner provided by this Law, by the Criminal Procedure Code or by any other written law including such rules and orders of court as may be made pursuant to this Law or any other written law and, in civil causes and matters, by the High Court (Civil Procedure) Rules.

[Cap. 68 (1994).]

[No. 4 of 2006.]

References to Court of Resolution

36.

[KWS LN 1 of 1982.]

PART IV

Special Provisions relating to Appellate Jurisdiction

37. Constitutions to prevail

The provisions of this Part shall have effect only subject to the provisions of the Constitution relating to the appellate jurisdiction of courts established for a State.

38. Jurisdiction of High Court in appeals and cases stated from lower courts

The High Court shall have appellate jurisdiction to hear and determine all appeals from the decisions of District Courts and magistrates' courts given in the exercise of the original jurisdiction of such courts as well as cases stated or questions of law referred by such courts

in accordance with the provisions of any written law.

[KWS LN 1 of 1982.]

39. Power of revision of decisions of District Courts or magistrates' courts

The High Court shall have powers of revision in respect of all proceedings in District Courts or magistrates' courts in accordance with the provisions of any written law.

40. Constitution of the High Court in its appellate jurisdiction

(1) The High Court in the exercise of its appellate jurisdiction shall, subject to the provisions of Part V, be constituted by not less than one judge and the Chief Judge shall where practicable, preside at each sitting of a court.

[KWS LN 1 of 1982.]

(2) The determination of any question before a court constituted under this section shall be according to the opinion of the majority of the members of the court hearing the appeal.

(3) Where in any appeal heard by a court constituted of two judges only the members of the court fail to agree upon any matter for decision on the appeal then if one of the members agrees with the judgment of the court or authority from which the appeal is brought that judgment shall be deemed to be the judgment of the court and in any other event and subject to the provisions of subsection (4) the appeal shall be reserved for hearing before a court constituted of an uneven number of judges not being less than three.

(4) Where a court is constituted of two judges only and at any stage of the hearing of an appeal before judgment is delivered either or both of such judges are of the opinion that the appeal should be reserved for hearing before a court consisting of an uneven number of judges not being less than three it shall be so reserved.

(5) The provisions of this section shall be in addition to and not in derogation of the provisions of any other written law prescribing the constitution of the High Court in its appellate jurisdiction in any particular class of case.

41. Judgment of the High Court in criminal appeal cases

Unless the court shall direct to the contrary in cases where, in the opinion of the court, the question is a question of law on which it would be convenient that separate judgments should be pronounced by the members of the court, the judgment of the court in criminal appeal cases shall be pronounced by the presiding judge or such other member of the court hearing the case as the presiding judge may direct, and no judgment with respect to the determination of any question shall be separately pronounced by any other member of the court.

Appeals from District Courts

42. Power of High Court in appeals from District Courts

On the hearing of any appeal from a District Court the High Court may draw any inference of fact and either—

[Cap. D4.]

- (a) order a new trial on such terms as the court thinks just; or
- (b) order judgment to be entered for any party; or
- (c) make a final or other order on such terms as the court thinks proper to ensure the determination on the merits of the real question in controversy between the parties.

43. Procedure on appeal

Subject to the provisions of this and any other written law the procedure, practice and manner of appeals from District Courts shall be in accordance with any rules made under this Law and any other written law authorising the making of such rules.

44. Appearance of appellant

In appeals from a District Court the appellant shall be entitled to be present at the hearing of the appeal and may appear either in person or by a legal practitioner.

Appeals from Magistrates' Courts

45. Summary dismissal of criminal appeal

(1) When the High Court has received the requisite notice of appeal and memorandum of the grounds of appeal in a criminal appeal from a magistrate a judge shall peruse the same, and if he considers that there is no sufficient ground for interfering may dismiss the appeal summarily.

Provided that no appeal shall be dismissed summarily unless the appellant or the legal practitioner appearing for him has had a reasonable opportunity of being heard in support of the same.

(2) Whenever an appeal is summarily dismissed notice of such dismissal shall forthwith be given to the Attorney-General and to the appellant or to the legal practitioner appearing for him.

46. Notice of time, place and hearing

If the judge does not dismiss the appeal summarily, he shall cause notice to be given to the appellant and to the respondent or to their respective legal practitioners, if any, on the record and if one of the parties is a public officer, to the Attorney-General, of the time and place at which such appeal will be heard and shall furnish the Attorney-General with a copy of the proceedings and of the notice and grounds of appeal and the provisions of the Criminal Procedure Code shall apply to such service.

47. Determination of criminal appeals from magistrates

On the hearing of any appeal against a conviction by a magistrate in a criminal case the court shall allow the appeal if it thinks that the judgment of the magistrate should be set aside on the ground that—

- (a) it is unreasonable or cannot be supported having regard to the evidence; or
- (b) the magistrate has made a wrong decision on any question of law; or
- (c) there was a miscarriage of justice, and in any other case shall dismiss the appeal.

Provided that the court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

48. Power of High Court in criminal appeals from magistrates

On the conclusion of the hearing of an appeal from a magistrate in a criminal case the High Court shall at the same or any subsequent sitting pronounce judgment on the appeal and in giving such judgment the court may—

- (a) on an appeal from a conviction—
 - (i) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a court of competent jurisdiction, or commit him for trial; or
 - (ii) alter the finding, maintaining the sentence or, with or without altering the finding, reduce or increase the sentence; or
 - (iii) with or without such reduction or increase and with or without altering the finding, alter the nature of the sentence; or
 - (iv) annul the conviction and substitute a special finding to the effect that the accused committed the act or omission charged, but was insane so as not to be responsible for his action at the time when he did the act or made the omission and order the accused to be confined as a criminal lunatic in a lunatic asylum, prison or other suitable place of safe custody;
- (b) on an appeal from an order of discharge or acquittal, affirm such order or, if the High Court is of opinion that such order should not have been made, remit the case together with the judgment of the High Court thereon to the court for trial for determination, whether or not by way of rehearing, with such directions as the High Court may think necessary;
- (c) on an appeal from any other order, affirm, alter or reverse such order, and in each case make any amendment or any consequential or incidental order that may

appear just and proper.

49. Effect of wrong venue

No finding, sentence or order of any magistrate's court sitting in its criminal jurisdiction shall be set aside merely on the ground that the inquiry, trial or other proceeding, in the course of which it was arrived at or passed, took place in a wrong division or district unless it appears that such error has in fact occasioned a failure of justice.

50. Appearance of appellant in criminal cases

(1) In a criminal appeal from a magistrate an appellant who is not in custody shall be entitled to be present at the hearing of the appeal and may appear either in person or by a legal practitioner.

(2) In a criminal appeal from a magistrate an appellant who is in custody shall not be entitled as of right to be present at the hearing of the appeal and his attendance or otherwise shall be in the discretion of the High Court, but every appellant shall be entitled to be represented at the hearing of the appeal and for this purpose may either appear in person or by a legal practitioner.

General Provisions relating to Appeals from District Courts and Magistrates' Courts

51. Defects in notice of appeal and recognisance

No objection shall be taken or allowed on any appeal from a District Court or a magistrate's court to any notice of appeal which is in writing or to any recognisance entered into under this Law for the due prosecution of such appeal for any alleged error or defect therein; but if any such error or defect appears to the High Court to be such that the respondent on such appeal has been thereby deceived or misled, it shall be lawful for the court to amend the same and, if it is expedient to do so, also to adjourn the further hearing of such appeal, such amendment and such adjournment, if any, being made on such terms as the court may deem just.

52. Objections to form of grounds for appeal

(1) No objection on account of any defect in the form of setting forth any ground for appeal shall be allowed in an appeal from a District Court or a magistrate's court, unless the High Court is of opinion that the ground of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the respondent to inquire into the subject matter thereof or to prepare for the hearing.

(2) In any case where the court is of opinion that any objection to any reason for appeal ought to prevail, the court may if it thinks fit, cause the reason for appeal forthwith to be

amended by the registrar upon such terms and conditions, if any, as the court may think just.

53. Objections to complaint, charge, conviction or order

If, on the hearing of an appeal from a District Court or a magistrate's court, it appears that there is any defect in form in the charge, complaint or plaint, or any omission or mistake in the drawing-up of the decision or order and if it is shown, to the satisfaction of the High Court, that there was sufficient evidence before the District Judge or the magistrate who made such decision or order to have authorised the drawing-up thereof free from such omission or mistake, the High Court shall amend such information, complaint or plaint or such decision or order and proceed thereafter as if no such defect, omission or mistake had existed.

54. Defects in proceedings under appeal

On any appeal from a decision of a District Court or a magistrate's 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 such court, or to any complaint, summons, warrant, or other process to or 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, however, that if any error, defect, or variance mentioned in this section appears to the High Court at the hearing of any appeal to be such that the appellant has been thereby deceived or misled, it shall be lawful for the High Court either to refer the case back to the District Judge or the magistrate, as the case may be, with directions to rehear and determine the same or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.

55. Additional evidence

On any appeal from a decision of a District Court or a magistrate's court the High Court may, where it may consider it necessary that evidence should be adduced, either—

- (a) order such evidence to be adduced before the High Court on some day to be fixed in that behalf; or
- (b) refer the case back to the District Judge or the magistrate as the case may be, to take such evidence, and may in such case either direct the District Judge or the magistrate, as the case may be, 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 him, 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.

56. Restriction on review

The High Court shall not review any judgment or order once made and delivered by it in an appeal from a District Court or a magistrate.

[KWS LN 1 of 1982.]

57. Costs in appeals from District Judges and magistrates

Subject to the express provisions of this Law, the High Court may in any appeal from a District Judge or a magistrate make such order as to the costs of the proceedings in the District Court or the magistrate's court, as the case may be, and in the High Court as it may think just.

58. Notice of appeal and limitation of time

(1) An appeal from a magistrate's court shall be commenced by the appellant giving to the registrar of the magistrate's court notice of such appeal, which shall be verbal or in writing, and if verbal shall forthwith be reduced to writing by the registrar and signed by the appellant, or by a legal practitioner if a legal practitioner is representing him.

(2) Subject to the provisions of subsection (3), a notice of appeal under subsection (1) shall be given in every case before the expiration of the thirtieth day after the day on which the court has made the decision appealed against.

(3) A notice of appeal under subsection (1) in respect of a sentence on caning shall be given in every case before the expiration of the fifteenth day after the day on which the court has made the decision appealed against.

59. Enlargement of time

The High Court may, if it deems fit, enlarge any period of time prescribed by this Law (other than the period of time prescribed in the District Courts Law or the Criminal Procedure Code Law except where that Law prescribes a period of time within which notice of appeal must be given against a sentence of caning) or any rules under any of such Laws.

[Cap. D4. Cap. C23.]

60. Finality of judgment

Every judgment of the High Court in an appeal from a District Court or a magistrate's court shall, subject to the provisions of the Constitution or any written law relating to further appeal, be final and conclusive.

[KWS LN 1 of 1982.)

Provisions pending Appeal

61. Provisions pending appeal

(1) Where an appeal to the Court of Appeal is entered, or leave to appeal is granted,

against a conviction in respect of which the appellant has been sentenced to imprisonment or Borstal Training the High Court may, in its direction, admit the appellant to bail pending the determination of the appeal; and in the case of a sentence of imprisonment, any time during which the appellant is so admitted to bail, shall not count as part of the term of imprisonment to which he was sentenced.

[KWS LN 1 of 1982, No. 4 of 2006.]

(2) The operation of any order made on conviction by the High Court for the payment of compensation or of any of the expenses of the prosecution or of the imprisonment or of other punishment imposed on the person convicted or for the restoration of any property to any person, and the reversion in case of any such conviction, in the original owner or his personal representative of the property in stolen goods, shall (unless the judge before whom the conviction takes place directs to the contrary in any case in which, in his opinion, the title to the property is not in dispute) be suspended until the expiration of fifteen days after the date of the conviction.

(3) Subject to the provisions of subsections (1) and (2) of this section, an appeal to the Court of Appeal shall not operate as a stay of execution but the High Court may order a stay of execution either unconditionally or upon the performance of such conditions as may be imposed in accordance with rules of court.

[No. 4 of 2006.]

PART V

Appeals from Area Courts

62. High Court to hear appeals from upper area courts

The High Court shall have jurisdiction to hear appeals (other than appeals in respect of matters which are the subject of the jurisdiction of the Sharia Court of Appeal) from upper area courts.

63.

[KWS LN 1 of 1982.]

64. Assessors in area court appeals

(1) On the hearing of an appeal from an area court in the exercise of its jurisdiction under section 62 the High Court may, if it shall think fit so to do, require the aid of one or more assessors and may hear the appeal wholly or partially with their assistance.

(2) The High Court may require the aid of such persons as it shall think fit in the capacity of assessors and it shall not be necessary for such persons to be specially qualified within the meaning of subsection (1) of section 87.

65. English law not to be applied in cases governed by customary law

Where the jurisdiction conferred on any area court is, as regards law, practice or procedure, regulated in any particular customary law, no objection to any proceeding in such court shall be taken or allowed on the hearing of an appeal from a decision of such court on the ground only that, in any such particular, there has been a failure to observe any principle of English law or any English rule of evidence or procedure, if such proceeding or decision is not in fact contrary to natural justice, morality, equity or good conscience nor incompatible with the provisions of any written law.

65A. Summary dismissal of criminal appeal from area court

(1) When the High Court has received the requisite notice of appeal and memorandum of the grounds of appeal in a criminal appeal from an area court judge, a judge shall peruse the same, and if he considers that there is no sufficient ground for interfering may dismiss the appeal summarily.

[NN 15 of 1965.]

Provided that no appeal shall be dismissed summarily unless the appellant or the legal practitioner appearing for him has had a reasonable opportunity of being heard in support of the same.

(2) Whenever an appeal is summarily dismissed notice of such dismissal shall forthwith be given to the Attorney-General and to the appellant or to the legal practitioner appearing for him.

PART VI

Divisions, Distribution of Business, Sessions, etc.

66. Court open throughout the year

The court shall be open throughout the year except on Saturdays, Sundays and public holidays for the transaction of the general legal business pending therein.

67. Divisions and distribution of business

(1) For the more convenient dispatch of business the court may sit in two or more divisions.

(2) Subject to the other provisions of this Law and in particular to sections 68 and 69 the Chief Judge—

- (a) shall direct one or more judges to sit in one or more judicial divisions;
- (b) may determine the distribution of the business before the court among the judges thereof; and
- (c) may assign any judicial duty to any judge or judges.

68. Regulation of sessions

The Governor may from time to time by order provide in such a manner and subject to such conditions as he may think fit, for the division of the State into Judicial Divisions and the assignment of any part of the State to any Judicial Division and the designation of any such Judicial Division by name.

[KWS 10 of 1989.]

68. (1) The Chief Judge may by directions provide in such a manner and subject to such conditions as he may think fit, for all or any of the following matters:

- (a) the assignment of judges of the High Court to the Judicial Divisions;
- (b) the appointment of times and places at which sessions of the High Court are to be held and the alteration of such times and places in such manner as may be specified in any direction made under this section;
- (c) any matters which appear necessary to the Chief Judge for carrying into effect any direction made under this section.

(2) Subject to any direction of the Chief Judge, a judge shall have jurisdiction or be empowered to sit at any time in any Judicial Division even though he has not been specifically appointed to that Division.

(3) For the avoidance of doubt, notwithstanding the provisions contained in this Law or any rules of court made under this Law, nothing shall prevent the Chief Judge from directing that a suit or action (whether related to land or not) arising from or commenced in one Judicial Division, be tried in another Judicial Division.

[KWS 6 of 1985.]

69. Power to dispense with holding of sessions

If at any time it appears to the Chief Judge that there is no business or no substantial business to be transacted at a session then about to be held at any place, he may direct that session shall not on that particular occasion be held at that place and thereupon such session shall not be held.

[KWS 1 of 1968.]

70. Effect of judge's absence from a sitting

(1) In case the judge who should preside over the sitting of the court is from any cause unable or fails to attend the same on the day appointed, and no other judge shall attend in his stead, the judge shall make a report of the facts to the Chief Judge in the most expeditious manner available to him and the Chief Judge shall thereupon give such directions in the matter as he shall think fit.

(2) If the judge is unable by reason of illness or any other cause to make a report in

pursuance of subsection (1) the registrar of the court concerned shall make such report.

Power of Transfer

71. Transfer of cause to District Court or magistrate's court

(1) A judge may at any time or at any stage of the proceedings before final judgment, and either with or without application from any of the parties thereto, transfer any cause or matter before him to a District Court in the case of a civil cause or matter or a magistrate's court in the case of a criminal cause.

Provided that no cause or matter shall be transferred to a District Court or a magistrate's court unless the District Judge or the magistrate thereof, as the case may be, has jurisdiction to hear and determine the same.

(2) The power of transfer under this section shall be exercised by means of an order under the hand of the judge and the seal of the court.

72. Transfer of cause from one judge to another

(1) The Chief Judge may at any time or any stage of the proceedings before judgment, and either with or without application from any of the parties thereto, transfer any cause or matter before a judge to any other judge.

(2) The power of transfer under this section shall be exercised by means of an order under the hand of the Chief Judge and the seal of the court, and may apply—

(a) to any particular cause or matter in dependence either—

(i) in its entirety; or

(ii) in respect of any part thereof; or

(iii) in respect of any procedure to be taken thereon; or

(b) generally to all such causes or matters as may be described in such order whether future or in dependence at the date of the order.

(3) The power conferred upon the Chief Judge by this section shall be in addition to and not in derogation from any other power or duty to transfer conferred or imposed upon a judge by this Law or by any other written Law.

73. Power to cancel or vary order of transfer

The Chief Judge or judge, as the case may be, may, at any time before final judgment has been given by the court to which a cause or matter has been transferred, cancel, vary or amend any order made by him under section 72 or 71 respectively.

74. Telegram to have validity of order

The Chief Judge or judge, as the case may be, may, if it appear expedient, in the first

instance transmit by telegram the contents of any order made by him under section 71, 72 or 73 and such telegram shall, until receipt of the said order, have the same validity and effects as if it were the said order.

75. Effects of order of transfer

- (1) Every order of transfer shall operate as a stay of proceedings before the judge from whom the proceedings are ordered to be transferred.
- (2) A certified copy of the record of such proceedings shall be transmitted to the judge, or magistrate to whom the same has been ordered to be transferred.

76. Power to transfer cause to area court

A judge may at any time or at any stage of the proceedings before final judgment by order under his hand and the seal of the court transfer any cause or matter before him to an area court having jurisdiction in such cause or matter.

77. Order of transfer not subject to appeal

No appeal shall, subject to the provisions of section 36, lie from any order of transfer made under section 71, 72, 73, 74 or 76.

78. Transfer to Sharia Court of Appeal

- (1) On or at any time before the hearing of any appeal from any area court the High Court, if it is of opinion that the appeal should properly have been brought before the Sharia Court of Appeal, may, at any time or at any stage of the proceedings before final judgment, and either with or without application from any of the parties thereto, and with the consent in writing of the Grand Kadi, transfer such appeal to the Sharia Court of Appeal.
- (2) The power of transfer under this section shall be exercised by means of an order under the hand of the presiding judge of the High Court.

79. Transfer from Sharia Court of Appeal

Notwithstanding anything contained in any rules made under section 116 to the contrary, no appeal transferred to the High Court by the Sharia Court of Appeal in accordance with section 15 of the Sharia Court of Appeal Law, shall be questioned on the ground that it has not been entered within the time prescribed for entering appeals to the High Court.

PART VII
General Provisions relating to Trial, Practice and Procedure
Trial by Judge Alone

80. Mode of trial in original jurisdiction

Every proceeding in the High Court in the exercise of its original jurisdiction and all business arising thereout shall, so far as is practicable and convenient and subject to the provisions of any written law, be heard and disposed of by a single judge, and all proceedings in an action subsequent to the hearing or trial, down to and including the final judgment or order, shall, so far as is practicable and convenient, be taken before the judge before whom the trial or hearing took place.

81. Powers of single judge in court and in chambers

A judge may, subject to rules of court, exercise in court or in chambers all or any part of the jurisdiction vested in the High Court in all such causes and matters.

82. Discharge of orders made in chambers

Subject to the provisions of this Law with respect to appeals in matters of practice and procedure, every order made by a judge in chambers, except such orders as to costs only which by law are left to the discretion of the court, may upon notice be set aside or discharged by the judge sitting in court.

83. Procedure where second action for same cause

(1) If any party sues another in the High Court for any cause of action for which he has already sued him and for which judgment other than a judgment of non-suit has been given in the High Court or any other court, upon proof of such former action having been brought and judgment having been given, the party so suing shall not be entitled to recover in such second action, and may, if the court thinks fit, be adjudged to pay three times the costs of such second action to the opposite party.

(2) A judgment of any court which is or may be established within Nigeria in favour of any party to any cause or matter before that court may in respect of the same subject matter be pleaded as a defence to any proceedings commenced in the High Court of the State by the unsuccessful party to such cause or matter.

[KWS LN 1 of 1982.]

Keeping of Minutes

84. Notes of evidence and minutes of proceedings to be kept by presiding judge

(1) In every cause or matter the presiding judge shall take down in writing the purport of all oral evidence given before the court and minutes of the proceedings and shall sign the same at any adjournment of the case and at the conclusion thereof.

(2) No person shall be entitled, as of right, to the inspection of or to a copy of the records so kept as aforesaid save as may be expressly provided for by rules of court.

(3) The record so kept as aforesaid or a copy purporting to be 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 witnesses.

Inspection

85. Inspection

In any cause the court may on the application of either party, or of its own motion, make such order for the inspection by the court, the parties or witnesses, of any movable or immovable property, the inspection of which may be material to the proper determination of the question in dispute, and give such direction respecting such inspection as to the court may seem fit.

Trial with a Jury or with Assessors

86.

[KWS LN 10 of 1991.]

87. Trial with assessors

(1) In any civil cause or matter before the High Court the court may, if it thinks it expedient so to do, call in the aid of one or more assessors specially qualified, and may try and hear the cause or matter wholly or partially with their assistance.

(2) The remuneration, if any, to be paid to an assessor shall be determined by the court.

88. Questions of foreign and customary law to be decided by judge alone

Where for the purpose of disposing of any action or other matter which is being tried in the High Court by a judge with assessors it is necessary to ascertain the law of any other country or customary law of Nigeria which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law or custom shall, instead of being submitted to the assessors, be decided by the judge alone.

[KWS LN 1 of 1982.]

Inquiries and Trials by Referees

89. Reference for report

- (1) Subject to rules of court a judge may refer to an official or special referee for inquiry or report any question arising in any cause or matter, other than a criminal proceeding.
- (2) The report of an official or special referee may be adopted wholly or partially by the court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

90. Reference for trial

In any cause or matter, other than a criminal proceeding—

- (a) if all the parties interested who are not under disability consent; or
 - (b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the court or a judge conveniently be conducted by the court through its ordinary officers; or
 - (c) if the question in dispute consists wholly or in part of accounts,
- the court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the court.

91. Powers and remuneration of referees and arbitrators

- (1) In all cases of reference to an official or special referee or arbitrator, the official or special referee or arbitrator shall be deemed to be an officer of the court, and subject to rules of court shall have such authority, and conduct the reference in such manner, as the court or a judge may direct.
- (2) The report or award of an official or special referee or arbitrator on any reference shall, unless set aside by the court or a judge, be equivalent to a finding of the court.
- (3) The remuneration to be paid to a special referee or arbitrator to whom any matter is referred under an order of the court or a judge shall be determined by the court or a judge.

92. Court to have powers as in submissions

The court or a judge shall, in relation to references, have all such powers as are conferred by the Arbitration Law on the court or a judge in relation to submissions.

[Cap. A8.]

93. Power to order habeas corpus ad testificandum to issue

The court or a judge may order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before an official or special referee or arbitrator.

94. Statement of case pending arbitration

A referee or arbitrator may at any stage of the proceedings under a reference, and shall, if

so directed by the court or a judge, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference.

95. Power of court to impose terms as to costs

An order made under the provisions of this Law relating to inquiries and trials by referees may be made on such terms as to costs or otherwise as the court or a judge thinks fit.

Costs in Certain Cases

96. Disallowance of costs in certain cases

Costs shall be allowed to a successful plaintiff on the scale prescribed for similar proceedings in a lower court in any action brought by him in the High Court which might have been tried in a lower court in its civil jurisdiction, unless the judge is of the opinion that the action was one which it was proper to bring in the High Court and certifies accordingly.

Power to Arrest Debtor in Certain Cases

97. Power to arrest debtor quitting Nigeria or of Kwara State

(1) Where the plaintiff in any action in the High Court proves at any time before final judgment by evidence on oath to the satisfaction of the court that he has good cause of action against the defendant to any amount and that there is probable cause for believing that the defendant is about to quit Nigeria or the State unless he be apprehended and that the absence of the defendant from Nigeria or the State will materially prejudice the plaintiff in the prosecution of his action, the court may, in the manner prescribed by rules of court, order such defendant to be arrested and imprisoned for a period not exceeding six months unless and until he has paid into court such sum claimed and costs, or given security as prescribed by rules of court, that he will not go out of Nigeria or the State without the leave of the court, in a sum not exceeding the amount claimed in the action.

[KWS LN 1 of 1982.]

(2) Where the claim is for a penalty or sum in the nature of a penalty other than a penalty in respect of any contract, the provisions of subsection (1) shall apply as if it were an action but it shall not be necessary to prove that the absence of the defendant from Nigeria or the State will materially prejudice the plaintiff in the prosecution of his action and the security given, instead of being that the defendant will not go out of Nigeria or the State, shall be to the effect that any sum recovered against the defendant in the action shall be paid or that the defendant shall be rendered to prison.

Witnesses

98. Allowances to witnesses and method of payment

(1) The presiding judge may in any cause or matter order and allow to all persons required to attend, or be examined as witnesses, such sum or sums of money as may be

specified by rules of court as well for defraying the reasonable expenses of such witnesses, as for allowing them a reasonable compensation for their trouble and loss of time.

(2) All sums of money so allowed shall be paid in civil proceedings by the party on whose behalf the witness is called, and shall be recoverable as ordinary costs of suit if the court shall so order, and in criminal proceedings they shall, unless by the court ordered to be paid by the party convicted or the prosecutor, be paid out of the general revenue.

99. Forfeiture for neglecting witness summons

Subject to the provisions of the Evidence Law any person summoned as a witness in the court who—

(a) refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced; or

[NN 1963, Cap. 40.]

(b) refuses to be sworn or make an affirmation or given evidence, shall forfeit a sum not exceeding two hundred naira as the judge may direct.

Provided that no person so summoned shall forfeit a sum unless there has been paid or tendered to him at the time of the service of the summons such amount in respect of his expenses as may be prescribed including, in such cases as may also be prescribed, compensation for loss of time.

100. Persons in court may be required to give evidence though not summoned

Any person present in court, whether a party or not in a cause, may be compelled by the court to give evidence, and produce any document in his possession, or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document, and may be punished for any refusal to obey the order of the court.

101. Evidence of prisoners

A judge may issue a warrant under his hand for bringing up any person confined as a prisoner under any sentence or order of commitment for trial or otherwise, or under civil process, to be examined as a witness in any cause pending, or to be inquired of, in the court. Provided that such warrant shall not be granted as of course, nor unless the judge shall have probable grounds for believing that the evidence of the prisoner is likely to prove material.

102. Production of prisoner

The Superintendent of Prisons or person in whose custody such prisoner may be shall

forthwith obey such warrant by bringing the prisoner to the court in his custody, or by delivering him to an officer of court, as the warrant may order, and if the prisoner shall under the terms of the warrant be delivered to any officer of the court, the Superintendent of Prisons or other person shall not be liable for the escape of such prisoner.

Saving of Rules of Evidence

103. Law not to affect rules of evidence

Nothing in this Law and nothing in rules of court made or to be made under this Law shall affect the mode of giving evidence by the oral examination of witnesses, or the rules of evidence:

Provided that nothing in this section shall—

- (a) prejudice the operation of any rules of court made in pursuance of the express power conferred by this Law to make rules of court for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given;
- (b) affect the power of the court for special reasons to allow depositions or affidavits to be read.

Representation of Parties

104. Right of appearance of legal practitioners

Subject to the provisions of this or any other written law all persons admitted to practice as legal practitioners in the Supreme Court shall have the right to practice as such in the High Court.

105. Representation of the State and Government departments

(1) In the case of a prosecution by or on behalf of the State or by any public officer in his official capacity, the State or that officer may be represented by a law officer, Director of Public Prosecutions, Deputy Solicitor-General, Deputy Director of Public Prosecutions, State counsel, police officer or by any legal practitioner or other person duly authorised in that behalf by or on behalf of the Attorney-General or, in revenue cases, authorised by the head of the ministry, department or office concerned.

(2) Subject to the provisions of any written law in any civil cause or matter in which the State or any public officer in his official capacity is a party, or in any civil cause or matter affecting the revenues of the Federation or of the State, that officer may be represented by a law officer, Director of Public Prosecutions, Deputy Solicitor-General, Deputy Director of Public Prosecutions, State counsel, or by any legal practitioner or other person duly authorised in that behalf by or on behalf of the Attorney-General or, in revenue cases, authorised by the head of the Ministry, department or office concerned.

(KWS LN 1 of 1982.)

(3) Nothing contained in this section shall be construed as so to restrict the right of any Attorney-General, Solicitor-General, Director of Public Prosecutions, Deputy Solicitor-General, Deputy Director of Public Prosecutions, or State counsel of any part of the Federation to appear in any case in which he has been instructed to appear in any court in the State in which counsel may appear, and no objection to his appearance may be taken or entertained in any court upon any ground based solely upon the provisions of this section.

106. Award of costs where public officer represented by law officer, etc.

In any civil cause or matter in which a public officer of the State in his official capacity is a party, and is represented, in accordance with the provisions of section 105 (2) the court may award costs either—

- (a) to or against such public officer personally; or
- (b) to or against the State Government.

[KWS LN 1 of 1982.]

107. Representation of local government

In any cause, matter or appeal to which a local government is a party such local government may be represented at any stage of the proceedings by any member or officer of the local government who shall satisfy the High Court that he is duly authorised in that behalf.

108. Representation of first and second class chiefs

In any suit brought by or against a first or second class chief in either his official or personal capacity such chief may be represented in the High Court at any stage of the proceedings by any indigene of his chiefdom who shall satisfy the court that he has the authority to represent such chief.

[KWS LN 1 of 1982.]

109. Acting without authority contempt of court

- (1) Any person who acts or takes any step in any proceedings in the High Court at any stage thereof in the name of or on behalf of any other person without being thereunto lawfully authorised and who knows himself not to be so authorised shall be guilty of contempt of court.
- (2) Proceedings for contempt of court under this section may be taken against any person by the court either on his own motion or on the relation of any other person.

PART VIII

Officers of the Court and Rules of Court

110. Chief Registrar, Probate Registrar and other officers

- (1) The Chief Registrar of the High Court, registrars and deputy registrars shall perform

such duties in execution of the powers and authorities of the court as may from time to time be assigned to them by the rules of court, or subject thereto, by any special order of the Chief Judge.

(2) There shall be a Probate Registrar of the High Court and his office shall be filled by the Chief Registrar unless and until some other person or officer shall be appointed.

111. Negligence or misconduct of officers

If any officer of the court, employed to execute an order, wilfully or by neglect or omission loses the opportunity of executing it, then on complaint of the person aggrieved, and proof of the fact alleged, the court may, if it thinks fit, order the officer to pay the damages sustained by the person complaining, or part thereof, and the order shall be enforced as an order directing payment of money.

112. Restriction on officers of court buying property sold at execution

No officer of the court shall or may directly or indirectly or by the intervention of a trustee or otherwise purchase any property sold at execution, and in the event of any such person purchasing or being interested in the purchase of any property at an execution sale, such purchase shall be entirely void.

Provided that nothing herein contained shall prevent any such person from purchasing by leave of the court at an execution sale, any property which it may be necessary for him to purchase in order to protect the interest of himself, his wife or child.

Commissioners for Oaths

113. Appointment of commissioners for affidavits or for taking evidence

(1) The Chief Judge may appoint under his hand and the seal of the court, from time to time, such and so many persons as may be requisite to be Commissioners within the State for taking affidavits and declarations and receiving production of documents, or for taking the examination of witnesses on interrogatories or otherwise which may be necessary to be taken in respect of any proceedings in the court, and any order of the court for the attendance and examination of witnesses or production of documents before any such Commissioner shall be enforced in the same manner as an order to attend and be examined or produce documents before the court.

(2) All persons who were before the date of commencement of this Law duly appointed commissioners for oaths in Nigeria shall be deemed to be Commissioners for oaths duly appointed in pursuance of this section.

114. Protection of Commissioners from actions

No action shall be brought against any commissioner in respect of any act or order bona

vide performed or made by him in the execution, or supposed execution, of the powers or jurisdiction vested in him, but every such act or order if in excess of such powers and jurisdiction shall be liable to be revised, altered, amended or set aside upon summary application to the court.

Protection of Judicial and Certain Other Officers

115. Protection of judges and persons executing warrants, etc.

(1) No judge or person appointed to act as a judge 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.

[KWS LN 1 of 1982.]

(2) No officer of any court or other person bound to execute any warrant or order issued by a judge or by a person acting as a judge shall be liable in any action for damages in respect of the execution of such warrant or order unless it be proved that he executed the same in an unlawful manner.

Rules of Court

116. Power to make rules of court

(1) The Chief Judge with the approval of the Governor may make rules of court for carrying this Law into effect, and in particular for all or any of the following matters:

- (a) regulating the pleading, practice and procedure of the court, including all matters connected with the forms to be used and the fees to be payable;
- (b) prescribing or permitting the use in or in connection with all or any specified documents, forms or records of court of a specific abbreviated version or versions of the name of the court;
- (c) regulating—
 - (i) the fees of legal practitioners; and
 - (ii) the taxation and recovery of their fees and disbursements;
- (d) defining, so far as conveniently may be defined by general rules, the duties of the several officers of court;
- (e) regulating the procedure for the grant of probate and letters of administration and for securing the due administration of estates;
- (f) requiring and regulating the filing of accounts by executors and administrators of estates;
- (g) fixing the fees payable on the grant of probate and letters of administration and on all matters incidental to the administration of an estate until the passing of the final accounts and the discharge of the administrator;
- (h) providing that no fees need be paid or that certain fees need not be paid or which fees must be paid on the grant of probate or letters of administration in respect of estates of

small value;

- (i) ascertaining the value of estates;
- (j) regulating the administration of estates either generally or in respect of different classes or kinds of estates or of estates of different classes of persons;
- (k) regulating and prescribing the procedure on appeals from any court or person to the High Court, and the procedure in connection with the transfer of proceedings from any lower court to the High Court or from the High Court to a lower court;
- (l) regulating the time within which notice of appeal from the decision of any court to the High Court shall be given;
- (m) subject to the provisions of Part VI, for regulating the sittings of the High Court and of the judges thereof whether sitting in court or chambers;
- (n) prescribing what part of the business which may be transacted and of the jurisdiction which may be exercised by judges of the High Court in chambers may be transacted or exercised by registrars or other officers of the High Court, and for providing that any interlocutory application to be made in connection with or for the purpose of any appeal or proposed appeal to be heard by the court shall be heard and disposed of before a single judge;
- (o) regulating any matters relating to the costs of proceedings in the High Court;
- (p) regulating and prescribing the duties and procedure of referees and arbitrators;
- (q) subject to the provisions of section 103, regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any proceedings or on any application in connection with or at any stage of any proceedings;
- (r) the arrest of absconding debtors and for giving security for their release;
- (s) regulating the payment of allowances and travelling expenses of witnesses;
- (t) providing for the service or execution of any writ, warrant, order or other process issuing out of or transmitted by a customary court for service in like manner as similar process issuing out of the High Court; the payment of mileage before or after service or execution; the conditions precedent before any such process or process of certain classes will be served or executed and the procedure to be followed after the service or execution of such process;
- (u) imposing penalties on any person who fails to take any action required by a rule of court or who disobeys any rule of court.

(2) Rules of court made under this section shall apply to all proceedings by or against the State.

CHAPTER H2

HIGH COURT LAW

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. High Court (Appeals from Native Courts) Rules.
2. High Court (Appeals from Area Courts) Rules.
3. High Court (Judicial Divisions) Creation Order.
4. Kwara State High Court (Civil Procedure) Rules.

HIGH COURT (APPEALS FROM NATIVE COURTS) RULES

ARRANGEMENT OF RULES

ORDER I

Title and Interpretation

RULE

1. Short title.
2. Interpretation.

ORDER II

Appeals from Native Courts in Civil and Criminal Cases other than Capital Cases

1. Appeals to High Court.
2. Time for entering appeal.
3. Notice of appeal.
4. Appeals from native courts.
5. English translations.
6. Address for notices.
7. Security for costs, etc.
8. Notification of hearing of appeal
9. Hearing of appeal.
10. Stay of execution.
11. Appeal out of time.
12. Fees.

ORDER III

Appeals in Certain Cases

1. Appeals to Appeal Court.

RULE

2. Time and mode of entering appeal.
3. Appeals to have priority.
4. Hearing of appeals.
5. Exemption from fees.

ORDER IV

Certification of Judgment

1. Certification of judgment to court below.

ORDER V

Applications under Section 16 or Section 43 of the Area Courts Law

1. Application by motion.
2. Court to call for and serve copy of record and make and serve English translations.
3. High Court to serve copies.
4. Notice of hearing.
5. Hearing.
6. Application to be made where native court situated.

ORDER VI

Forms

1. Forms.

FIRST SCHEDULE

HIGH COURT (APPEALS FROM NATIVE COURTS) RULES

[Section 116.]

[NR LN 112 of 1960, NN 27 of 1963, NN LN 186 of 1963, KWS LN 10 of 1969.]

[Date of commencement: 30th September, 1960]

ORDER I

Title and Interpretation

1. Short title

These rules may be cited as the High Court (Appeals from Native Courts) Rules.

2. Interpretation

Definitions—

"Appeal Court" means the High Court;

"native court" means a grade A or grade A limited native court or a Provincial Court.

ORDER II

Appeals from Native Courts in Civil and Criminal Cases other than Capital Cases

1. Appeals to High Court

When an appeal is made from any order or decision of an upper are court (hereinafter in this Order in each case called "the court below") to the High Court in accordance with the provisions of the Area Courts Law, 1967, such appeal shall be entered either in the registry of the High Court in the judicial division in which the court below is situated or held its session or in the registry of the court below.

[Cap. 15.]

[KWS LN 10 of 1969.]

2. Time for entering appeal

An appellant shall enter his appeal within thirty days of the order or decision appealed against:

Provided that where the appeal is against a sentence of caning he shall enter his appeal within fifteen days of the order or decision appealed against.

3. Notice of appeal

Every appeal shall be entered by notice in writing in the form set out in Form 1 in the First Schedule hereto to be called a "Notice of Appeal" presented by the appellant or someone duly authorised to do so on his behalf, stating—

(a) the name of the court below and the reference number, if any, of the proceedings in which the decision was given;

[Form 1, First Schedule.]

(b) the names of the parties;

(c) the date of the decision;

(d) the grounds of appeal in full;

(e) the appellant's address for service to comply with rule 6 hereof.

4. Appeals from area courts

(1) An appellant shall enter his appeal—

(a) either by delivering the Notice of Appeal by hand to the Registrar of the court in

which he enters his appeal; or

(b) by sending the Notice of Appeal by registered post to the Registrar of the court in which he enters his appeal, together, with two copies of the said Notice and with the fees prescribed in the Second Schedule for entering a Notice of Appeal and for copies of the record of the area court or courts.

Provided that where there is more than one respondent the appellant shall deliver or send an additional copy of the said Notice for each respondent.

[KWS LN 10 of 1969.]

(2) The Registrar of the court in which the appeal is entered shall forthwith—

(a) send a copy of the Notice of Appeal to the Appeal Court or the court below as the case may be; and

(b) cause to be served on each respondent a copy of the Notice of Appeal.

Provided that where the appellant is a person convicted in a criminal case the Attorney-General shall be deemed to be the respondent.

[KWS LN 10 of 1969.]

(3) Within one month of the date of receiving the Notice of Appeal the court below shall forward to the Appeal Court a certified copy of the record of the court below and of the original trial court (if any) in a file cover in the form set out in Form 2, together with the exhibits (if any) at the trial.

[KWS LN 10 of 1969.]

(4) The Appeal Court shall thereupon cause a copy of the record or records to be served upon the appellant and upon each respondent.

Provided that where the appellant is a person convicted in a criminal case the Attorney-General shall be deemed to be the respondent.

[KWS LN 10 of 1969.]

5. English translations

The Appeal Court, upon receiving the copy of the record or records as provided in paragraph (3) of rule 4 shall, when such record has been kept in the vernacular, prepare English translations thereof where necessary, and shall cause a copy thereof to be served upon the appellant and upon each respondent.

Provided that where the appellant is a person convicted in a criminal case the Attorney-General shall be deemed to be the respondent.

[KWS LN 10 of 1969.]

6. Address for notices

Every appellant shall, when entering his Notice of Appeal, give to the court below a postal

address to which notices may be sent to him or an address for service where he can be found, or, if unable to do so, shall from time to time call at, or send his agent to, the court below to collect any notices awaiting him; and any notice or communication addressed accordingly, or left with the court below shall be presumed to have reached the appellant unless the contrary is shown.

7. Security for costs, etc.

The Appeal Court may order the appellant to find, within one month, security for any costs which may be given against him.

[Forms 3 and 4.]

8. Notification of hearing of appeal

(1) The Appeal Court shall notify the parties and any other person entitled to appear of the time and date fixed for the hearing of the appeal.

[Form 5.]

(2) The Appeal Court shall cause the appeal to be set down for hearing and if the appellant is in custody shall require the officer in charge of the prison in which the appellant is in custody to produce him before the Appeal Court on the day fixed for the hearing.

9. Hearing of appeal

At the hearing of the appeal the Appeal Court may allow or require witnesses to be called, whether or not they gave evidence at the trial, and may order any reference to be made, and call for any document or other exhibit, and may inspect any object or place and may call for and examine the original records and adjourn the hearing from time to time and place to place, and may do or order to be done anything which it would have power to do or order had the case been before the High Court in the exercise of its original jurisdiction.

10. Stay of execution

At any time after an appeal has been entered until the determination thereof by the Appeal Court the Appeal Court or a single judge thereof may, on the application of the appellant or of its own motion, order that the execution of the order or decision appealed against be suspended, either with or without security for the eventual performance thereof should the appeal fail, and if the appellant is in custody, may order his release on bail with or without sureties and shall send a copy of any such order to the court below or to the person or authority empowered to put into execution such order of the Appeal Court.

Provided that if the order or decision of the court below was for the payment of a sum of money or penalty which has been paid, the Appeal Court, or a single judge thereof, shall not order it to be refunded pending the determination of the appeal unless the court below ordered, or had power to order, a sentence of imprisonment if the money or penalty was not

paid.

[Form 6.]

11. Appeal out of time

When application is made to the Appeal Court for leave to appeal out of time the applicant shall state the grounds on which he bases his said application, and the Appeal Court may summarily refuse such leave without hearing the appellant.

12. Fees

No appeal shall be entered except upon payment of the fees prescribed in the Second Schedule hereto, and thereafter no step shall be taken until the fee prescribed therefor in the said Schedule has been paid by the appellant. If any fee has not been paid within thirty days after it became due the appeal shall lapse unless the Appeal Court, or a single judge thereof, sees fit to extend the time on sufficient cause being shown. An application for such extension may be made after the appeal has lapsed.

Provided that the Appeal Court, or a single judge thereof, may waive or remit any such fee on the ground of the poverty of the appellant if it appears that there are substantial grounds of appeal.

Provided further that in the case of an appeal against a sentence of caning the appeal shall lapse if the fee has not been paid or waived or omitted within fifteen days and there shall be no power to extend such time.

[Second Schedule.]

ORDER III

.....

[KWS LN 10 of 1969.]

ORDER IV

Certification of Judgment

1. Certification of judgment to court below

Upon the determination of every appeal under these rules the Appeal Court shall certify its judgment or order to the court below, and when an appeal is not dismissed, such certificate shall state the grounds upon which the appeal was allowed or the finding, sentence, judgment, or order varied.

[Form 7.]

ORDER V

Applications under Section 16 or Section 43 of the Area Courts Law

[KWS LN 10 of 1969.]

1. Application by motion

An application to the High Court under section 16 or section 43 of the Area Courts Law, 1967 shall be made by motion and shall be accompanied by a written statement in duplicate of the grounds of the application.

Provided that if the applicant is illiterate and not represented by an advocate he may be permitted to dictate his grounds of application to any person appointed by the court, who shall also make a duplicate thereof and the duplicate shall be given to such person, if any, as is entitled to oppose the application on his applying therefor.

[Cap. 15.]

[KWS LN 10 of 1969.]

2. Court to call for and serve copy of record and make and serve English Translations

On receiving an application under this Order the High Court shall notify the court below and call for a certified copy of the record in a file cover in the Form set out in Form 2 and such certified copy of the record shall be delivered to the High Court within one month of the request therefor.

3. High Court to serve copies

On receiving the certified copy of the record from the court below the High Court shall serve copies of such record on all parties, which in a criminal case shall include the Attorney-General, and if the record is in the vernacular shall make and similarly serve English translations thereof.

4. Notice of hearing

Upon receipt of such certified copy, the High Court shall give notice to the applicant and respondent, if any, of the day on which the application will be heard.

[Form 12.]

5. Hearing

The application shall be heard by a single judge and may be conducted in the same manner as the hearing of a suit.

6. Application to be made where native court situated

Applications under this Order shall be made to the High Court in the judicial division in which the area court is situated.

[KWS LN 10 of 1969.]

ORDER VI

Forms

1. Firms

The forms set out in the First Schedule hereto or forms to the like effect may be used where appropriate.

[First Schedule.]

FIRST SCHEDULE

FORM I

[Order II, Rule 3.]

Notice of Appeal

To
The Registrar,
The High Court of Justice,
.....

This is to give notice of appeal against the decision of the court
details of which are below.

In criminal cases set offences out briefly, e.g. (1) Date of decision.

(2) Names of parties.

Stealing N100. In civil cases give brief details of (3) Offence (in criminal cases) or Claim (in civil cases).

(4) Sentence (in criminal cases) or Order (in civil cases).

Set out grounds of appeal in full. My grounds of appeal are—
My address for service in Northern Nigeria is—

FORM 2

[Order II, Rule 4.]

Native Court
(*Kotun Kasa*)

Case No.
(*Lambar Shari 'a*)

Provincial Court
(*Kotun Lardi*)

Case No.
(*Lambar Shari'a*)

High Court/Sharia Court of
Appeal (*Babbar KotulKotun
Daukaka Shari'a*)

PROCEEDINGS ON APPEAL

(*Bill Sawing Shari'ar Daukaka Kara*)

Between
(Tsakanin)

AND
(*da*)

NATIVE COURT

(kotun kasa) Court: (kolu)
Names of Alkali and/or Members present
constituting Court:
(Sunayen Alkali tare dajiko Mashawarlan da
suka hallaria bias ga tsarin kotun)

Grade of Court: (*Darajar kotun*) N.A. and
Province:
N.A. and Province: (En'e da Lardi)

*Composition of court must not vary during
hearing

**Ba za a canja Isarin kotun ba a lokacin da a ke
shari'a)*

PROVINCIAL COURT

(*Kotun Lardi*)

Province:
(*Lardi*)

Date of Complaint/Information

(Ranar da aka yi kara/ samu labari)
Date of Termination of Hearing:
(Ranar da aka gama yin Shari'a)
Date of Notice of Appeal to Provincial
Court/High
Court/Sharia Court of Appeal:
Fees Paid: Receipt:
(Kudin da aka biya) (*Lambar Rasi*)
Date of Payment of Fees:
(*Ranar da aka biya kudin*)

Date of Receipt of Notice of Appeal from Native

Court:

(Ranar da aka samu takardar neman daukaka
kara daga kotun kasa)

Date of Determination:

(Ranar da aka gama Shari'a)

Date of Notice of Appeal to High Court/Sharia
Court of Appeal:

(*Ranar da aka sanar da niyyar daukaka kara
zuwa ga Babbar kolu/kotun Daukaka Shari'a*)

Fees Paid: Receipt No.:
(*kudin da aka biya*) (*Lambar Rasi*)

HIGH COURT/SHARIA COURT OF APPEAL

(Babbar Kotu/Kotun Daukaka Shari'a)

Sitting at:

(Wurin da a ka yi zaman shari'a)

Date of Payment of Fees:

(Ranar da aka biya kudin)

Date of Receipt of Notice of Appeal from
Provincial Court or Native Court Grade A or A
Limited:

*(Ranar da aka samu sanarwar niyyar daukaka
kara*

*daga kolun Lardi ko Kotun kasa mai Daraja A
ko A ragaggiya)*

Date of Hearing:

(Ranar Shari'a)

Date of Determination:

(Ranar da aka gama Shari'a)

Date of Notice for Leave to Appeal (if any):

*(Ranar da aka sanar da neman izinin daukaka
kara (idan an kawo)*

Fees Paid:

Receipt No.:

(kudin da aka biya)

(Lambar Rasit)

Date of Payment of Fees:

(Ranar da aka biya kudin)

SUMMARY OF PROCEEDINGS AT FIRST INSTANCE

[S. 395 Criminal Procedure Code.]

Takalaccen bin sawun Shari'ar da aka yi da farko
(Kashi na 395 na Dokar Tsarin Tafiyad da Hukuncin Laifi)

Accused <i>Wanda aka yi kara</i> Complainant <i>Maikara</i>	
Name	<i>Suna</i>
Tribe or National- <i>Kabila ko Jinsi</i>
Ity	
Residence	<i>Wurin Zama</i>
Occupation	<i>Sana'a</i>
Approximate age	<i>Shekarun Haifuwa</i>

Offence complained of with date and place and, when material, the value of the property in respect of which the offence has been committed.

Laifin da aka yi kara a kansa da rana da wuri kuma, da kimar dukiya da aka yi laifin game da shi.

.....
.....
.....

Date of Arrest *Ranar*
Kamarwa

Date of Police Report or of Complaint *Ranar da Yandoka suka kai*
Labari

ko Ranan Kara gaban Shari'ar

Names of Witnesses examined for the Prosecution *Sunayen Shaidun Mai Kara*

.....
.....
.....

Plea of Accused *Yarda ko Musun wanda aka yi*
kara

.....

...

...

Names of Witnesses examined for Defence *Sunayen Shaidun wanda aka yi Kararsa*

...

...

...

...

FINDING (in case of conviction the offence proved must be stated with a reference to the Penal Code or other Act or Law and a brief statement of the reason for conviction must be given).

Samu ko rashin samun laifi (in an tabatar da laifi sai a fada game da Dokar Laifiifuka ko wata Doka a badit takaitaccen bayani na dalilin tabbatar laifi).

...

SENTENCE OR OTHER FINAL ORDER *Hukunci ko wani Umarni*

...

Date of Termination of Proceedings *Rana Karewar Shari'ar*

S. 110 Evidence Law, Cap. 40 (1994)

Kashi na 110 na Dokar Shaida, Babi na 40.

Certified True copy

Tabbataccen kofe

Signature of President of Court

Sa hannun Shugaban Kotu

NOTES FOR GUIDANCE

1. A copy of the court record must be made and filed in this file before sending the file to the Appeal Court.
2. The copy of the court record must be certified by the Court President in accordance with section 110 of the Evidence Law (Cap. 40 (1994)).
3. All documents referred to in the court proceedings should be securely packeted in envelopes, clearly marked with the names of the parties and the reference number of the case and then forwarded to the Appeal Court with this file.
4. All exhibits should be labelled with the names of the parties and the reference

number of the case and forwarded (if required) to the Appeal Court by secure means.

5. A list should be made of both documents and exhibits on this page of the file.

ABUBUWAN LURA DON JAGORA

1. *Lalle ne a ajiye rubutun shari'ar da aka yi a cikin wannan fail kafin a aika da fail din zuwa ga Kotun Dankaka Kara.*

2. *Shugaban Kotun zai tabbutad da rubutun da aka yi bisa ga kashi na 110 na Dokar Tab-batawa (Babi na 40(1994)).*

3. *Duk rubuce rubuceu da aka yi maganar su a lokacin bin sawun shari'ar za a shiriyar su a cikin ambulan mai aminci, like da sunayen masu shari'ar, da kuma lamban shari'ar, sa'an nan a aika da ambulan zwea ga Kotun Daukaka Kara tare da wannan fail.*

4. *Duk wasu abubuwan mini za a lika su da sunayen masu shari'ar wadanda suka yi amfani da su, da kuma lamban shari'ar, sa'an nan a aika da su (idan an nemi aikawar) ta amintacciyar hanya zuwa ga Kotun Dankaka Kara.*

5. *Za a yijerin dukan rubuce rubucen, da abubuwan nuni, a wannan shaft na fail.*

A. LIST OF DOCUMENTS Date and Method of Despatch to Appeal Court
(*Tsarin Rubutatun Takardu*) (Kwanan wata da yadda aka aika du su zuwa ga
Kotun Daukaka Kara)

B. LIST OF EXHIBITS
(*Tsarin Abubuwan Nuni*)

FORM 3

KWARA STATE OF NIGERIA

[Order 11, Rule 7.]

Order for Security of Costs

In the Court of

.....

Case No.

Between

Complainant

and

.....

Defendant

IT IS ORDERED that the appellant do within one month of the date hereof furnish security in

the sum of for any costs which may be given against him (for the making of

copies of the petition and record for the respondents) (and for the translation thereof).*

* Delete where necessary.

.....

President

FORM 4

KWARA STATE OF NIGERIA

[Order D, Rule 7, Rule 10.]

Security Bond

In the Court of

.....

Case No.

Between

Complainant

and

Defendant

We*

of and*

of and*

FORM 4—*continued*

of hereby declare that we are jointly and severally

held and firmly bound to in the sum of

N k to be paid to the said or his certain

attorney, executors, administrators, or assigns; and we bind ourselves, and each and every one of us, in the whole, our and each of our heirs, executors, and administrators jointly and severally to make such payment.

* Names of the appellant and sureties.

Sealed with our seals, and dated this day of
two thousand and

Whereas (here recite the circumstances in which the bond is required).

Now the condition of this obligation is such, that if the above bounden do (here state the obligation undertaken) then this obligation shall be void and of none effect, otherwise the same shall remain in full force.

..... Appellant L.S.

..... Surety L.S.

..... Surety L.S.

Signed, sealed and delivered by the above bounden*

in the presence of

* Names of the appellant and sureties.

FORM 5
KWARA STATE OF NIGERIA
[Order II, Rule 8(1).]

Notice of Appeal and Hearing

In the Court of

.....

Case No.

Between

Complainant

and

.....

Defendant

Take Notice that this appeal has been duly entered and will be heard by the Court at

.....

..... on the day of , 20

at o'clock in the noon.

Dated at this day of , 20

.....

Registrar

FORM 6
KWARA STATE OF NIGERIA
[Order II, Rule 10.]

Order for Stay of Execution

In the Court of

.....

Case No.

Between

Complainant

and

.....

Defendant

IT IS ORDERED that execution of the order/decision made by the Court of

.....

against the appellant be and is hereby suspended until the determination of this appeal.

AND THAT the appellant do furnish security in the sum of

.....

for the performance, should the appeal fail of the said order or decision.*

AND THAT the appellant be released from custody on bail in the sum of

.....*

with surety/sureties in the sum of*

.....

* Delete where necessary.

.....

President/Judge

FORM 7

KWARA STATE OF NIGERIA

[Order IV.]

Certificate of Judgment

In the Court of

.....

Case No.

Between

Complainant

and

.....

Defendant

I Hereby Certify that this appeal was heard by the High Court at

.....

on the day of, 20

.....

And That the Court ordered as follows—

*And that the grounds upon which were as follows—

(the appeal was allowed the finding/sentence judgement/order was varied)

were as follows—

.....

Registrar

* This paragraph need only be added when an appeal is not dismissed.

FORMS 8

KWARA STATE OF NIGERIA

HEARING NOTICE

[Order V, Rule 4.]

In the High Court of Justice

Holden at

Application No.

A.B. Applicant

C.D.

Respondent

In the matter of an application under section 19 of the Native Courts Law.

Take Notice that this application will be heard at

.....

on the day of, 20 at

o'clock in the noon.

Dated at this day of, 20

By Order:

.....

Registrar

SECOND SCHEDULE

N

- | | |
|---|--------|
| 1. Entering notice of appeal, if in time | 1 5 0 |
| 2. Entering notice of appeal, if out time | 1 10 0 |
| 3. Copies of record of area court or courts, whether for use in Appeal Court or of
respondent | 0 0 5 |
| 4. Giving notice to a respondent (plus service and mileage fees) | 1 0 0 |
| 5. Making application under section 16 or section 43 of the Area Courts Law, 1967 | 0 12 6 |
| 6. For proceedings or services other than those provided for in items 1 to 5, the same
Fees as are chargeable in a case begun in the High Court. | |

HIGH COURT (APPEALS FROM AREA COURTS) RULES

ARRANGEMENT OF RULES

RULE

1. Short title and commencement.
2. Adaptation of NR LN 112 of 1960, Vol. IV of 1963 Laws, p. 583.
3. Revocation of KWS LN 21 of 1968.

SCHEDULE

HIGH COURT LAW

[CAP. 49 (1994).]

HIGH COURT (APPEALS FROM AREA COURTS) RULES

[Date of commencement: 9th October, 1969]

In exercise of the powers conferred upon him by subsection (1) of section 116 of the High Court Law, the Chief Justice, with the approval of the Military Governor of the Kwara State of Nigeria, hereby makes the following rules of court.

1. Short title and commencement

These rules may be cited as the High Court (Appeals from Area Courts) Rules, 1969, and shall come into operation on the 9th day of October, 1969.

2. Adaptation of NR LN 112 of 1960, Vol. IV of 1963 Laws, p. 583

The High Court (Appeals from Native Courts) Rules shall apply in respect of area courts established under the provisions of the Area Courts Law, 1967, subject to the modifications set out in the Schedule and to such other modifications as may be necessary to make them applicable to the provisions of the said Law.

[No. 2 of 1967.]

3. Revocation of KWS LN 21 of 1968

The High Court (Appeals from Native Courts) (Adaptation) Rules, 1968, are hereby revoked.

HIGH COURT (JUDICIAL DIVISIONS) CREATION ORDER

ARRANGEMENT OF ORDERS

SECTION

1. Short title and commencement.
2. Judicial Divisions.

SCHEDULE

HIGH COURT LAW

[Cap. 49(1994).]

HIGH COURT (JUDICIAL DIVISIONS) CREATION ORDER

[KWS LN No. 4 of 1984.]

In exercise of the powers conferred upon me by section 68 of the High Court Law, and of all other powers enabling me in that behalf, I Group Captain Salaudeen Adebola Latinwo,

Military Governor of Kwara State of Nigeria, hereby make the following order.

[Date of commencement: 15th June, 1984]

1. Short title and commencement

This Order may be cited as the High Court (Judicial Divisions) Creation Order, 1984 and shall come into force on the 15th day of June, 1984.

2. Judicial Divisions

The Kwara State of Nigeria is hereby divided into the Judicial Divisions specified in the first column of the Schedule hereto, each of which consists of the area mentioned in the second column thereof opposite each Judicial Division respectively.

SCHEDULE

<i>Judicial Division</i>	<i>Area comprising Division</i>
1. Ilorin Judicial Division	Ilorin, Asa, Moro and Edu Local Government areas.
2. Jebba Judicial Division	
3. Offa Judicial Division	Oyun Local Government area.
4. Omu-Aran Judicial Division	Irepodun and Ifelodun Local Government areas.

**KWARA STATE HIGH COURT
(CIVIL PROCEDURE) RULES**

ARRANGEMENT OF RULES

ORDER 1

Citation, Application and Interpretation

RULE

1. The civil procedure rules.
2. Where no rules exist.
3. Construction of reference to law, rules, etc.
4. Application.
5. Interpretation of terms.

ORDER 2

Form and Commencement of Action

1. Mode of beginning civil proceedings.

2. Proceedings which must be begun by writ.
3. Form of writ.
4. Form of writ for service out of Nigeria.
5. Proceedings which may be begun by originating summons.
6. Construction of enactment.
7. Discretion of the Judge.
8. Form of originating summons.
9. Service outside Kwara State.
10. Originating process to be tested by its date.
11. Proceedings to be begun by motion or petition.

ORDER 3

Place of Instituting and Trial of Suits

1. Place for trial of suits.
2. Suits relating to land and property distrained or seized.
3. Suits for recovery of penalties, etc.
4. Suits upon contract.
5. Other suits.
6. Suit commenced in wrong division.

ORDER 4

Effect of Non-Compliance

1. Effect of non compliance.
2. Application to set aside for irregularity.

ORDER 5

Endorsement of Claim and Address

RULE

1. Endorsement.
2. Endorsement to show representative capacity.
3. Probate actions.
4. What is endorsed where the claim is liquidated.
5. Ordinary account.
6. Endorsement of address by claimant or by legal practitioner.
7. Endorsement of address.
8. Originating process without an address or with fictitious address.

ORDER 6

Issue of Originating Process

1. Preparing originating process.

2. Sealing of originating process.
3. What is to be done after sealing.
4. Copies to be served.
5. Probate actions: affidavit with originating process.
6. Renewal of originating process.
7. Endorsement of renewal.
8. Loss of originating process.
9. Concurrent originating process.
10. Concurrent originating process for service within and out of jurisdiction.

ORDER 7

Service of Originating Process

1. By whom service is to be effected.
2. Service of originating process, etc., how effected.
3. When originating process need not be served personally.
4. Mode of service when not personal.
5. Substituted service.
6. Persons under legal disability.
7. Prisoner or detainee.
8. Partner.
9. Corporation or company.
10. Foreign corporation or company.
11. Local agent of principal who is out of jurisdiction.
12. Where violence threatened.
13. Proof of service generally.
14. Expenses of service.
15. Time of service on certain days.
16. Recording of service.

ORDER 8

Service Out of Nigeria and Service of Foreign Process

RULE

1. Cases where service of originating process are allowed out of Nigeria.
2. Agreement as to service.
3. Service abroad by letter of request.
4. Where leave is granted or not required.
5. Service of foreign processes.
6. Inapplicability of rule 4.
7. Service on behalf of foreign tribunals.

8. Substituted service of foreign process.

ORDER 9

Sittings of the Court and Vacation

1. Days of sittings.
2. Public or private sittings of court.
3. Office hours.
4. Days of sittings: long vacation.
5. Vacation court.
6. Chambers.

ORDER 10

Computation of Time

1. Rules for computation of time.
2. Holiday.
3. Time of service.
4. No enlargement of time by consent of parties.
5. Court may extend time.

ORDER 11

Interlocutory Applications, Motions Ex Parte and on Notice

I. Motions Generally

1. Time to apply.
2. Application by motion.
3. Motion list.
4. Hearing of motions.
5. Adjournment.
6. Motion to be on notice except in emergency.

II. Ex Parte *Motions*

7. Mode of filling motion ex parte.
8. Arguments on motion.
9. Orders on ex parte motions.

RULE

10. Duration of ex parte order.

III. Orders to Show Cause

11. Return – day to be specified.
12. Counter – evidence.
13. Further service in certain cases.

14. Appearance or proof of service.
15. General powers as to orders.

IV. Notice of Motion

16. Notice of motion.
17. Service of notice.
18. Service on legal practitioner.
19. Copy of affidavit to be served with notice.
20. Order for service.
21. Service of motion with originating process.

V. Evidence in Interlocutory Proceedings

22. Oral evidence.
23. Evidence in addition to or in lieu of affidavits.
24. Notice to parties and interested parties.
25. Evidence, how taken.
26. Affidavit not filed with motion paper.

ORDER 12

Interlocutory Orders

1. Prevention or interim custody of subject – matter of disputed contract.
2. Early trial of cause.
3. Order for sale of perishable goods.
4. Detention, preservation or inspection of property.
5. Inspection by judge.
6. Disposal of property in court's custody.
7. Proceeds of sale of property.
8. Order for recovery of specific property other than land subject to *lien*.
9. Allowance of income of property *pendente lite*.
10. Injunction against repetition of wrongful act for breach of contract.
11. Appointment of a receiver by way of equitable execution.
12. Receivers: security and remuneration.
13. Where receiver appointed in court: adjournment to give security.
14. Fixing days for receivers to leave and pass their accounts and pay in balances and neglect of receiver.
15. Form of receiver's accounts.
16. Leaving account at the registry.
17. Consequences of default by receiver.

RULE

18. Passing of guardians' accounts.

ORDER 13

Affidavit

1. Evidence on motion.
2. Title of affidavits.
3. Use of defective affidavits.
4. Special time for filing affidavits.
5. Affidavit in support of ex parte application.
6. Notice of intention to use affidavit in chambers.
7. Alterations in accounts to be initialled.
8. Exhibits.
9. Certificate on exhibit.
10. Application of Evidence Act.
11. Affidavit taken in commonwealth country admissible.

ORDER 14

Parties

I. Parties Generally

1. Person claiming jointly or severally.
2. Action in name of wrong claimant.
3. Misjoinder and counter claim.
4. Any person may be joined as defendant.
5. Action in name of wrong defendant.
6. Defendant need not be interested in all the reliefs sought.
7. Joinder of persons severally or jointly and severally liable.
8. Claimant in doubt as to person from whom redress is to be sought.
9. Persons under legal disability.
10. Guardian.
11. Trustees, executors, etc., may be used as representing the estate.
12. Numerous persons.
13. Representation of persons or classes of persons in certain proceedings.
14. Power to approve compromise.
15. Where there is no personal representation.
16. Proceedings not defeated by misjoinder or non-joinder.
17. Application to add or strike out.

18. Where defendant is added.
19. Third parties.
20. Appearance by third party.
21. Default by third party.
22. Subsequent third party.
23. Claim against co-defendant.

*II. Actions against Firms and Persons Carrying on Business in Names
other than their Own*

RULE

24. Actions by and against firms.
25. Disclosure of partners' names.
26. Appearance of partners.
27. Application of rules to actions between co-partners.
28. Persons trading as firms.

III. Alteration of Parties

29. Action not abated where cause of action survives.
30. Order to carry on proceeding.
31. Continuation of cause on assignment, creation or devolution of estate or title.
32. Discharge of order by person having a guardian.
33. Discharge by a person having no guardian.

IV. Legal Practitioners or Agents

34. Acts may be done by legal practitioner or agent.

ORDER 15

Legal Practitioner

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

ORDER 16

Appearance

1. Mode of entry of appearance.
2. Defendant appearing in person or represented by legal practitioner.
3. Fictitious address.

4. Defendants appearing through same legal practitioner.
5. Late appearance.
6. Intervener in probate matters.
7. Recovery of land.
8. Landlord appearing.
9. Person under legal disability appearing.
10. Tenant.

ORDER 17

Default of Appearance

1. Default of appearance generally.
2. Default of appearance by person under legal disability.
3. Liquidated demand.
4. Liquidated demand: several defendants.
5. Detention of goods.

RULE

6. Several defendants.
7. Detention of goods, damages and liquidated demand.
8. Recovery of land.
9. Mesne profits.
10. Judgment for costs: upon payment, satisfaction, etc.
11. Setting aside judgment.
12. Default of appearance in actions not otherwise specifically provided for.
13. Compulsory service.

ORDER 18

Arrest of Absconding Defendant

1. Defendant leaving jurisdiction or removing property.
2. Warrant to arrest.
3. Bail for appearance or satisfaction.
4. Deposit in lieu of bail.
5. Committal in default.

ORDER 19

Interim Attachment of Property

1. In what cases.
2. Application for attachment.
3. Form of order.
4. Where defendant fails to show cause or give security.
5. Rights of third parties not to be affected.

6. Removal of attachment.

ORDER 20

Accounts and Inquiries

1. Summary order for account.
2. Court may direct taking of accounts.
3. Direction as to manner of taking account.
4. Account to be made, verified.
5. Erroneous account.
6. Allowances.
7. Delay in prosecution of accounts.
8. Distribution of fund before all persons entitled are ascertained.

ORDER 21

Arbitration

I. Reference to Arbitration

1. Nomination of arbitrators and appointment.
2. Court may appoint arbitrators.

RULE

3. Form of order of reference.
4. Umpire where necessary.
5. Attendance of witnesses.
6. Extension of time for making award.
7. Power of court in case of death, incapacity or refusal to act.
8. Finding.
9. Special case for opinion of the court.
10. Court may modify for correct award.
11. Power as to costs.
12. Power of court to remit award for reconsideration.
13. Setting aside award.
14. Filing award: effect of.

II. Arbitration Proceedings

15. Applications under Arbitration and Conciliation Act.
16. Application to be made within 15 days.

III. *Enforcement of Arbitration Awards*

17. Mode of enforcing awards.

IV. *Registration of Foreign Arbitration Awards*

18. Awards made on proceedings in foreign territory.

ORDER 22

Reference to Referees

1. Reference to referees.
2. Instruction to referee.
3. Interim inquiries or accounts.
4. General power of the referee.
5. Evidence.
6. Referee's authority on the inquiry.
7. Limitations in certain particulars.
8. Report made in pursuance of reference.
9. Referee may report questions of facts specifically.

ORDER 23

The Undefended List

1. Where claimant believes there is no defence. The undefended list: affidavit.
2. Delivery of extra copies, copy of affidavit to be served.
3. Where a defendant intends to defend. Notice of intention to defend.
4. Judgment in undefended suit.
5. Where there are several defendants: Oral evidence.

ORDER 24

Summary Judgment

RULE

1. Where claimant believes there is no defence.
2. Delivery of extra copies.
3. Service.
4. Where defendant intends to defend.
5. Where defendant has good defence or has no good defence or has good defence to part of the claim.
6. Where there are several defendants.

ORDER 25

Joinder of Causes of Action

1. All causes of action may be joined.
2. Counter claim against claimant.
3. Court may order separate trials.

ORDER 26

Proceedings in Lieu of Demurrer

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

ORDER 27

Pleadings

1. Filing of pleadings.
2. Pleadings to state material facts and not evidence.
3. Particulars to be given where necessary.
4. Matters which must be specifically pleaded.
5. Further and better statement of particulars.
6. Order for particulars not a stay.
7. Specific denial.
8. Joinder of issue.
9. Pleadings to be consistent.
10. Grounds of claim founded on separate facts to be separately stated.
11. The relief claimed to be stated.
12. Allegations shall not be made generally but specifically.
13. Denial of fact must answer point of substance.
14. Admissions.
15. Set off or counter-claim to be pleaded.
16. Striking out of pleadings.

RULE

17. Where pleadings disclose no reasonable cause of action.
18. Denial of contract.
19. Effect of documents to be stated.
20. Malice, knowledge, or other condition of mind.
21. Notice.

22. Implied contract or relation.
23. Presumptions of law.
24. Pleadings: probate actions.
25. Technical objection.
26. Stated or settled account.
27. Defence of tender.
28. Judgment for balance.
29. Close of pleadings.

ORDER 28

Amendment

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

ORDER 29

Default of Pleadings

1. Claim for debt or liquidated demand.
2. Several defendants: default of one.
3. Default of defence: claim for unliquidated damages.
4. Default of defence: claim in detinue.
5. Default of defence: claim for possession of land.
6. Claim for mesne profits, arrears or damages.
7. Default of defence: mixed claims.
8. Default of defence: other claims.
9. Default of defence: severable claims.
10. Default of third-party.
11. Default of defence to counter-claim.
12. Setting aside default judgment.
13. Interpretation.

ORDER 30

Interpleader

RULE

1. Where relief by interpleader is granted.
2. Matters to be proved by application.
3. Adverse titles of claimants.
4. When application to be made by a defendant.
5. Summons by applicant.
6. Stay of action.
7. Order upon summons.
8. Failure of claimant to appear, or neglect to obey summons.
9. Costs.

ORDER 31

Withdrawal and Discontinuance

1. Discontinuance of action, etc., by parties.
2. Withdrawal by consent.
3. Discontinuance of action with leave.
4. Effect of discontinuance.
5. Stay of subsequent action until costs paid.
6. Withdrawal of summons and motions.

ORDER 32

Payment into and Out of Court

1. Payment into and out of court.
2. Claimant may take out money.
3. Money remaining in court.
4. Several defendants.
5. Counter-claim.
6. Persons under legal disability.
7. Application to be made ex-parte.

ORDER 33

Pre-Trial Conferences and Scheduling

1. Issues of facts.
2. Pre-trial conference notice.
3. Scheduling and planning.
4. Agenda.
5. Time-table.
6. Report.
7. Sanctions.
8. Management.

ORDER 34

Special Case

RULE

1. Special case by consent of parties.
2. Special case by order before trial.
3. Special case to be signed.
4. Application to set down where a person under legal disability is a party.
5. Agreement as to payment of money and costs.
6. Application of order.

ORDER 35

Discovery and Inspection of Documents

1. Discovery by interrogatories.
2. Form 25.
3. Corporation or companies.
4. Objection to interrogatories by answer.
5. Affidavit in answer: filing.
6. Form of affidavit in answer.
7. Order to answer or answer further.
8. Application for discovery of documents.
9. Processes filed after pre-trial conference.
10. Verification of business books.
11. Attachment of party after service on legal practitioner.
12. Attachment of legal practitioner.
13. Using answers to interrogatories at trial.
14. Discovery against sheriff.
15. Interrogatories not related to matters deemed irrelevant.
16. Order to apply to person under legal disability.

ORDER 36

Transfer and Consolidation

1. Re-assignment of cause or matter.
2. Action by chief judge on transfer of cause.
3. Evidence of part heard cause or matter.
4. Order transferring proceedings from district to the high court.
5. Payment of filing fees.
6. Duties of registrar.
7. Party failing to attend.

8. Construction.
9. Consolidation.

ORDER 37

Applications and Proceedings in Chambers

RULE

1. Representation in chambers.
2. Business to be disposed of in chambers.
3. Procedure on applications in chambers.
4. Notes of proceeding in chambers.
5. Drawing up any entry of orders made in chambers.
6. Effect of order in chambers.

ORDER 38

Cause Lists

1. List of causes for hearing.
2. Pre-trial and weekly cause list.
3. Public holidays.
4. Judge unable to sit.
5. Notice boards.

ORDER 39

Proceedings at Trial

1. Attendance by proxy.
2. Non-appearance of both parties.
3. Default of appearance by defendant.
4. Default of appearance by claimant.
5. Judgment by default may be set aside on terms.
6. Application to re-list cause or set aside judgment.
7. Adjournment of trial.
8. Times of commencement and termination of trial.
9. Order of proceeding.
10. Burden of proof by party to begin.
11. Documentary evidence.
12. Additional witness.
13. Close of case of parties.
14. Exhibits during trial.

15. Rejected exhibits.
16. Written address.
17. Right of reply.
18. Custody of exhibit after trial.
19. Office copy of list of exhibits.
20. Indolent prosecution.

ORDER 40

Procedure Relating to Evidence

RULE

1. Proof of facts.
2. Particular facts.
3. Limitation of expert evidence.
4. Limitation on use of documentary evidence.
5. Revocation and variation.
6. Office copies admissible in evidence.
7. Examination of witnesses abroad.
8. Form of order for examination of witnesses abroad.
9. Order for attendance of person to produce document.
10. Disobedience to order for attendance.
11. Expenses of persons ordered to attend.
12. Contempt of court.
13. Examination of witnesses.
14. Depositions not to be given in evidence without consent or by leave of court.
15. Oaths.
16. Attendance of witness under subpoena for examination or to produce documents.
17. Practice as to taking evidence at any stage of course or matter.
18. Special directions as to taking evidence.
19. Evidence in proceedings subsequent to trial.
20. Form of practice for a subpoena.
21. Form of subpoena.
22. Subpoena for attendance of witness in chambers.
23. Correction of errors in subpoena.
24. Personal service of subpoena.
25. Duration of subpoena.
26. Action to perpetuate testimony.
27. Examination of witnesses to perpetuate testimony.
28. Such action not to be set down for trial.

29. Disallowance of irrelevant questions.

ORDER 41

Filing of Written Addresses

1. Application.
2. Content of written address.
3. Summation of address.
4. Copies of written address.
5. Oral argument.
6. Late filing of written address.

ORDER 42

Discontinuance and Non-Suit

Discontinuance of suit.

Stay of subsequent suit.

Power of court to non-suit.

ORDER 43

Judgments and Orders

1. Delivery of judgment in open court.
2. Notice when judgment reserved.
3. When parties deemed to have had notice.
4. Effect of minute of judgment.
5. Date of judgment pronounced in court.
6. Date of judgment directed to be entered.
7. Where set-off allowed.
8. Judgment may direct time for payment or performance and interest.
9. Payment by instalments.
10. Time to be stated for doing any act: memorandum to be endorsed.
11. Entry on production of affidavit document.
12. Judgment by consent.
13. Date of order when drawn.
14. What orders need to be drawn up.
15. Filing of orders.

ORDER 44

Writ of Execution: General

1. Definition.
2. When leave to issue any writ of execution is necessary.
3. Leave required for issue of writ in aid of other writ.
4. Application for leave to issue writ.
5. Application for leave to issue writ of sequestration.
6. Issue of writ of execution.
7. Duration and renewal of writ of execution.
8. Return of writ of execution.

ORDER 45

Garnishee Proceedings

1. Attachment of debt due to judgment debtor.
2. Application for order.
3. Service and effect of order to show cause.
4. No appearance or dispute of liability by garnishee.
5. Dispute on liability of garnishee.

RULE

6. Claims of third persons.

7. Discharge of garnishee.

ORDER 46

Habeas Corpus Proceedings

1. Habeas corpus ad subjucendum.
2. Application: how made.
3. Power to issue order of release.
4. Service of notice.
5. Copies of affidavits.
6. Service of order to release.
7. Statement and verifying affidavit.

8. Bringing up prisoner to give evidence, etc.
9. Form of writ.

ORDER 47

Committal for Contempt of Court

1. Committal for contempt of court.
2. Application to court.
3. Saving for power to commit without application for the purpose.
4. Provision as to hearing.
5. Contempt in face of court: saving for.
6. Power to suspend execution of committal order.
7. Discharge of person committed.
8. Procedure on disobedience of order of court.
9. Saving for other powers.
10. Return.

ORDER 48

Application for Judicial Review

1. Cases appropriate for application for judicial review.
2. Joinder of claims for relief.
3. Grant of leave to apply for judicial review.
4. Delay in applying for relief.
5. Mode of applying for judicial review.
6. Statements and affidavits.
7. Claim for damages.
8. Interlocutory application.
9. Hearing of application for judicial review.
10. Saving for person acting in obedience to mandamus.
11. Consolidation of applications.

ORDER 49

Appeals from District Courts, etc.

RULE

1. Notice of appeal.
2. Contents of notice of appeal.
3. Copies of proceedings.
4. Copies of proceedings to be sent to high court.
5. Respondent to be supplied with copy of proceedings.
6. Proceedings time.

7. Where time expires.
8. Constitution of court hearing appeals.
9. Time and place for hearing.
10. Where appellant fails to appear.
11. Where appellant appears.
12. Appeal limited to grounds given in notice.
13. Request to confirm judgment on other grounds.
14. Cross-appeal.
15. Objections to form of grounds of appeal.
16. Defects in proceedings under appeal.
17. Defects in notice of appeal or recognisance.
18. Additional evidence.
19. Mode of taking evidence.
20. Allowances to witnesses.
21. Stay of execution pending appeal.
22. Court may grant or refuse order for stay.
23. Formal order to be drawn.
24. Costs.
25. Security for costs.
26. Orders of high court to be certified to lower court.
27. Enforcement of judgment.
28. Enforcement of orders.
29. High court may enlarge time.
30. Interpretation.

ORDER 50

Stay of Execution Pending Appeal to the Court of Appeal

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

ORDER 51

Foreclosure and Redemption

- L Originating summons for foreclosure.

RULE

2. Forms 41, 42 and 43.
3. Service and execution of judgment.

ORDER 52

Probate and Administration

I. Grant of Probate or Administration in General

1. Petition to be made to probate registry.
2. Preservation of property.
3. Unauthorised persons intermeddling with property.
4. Production of testamentary papers.
5. Court may order production.
6. Examination respecting papers.
7. Notice to executor to come in and prove.
8. Liability of executor neglecting to apply for probate.
9. Identity.
10. Court may refuse grant until all persons interested are given due notice.
11. Value of property.
12. Answers required before grant.
13. Form of suits.

A. Custody of Wills

14. Testator may deposit will.
15. Custody of wills which probate is given.
16. Will not given out without order of court.

B. Probate or Administration with Will annexed

17. Examination of will as to its execution.
18. Evidence as to due execution of will.
19. Evidence on failure of attesting witnesses.
20. Evidence as to terms, conditions and date of execution of will.
21. Attempted revocation of a will.
22. Affidavit as to due execution, terms, etc., of will.
23. Wills of persons in military service and seamen.
24. Evidence of foreign law.
25. Order of priority for grant where deceased left a will.
26. Joinder of administrator.
27. Will of blind or illiterate testator.
28. Interlineations, erasures, obliterations.
29. Documents referred to in a will or annexed or attached.
30. Executor dying without proving or not appearing.
31. Making of wills.
32. Viva voce examination of persons making affidavits.

C. Administration (not with Will)

RULE

- 33. Letters of administration.
- 34. Administration bond.
- 35. Guarantee.
- 36. Assignment of bond.

D. Administration of Property

- 37. Administration summons.
- 38. Order for administration.
- 39. Order relating to property.
- 40. Administration may be granted to officer.
- 41. Officer to act under the direction of court.
- 42. Court may appoint person to be administrator.
- 43. Remuneration of administrators.
- 44. Securing and collection of estate.
- 45. Application by consular officer or person authorised by him to administer estate.

E. Administration Generally

- 46. Accounts to be filed.
- 47. Court may refuse application to review.
- 48. Grant to be signed by probate registrar.

II. Probate (Non-contentious) Procedure

- 49. Application.
- 50. Application for grants through legal practitioner.
- 51. Personal applications.
- 52. Duty of registrar on receiving application for grant.
- 53. Oath in support of grant.
- 54. Grant in additional name.
- 55. Engrossment for purposes of record.
- 56. Grant to attesting witnesses.
- 57. Right of assignee to a grant.
- 58. Additional personal representatives.
- 59. Grants where two or more persons entitled in same degree.
- 60. Prevention of grant.
- 61. Grants to person having *spes successionis*.
- 62. Grants where deceased was domiciled outside the state.
- 63. Grant to attorney.
- 64. Grants on behalf of minors.

- 65. Grants where minor is co-executor.
- 66. Grants in case of mental or physical incapacity.
- 67. Renunciation of probate and administration.
- 68. Notice to State of intended application for grant.

RULE

- 69. Resealing.
- 70. Amendment and revocation of grant.
- 71. Notice to prohibit grant: caveats.
- 72. Citation.
- 73. Citation to accept or refuse a grant.
- 74. Citation to propound a will.
- 75. Address for service.
- 76. Application for order to bring or to attend for examination.
- 77. Limited grant.
- 78. Grants *ad colligenda bona*.
- 79. Application for leave to swear to death of a person.
- 80. Grants in respect of codicils and copies of will.
- 81. Grants *durants absentia*.
- 82. Notice of election by surviving spouse to redeem life interest.
- 83. Photocopy of wills or other documents may be certified and sealed.
- 84. Power to require application to be made by summons or motions.
- 85. Duties and powers to be performed and exercised by probate Registrar.
- 86. Exercise of power of judge.
- 87. Court may refuse application to review.
- 88. Service of notice of motion and summons.
- 89. Notices, etc.
- 90. Affidavit.
- 91. Time.
- 92. Application.
- 93. Contentious probate: form of suits.

III. *Proceeding Generally*

- 94. Probate actions.
- 95. Service of writ of summons.
- 96. Pleadings and further action.
- 97. Where claimant disputes defendant's interest.
- 98. Notice in probate actions.
- 99. Inquiry as to outstanding personal estate.

100. Direction to order costs.
101. Originating summons relating to deceased person.
102. Order for administration of estate of deceased and of trust.
103. Persons to be served.
104. Court not bound to order administration.
105. Order to be made on application for administration or execution of trusts.
106. Interference with discretion of trustee.
107. Application of summons.
108. Interpretation.

ORDER 53

Summary Proceedings for Possession of Landed Property Occupied without the Owner's Consent

RULE

1. Proceedings to be brought by originating summons.
2. Form of originating summons.
3. Affidavit in support.
4. Service of originating summons.
5. Application by occupier to be made a party.
6. Order of possession.
7. Writ of possession.
8. Setting aside of order.

ORDER 54

Proceedings in Forma Pauperis

1. Who may sue or defend in *forma pauperis*.
2. Conditions to be fulfilled.
3. Fees and costs.
4. Procedure to be followed.
5. Revocation of order, discontinuance, etc.
6. Payment to legal practitioner.
7. Duty of legal practitioner.
8. Appeals.

ORDER 55

Costs

1. Principle to be observed in fixing costs.
2. Security for costs.
3. Security for costs by claimant temporarily within jurisdiction.
4. Action founded on judgment or bill of exchange.

5. Bond as security for costs.
6. Costs at discretion of court.
7. Costs out of fund or property.
8. Stay of proceedings till costs paid.
9. When costs to follow the event.
10. State of proceedings at which costs to be dealt with.
11. Matters to be taken into account in exercising discretion.
12. Costs arising from misconduct or neglect.
13. Personal liability of legal practitioner for costs.
14. Taxation of costs.
15. Notice to other party.
16. Power of taxing officer.
17. Supplementary powers of taxing officer.

RULE

18. Extension of time.
19. Power of taxing officer where party liable to be paid and to pay costs.
20. Mode of beginning proceedings for taxation.
21. Provisions as to bills of costs.
22. Provisions as to taxation proceedings.
23. Certificate of taxing officer.
24. Fees on taxation.
25. Application for review.
26. Application by summons.

ORDER 56

Miscellaneous Provisions

1. What orders to be made.
2. Recovery of penalties and costs.
3. Notice.
4. Office hours.
5. Filing.
6. How process addressed.
7. Framing of new forms.
8. Fees.
9. Regulations.
10. Rules of Court Advisory Committee.
11. Saving.

CHAPTER H2

KWARA STATE HIGH COURT (CIVIL PROCEDURE) RULES

In exercise of the powers conferred on me by section 274 of the Constitution of the Federal Republic of Nigeria, 1999, and of all other powers enabling me in that behalf, I, TIMOTHY ADEPOJU OYEYIPO, Chief Judge of the High Court of Justice of Kwara State of Nigeria, hereby make the following Rules.

[S LN No. 2 of 2005.]

[Date of commencement: 29th April, 2005]

ORDER 1

Citation, Application and Interpretation

1. The civil procedure rules

(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.

(2) The Rules may be cited as the Kwara State High Court (Civil Procedure) Rules, 2005.

2. Where no rules exist

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.

3. Construction of reference to law rules, etc.

(1) Any reference in these Rules to any thing 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.

4. Application

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

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

5. Interpretation of terms

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

[Cap. 15.]

(2) In these Rules, unless the context otherwise requires—

"Chief Judge" means the Chief Judge of the High Court of Justice of the State;

"Claimant" shall include a claimant in a counter-claim;

"Court" means the High Court of Justice of Kwara State of Nigeria;

"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;

"Governor" means the Governor of Kwara 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, Cap. H2, Laws of the Kwara State of Nigeria 1994 or any modification or re-enactment thereof;

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

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

"Person 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, Higher Registrar, or any other officer acting or performing the functions of a Registrar;

"Registry" means the Registry of the High Court of Kwara State in the appropriate Judicial Division;

"State" means Kwara State of Nigeria;

"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

1. Mode of beginning civil proceedings

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

2. Proceedings which must be begun by writ

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

(a) where a claimant claims—

(i) any relief or remedy for any civil wrong; or

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

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

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

(c) where an interested person claims a declaration.

- (2) Except where Order 23 applies, 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) copies of every document to be relied on at the trial.

3. Form of writ

Except in cases in which any 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 1.]

4. Form of writ for service out of Nigeria

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

[Form 2.]

5. Proceedings which may be begun by originating summons

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.

6. Construction of enactment

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.

7. Discretion of the judge

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

8. Forms of originating summons

- (1) An originating summons shall be in Forms 3, 4 or 5, with such variations as circumstances may require. It shall be prepared by the applicant or his legal practitioner,

and shall be sealed and filed in the registry, and when so sealed and tiled shall be deemed to be issued.

[Forms 3, 4 and 5.]

- (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.

(3) The person filing the originating summons shall leave at the registry sufficient number of copies thereof together with the documents referred to in subrule (2) for service on the respondent or respondents.

9. Service outside Kwara State

Subject to the provisions of the Sheriffs and Civil Process Act, a writ of summons or other originating process issued by the court for service in Nigeria outside Kwara State shall be endorsed by the claimant with the following notice:

[Cap.S6 LFN 2004.]

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

10. Originating process to be tested by its date

- (1) The Registrar shall indicate the date and time of presentation for filing on every originating process presented to him and shall arrange for service thereof to be effected.
- (2) An originating process shall not be altered after it is sealed except upon application to a judge.

11. Proceedings to be begun by motion or petition

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

ORDER 3

Place of Instituting and Trial of Suits

1. Place for trial of suits

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.

2. Suits relating to land and property distrained or seized

All suits relating to land, or any mortgage or charge on land or any interest in land, or any inquiry or damage to land and 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 situated, or the distress or seizure took place.

3. Suits for recovery of penalties, etc.

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.

4. Suits upon contract

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.

5. Other suits

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.

6. Suits commenced in wrong division

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

1. Effect of non-compliance

(1) Where in beginning or purporting to begin any proceedings, or 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 of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure may be treated as an irregularity and if so treated, will not nullify the proceedings, or any document, judgment or order therein.

(2) The Court may, on the ground that there has been such a failure as mentioned in subrule (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein, or it may exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

(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 of these Rules to be begun by an originating process other than the one employed.

2. Application to set aside for irregularity

(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 subrule (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

1. Endorsement

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

2. Endorsement to show representative capacity

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

3. Probate actions

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

4. What is endorsed where the claim is liquidated

(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 claimant'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 claimant's legal practitioner shall pay the costs of taxation.

5. Ordinary account

In all cases where a claimant in the first instance desires to have an account taken, the

originating process shall so state.

6. Endorsement of address by claimant or by legal practitioner

(1) A claimant suing in person shall state on the originating process his residential or business address as his address for service. If he lives and carries on business outside the jurisdiction he shall state an address within the jurisdiction as his address for service.

(2) Where a claimant sues through a legal practitioner, the legal practitioner shall state on the originating process his chambers' address as the address for service. If the legal practitioner is based outside the jurisdiction he shall state a chambers' address within the jurisdiction as his address for service.

7. Endorsement of address

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.

8. Originating process without an address or with fictitious address

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

ORDER 6

Issue of Originating Process

1. Preparing originating process

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

2. Sealing of originating process

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

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

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

3. What is to be done after sealing

The Registrar shall after sealing an originating process, file it and note on it the date of filing

and the number of copies supplied by a claimant or his legal practitioner for service on the defendants. The Registrar shall then make an entry of the filing in the Cause Book and identify the action with a suit number that may comprise abbreviation of the Judicial Division, a chronological number and the year of filing.

4. Copies to be served

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

5. Probate actions: affidavit with originating process

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

6. Renewal of originating process

(1) The life span of every originating process shall be 6 months.

(2) If the Registrar is satisfied that it has proved impossible to serve an originating process on any defendant within its life span and a claimant applies before its expiration for renewal of the process, the Registrar may renew the original or concurrent process for 3 months from the date of such renewal. A renewed originating process shall be in Form 6 with such modifications or variations as circumstances may require.

[Form 6.]

7. Endorsement of renewal

(1) The Registrar may order two renewals in each case strictly for good cause and upon prompt application.

Provided that no originating process shall be in force for longer than a total of 12 months.

(2) The Registrar shall state the fact, date, and duration of renewal on every renewed originating process.

8. Loss of originating process

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

9. Concurrent originating process

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

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

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

ORDER 7

Service of Originating Process

1. By whom service is to be effected

(1) Service of originating process shall be made by a sheriff, deputy sheriff, bailiff, special marshal or other officer of the court. The chief judge may also appoint and register any law chambers, courier company or any other person to serve court processes and such 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 or on a person under his control.

2. Service of originating process, etc., how effected

The process server shall serve an originating process by delivering to the party to be served a copy of the process duly certified as prescribed by Order 2, rule 8 (1).

3. When originating process need not be served personally

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

4. Mode of service when not personal

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

5. Substituted service

(1) Where it appears to the Court (either after or without an attempt at personal service) that for any reason personal service cannot be conveniently effected, but that there is a reasonable probability that the document will come to the knowledge of the person to

be served, the Court may order that service be effected either—

- (a) by delivery of the document to some adult inmate at the usual or last known place of abode or business of the person to be served; or
 - (b) by delivery thereof to some person being an agent of the person to be served, or to some other person, on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or other person, come to the knowledge of the person to be served; or
 - (c) by advertising in the State Gazette or in some newspapers circulating within the jurisdiction; or
 - (d) by notice put up at the principal court house of, or some other place of public resort in, the Judicial Division wherein the proceeding in respect of which the service is made is instituted, or at the usual or last known place of abode, or of business, of the person to be served.
- (2) Every application to the Court for substituted or other service, or for the substitution of notice for service shall be supported by an affidavit setting forth the grounds upon which the application is made.

6. Persons under legal disability

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

7. Prisoner or detainee

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

8. Partners

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

9. Corporation or company

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 organisation by delivery to a director, secretary, trustee or other senior, principal or responsible person at the registered, principal or advertised office or place of business of the organisation within the jurisdiction.

10. Foreign corporation or company

When the suit is against a foreign corporation or company within the meaning of Section 54 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.

[Cap C20. LFN 2004.]

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

11. Local agent of principal who is out of jurisdiction

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

12. Where violence threatened

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 person to be served, and this shall be deemed good and sufficient service

for all purposes.

13. Proof of service generally

- (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 acknowledgement of service.
- (2) After service the affidavit shall be prima facie proof of service.

14. Expenses of service

- (1) The party requiring service of any process shall pay in advance all costs and expenses of and incidental to service.
- (2) The rate payable for service shall be as directed by the Chief Judge in Practice Directions from time to time.

15. Time of service on certain days

- (1) Service of originating and other processes, 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 authorised by the court, service shall not be effected on a Sunday or on a public holiday.

16. Recording of service

- (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 claimant 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

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

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 jurisdiction; or

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

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

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

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

(i) made within jurisdiction; or

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

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

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

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

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

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

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

(k) the proceedings relate to probate matters; or

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

2. Agreement as to service

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

3. Service abroad by letter of request

(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—

[Forms 7, 8 and 9.]

(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;

(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;

(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 whereupon the process and a copy as well as the order for substituted service shall be sealed and transmitted to the Solicitor-General of the Federation together with a request in Form 9 with such modifications or variations as circumstances may require.

Provided that notwithstanding the foregoing provisions a claimant 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 or existence of the proceedings with a view to such person having an opportunity of claiming, opposing or otherwise intervening.

4. Where leave is granted or not required

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

(a) the party desiring such service shall file in the registry a request in Form 10 with such modifications or variations as circumstances may require and the request shall state the medium through which it is desired that service shall be effected, either—

[Form 10.]

- (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, Federal Ministry of Foreign Affairs for onward transmission to the foreign country;

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

(2) 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.

5. Service of foreign processes

Where in any civil or commercial matter pending before a Court or tribunal of a foreign country a letter of request from such court or tribunal for service on any person or citation in such matter is transmitted to the Court by the Kwara 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 or citation to be served, and one copy of the translation thereof in accordance with the rules and practice of the Court regulating service;

(d) after service has been effected by the process server he shall file an affidavit of service in which he shall furnish particulars of charges for the cost of effecting the service. The affidavit shall be transmitted to the 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.

6. Inapplicability of rule 4

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

7. Service on behalf of foreign tribunals

Where in any civil suit pending before a court or tribunal in a foreign country with which a Convention in that behalf has been made, request for service 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 service;
- (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).

8. Substituted service of foreign process

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

ORDER 9

Sittings of the Court and Vacation

1. Days of sittings

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.

[Cap. H2.]

2. Public or private sittings of court

The sittings of the court for the hearing of causes shall ordinarily be public but subject to the provisions of the Constitution of 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.

3. Office hours

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

4. Days of sittings: long vacation

(1) The sittings of the Court for the despatch of causes shall be held on every weekday except that the Court shall not sit—

- (a) on any public holiday;
- (b) during the week beginning with Easter Monday;
- (c) during the period beginning on Christmas Eve and ending on 2nd January next following.

(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.

5. Vacation court

(1) Notwithstanding the provisions of rule 4, any action may be heard by a judge in court during any of the periods mentioned in subrule (1) (b) or (c) of rule 4 or subrule (2) where the action is urgent.

(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.

6. Chambers

No business shall be transacted in chambers on Sundays and public holidays.

ORDER 10

Computation of Time

1. Rules for computation of time

Where by 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) the act or proceeding shall be done or taken at least on the last day of the limited

time;

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

(d) where the time limited is less than 5 days, no public holiday, Saturday or Sunday shall be reckoned as part of the time;

(e) when the time expires on a public holiday, Saturday or Sunday the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterward not being a public holiday, Saturday or Sunday.

2. Holiday

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

3. Time of service

No pleading, summons, motions, orders, originating process, documents and other processes shall be served before 6.00a.m. or after 6.00p.m. Service effected after 6.00p.m. shall be deemed to have been effected the following day, except that service effected after 6.00p.m. on Saturday shall be deemed to have been effected on the following Monday.

4. No enlargement of time by consent of parties

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.

5. Court may extend time

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

Provided that any party who defaults in performing an act within the time authorised by the Court or under these Rules, shall pay to the Court an additional fee of H100 for each day of such default at the time of filing his application for extension of time.

Interlocutory Applications, Motions Ex Parte and on Notice

I. Motions Generally

1. Time to apply

Subject to these Rules, interlocutory applications may be made at any stage of an action.

2. Application by motion

(1) Where by these Rules any application is authorised to be made to a Judge, such application shall be made by motion which may be supported by affidavit and shall state under what rule of court or law the application is brought.

(2) 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.

3. Motion list

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.

4. Hearing of motions

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

5. Adjournment

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

6. Motion to be on notice except in emergency

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 *motions*

7. **Mode of filing motion ex parte**

(1) No motion ex parte for injunction shall be made except if 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, subrules (1) and (2) state sufficient grounds why delay in granting the order sought would entail irreparable damage or serious mischief to the party moving.

8. **Arguments on motion**

Any party moving the Court ex parte may support his motion by argument addressed to the Court on the facts put in evidence, and no party to the suit or proceedings, although present, other than party moving, shall be entitled to be heard.

9. **Orders on *ex parte* motions**

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

10. **Duration of *ex parte* order**

(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. *Orders to Show Cause*

11. **Return-day to be specified**

An order to show cause shall specify a day when cause is to be shown, to be called the return-day to the order, which shall ordinarily be not less than 3 days after service.

12. Counter-evidence

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

13. Further service in certain cases

On the return-day, if the person served does not appear and it appears to the Court that the service on all proper parties has not been duly effected, the Court may enlarge the time and direct further service or make such other order as seems just.

14. Appearance or proof of service

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

15. General powers as to orders

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

16. Notice of motion

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.

17. Service of notice

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

18. Service on legal practitioner

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.

19. Copy of affidavit to be served with notice

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.

20. Order for service

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 or 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.

21. Service of motion with originating process

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

V. Evidence in Interlocutory Proceedings

22. Oral evidence

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

23. Evidence in addition to or in lieu of affidavits

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.

24. Notice to parties and interested parties

Such notice as the Court in each case, according to the circumstances, considers reasonable, shall be given to the persons summoned and to such persons (parties to the cause or matter or otherwise interested) as the Court considers 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.

25. Evidence, how taken

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

26. Affidavit not filed with motion paper

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 Orders, etc.

1. Prevention or interim custody of subject-matter of disputed contract

(1) When by any contract a prima facie case of liability is established and there is alleged as a matter of defence a right to be relieved wholly or partially from such liability, 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 subrule (1) may be made by the claimant 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.

2. Early trial of cause

Whenever an application shall be made before trial for an injunction or other order and on the opening of such application, or 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.

3. Order for sale of perishable goods, etc.

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 merchandise which may be of a perishable nature (or likely to injure from keeping) or which for any other just and sufficient reason it may be desirable to have sold at once.

4. Detention, preservation or inspection of property

(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 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, authorise 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 authorise 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 subrule (1) (including an application made before any pleadings have

been delivered in the action 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.

5. Inspection by judge

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

6. Disposal of property in court's custody

(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 an interest yielding account in a commercial bank directed by the Court for the benefit of the person adjudged entitled to it at the trial or on appeal.

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

7. Proceeds of sale of property

Where any money paid after disposal 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.

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

Where an action or counter-claim 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 at the pre-trial conference order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed and such further sum (if any) for interest and costs as the court may direct and that upon such payment into Court being made, the property claimed be given up to the party claiming it.

9. Allowance of income of property *pendente lite*

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.

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

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

11. Appointment of a receiver by way of equitable execution

In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that such 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.

12. Receivers. security and remuneration

Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security to be approved by the Court, duly to account for what he shall receive as such receiver, and to pay 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 duly vacated.

[Forms 11 and 12.]

13. Where receiver appointed in court. adjournment to give security

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.

14. Fixing days for receivers to leave and pass their accounts and pay in balances and

neglect of receiver

When a receiver is appointed with a direction that he shall pass accounts, the Court shall fix the days upon which he shall (quarterly or at shorter periods) leave and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part of them as shall be certified as proper to be paid by him. 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.

15. Form of receivers accounts

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

[Form 13.]

16. Leaving account at the registry

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 claimant or party having the conduct of the action shall thereupon obtain an appointment for the purpose of passing the account.

[Form 14.]

17. Consequences of default by receiver

In case of any receiver failing to leave any account or affidavit or to pass such account or to make any payment or otherwise, the receiver or the parties or any of them may be required to show cause why such account 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.

18. Passing of guardians accounts

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

ORDER 13

Affidavit

1. Evidence on motion

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.

2. Title of affidavits

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

3. Use of defective affidavits

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 misdescription of parties of otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

4. Special time for filing affidavits

Where 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.

5. Affidavit in support of ex parte applications

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.

6. Notice of intention to use affidavit in chambers

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.

7. Alterations in accounts to be initialled

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.

8. Exhibits

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

9. Certificate on exhibit

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

10. Application of Evidence Act

Sections 78 to 90 of the Evidence Act (which set out provisions governing affidavits) shall apply as if they were part of these Rules.

[Cap E14 LFN 2004.]

11. Affidavit taken in commonwealth country admissible

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.

ORDER 14

Parties

1. Parties Generally

1. Person claiming jointly or severally

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

2. Action in name of wrong claimant

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

3. Misjoinder and counter-claim

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

4. Any person may be joined as defendant

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

5. Action in name of wrong defendant

Where an action has been instituted against a wrong defendant or where the name of a defendant has been incorrectly stated 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.

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

(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.

7. Joinder of persons severally or jointly and severally liable

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

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

Where a claimant 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.

9. Persons under legal disability

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

10. Guardian

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

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

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

12. Numerous persons

(1) Where there are numerous persons having the same interest in one 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.

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

(1) Where in any proceedings concerning—

- (a) the administration of an estate; or
- (b) property subject to a trust; or
- (c) land held under customary law as family or community property; or
- (d) the construction of any written instrument, including a statute, the Court is satisfied that—

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

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

found;

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

it is expedient for the purpose of efficient procedure that one or more persons be appointed to represent that person or class or member of the class, the court may make the appointment. The decision of the Court in the proceedings shall be binding on the person 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 subrule (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 recognised by Customary Law as members of a family or as members of a land owning community.

14. Power to approve compromise

Where in any proceedings mentioned in subrule (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.

15. Where there is no personal representation

(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 person 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 duly constituted legal personal representative of the deceased had been a party to the proceedings.

(2) Where a sole or sole surviving claimant or defendant in a proceedings 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.

16. Proceedings not defeated by misjoinder or non-joinder

(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 interest of the parties actually before him.

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

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

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

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

17. Application to add or strike out

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

(2) Where the application is to add a claimant or a defendant, the application shall be accompanied by the statement of claim or defence as the case may be, copies of every document intended to be used and the depositions of all the witnesses.

Provided that where the application is to substitute a deceased party with another person the application may not be accompanied by the documents specified above.

18. Where defendant is added

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

19. Third parties

(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 and existing processes shall be served on the third party within the time prescribed for delivering the defence.

20. Appearance by third party

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

21. Default by third party

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

22. Subsequent third party

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

23. Claim against co-defendant

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

*II. Actions against Firms and Persons Carrying on Business in Names
other than their Own*

24. Actions by and against firms

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

25. Disclosure of partners' names

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

(2) Where the claimants or their Legal Practitioners fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as 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 respect shall follow as if they had been named as claimants in the originating process; and the proceedings may continue in the name of the firm.

26. Appearance of partners

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

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

27. Application of rules to actions between co-partners

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.

28. Persons trading as firms

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

29. Action not abated where cause of action survives

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

30. Order to carry on proceeding

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

(2) An order obtained under this rule shall be served upon the continuing party or parties or their Legal 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.

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

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

32. Discharge of order by person having a guardian

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

33. Discharge by a person having no guardian

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

IV. Legal Practitioners or Agents

34. Acts may be done by legal practitioner or agent

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, or by his Legal Practitioner, or by his agent, unless an agent is expressly barred under these Rules.

ORDER 15

Legal Practitioner

1. Legal practitioner to conduct cause or matter to final judgment

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

2. Application for change of legal practitioner or withdrawal

An application for a change of Legal Practitioner or withdrawal may be made by the

claimant or defendant or the Legal Practitioner as the case may be, not less than 3 clear days before the date fixed for hearing.

3. Service of application by legal practitioner

Where the application is made by a Legal Practitioner, it shall be served on all parties to the cause or matter and where applicable also on the outgoing Legal Practitioner if he is not the applicant.

ORDER 16

Appearance

1. Mode of entry of appearance

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

[Form 15.]

(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 claimant.

2. Defendant appearing in person or represented by legal practitioner

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

3. Fictitious address

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

4. Defendants appearing through same legal practitioner

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.

5. Late appearance

If a defendant files an appearance after the time prescribed in the originating process, he shall pay to the Court an additional fee of H50. for each day of default. If the defendant appears late but within the time prescribed for filing his defence, he shall file his defence within that time.

6. Intervener in probate matters

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

7. Recovery of land

Any person not named as a defendant in an originating process for recovery of land may with leave of 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.

8. Landlord appearing

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

9. Person under legal disability appearing

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

10. Tenant

In this Order the word "Tenant" includes a subtenant or any person occupying any premises whether on payment of rent or otherwise.

ORDER 17

Default of Appearance

1. Default of appearance generally

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

2. Default of appearance by person under legal disability

Where no appearance has been entered for a person under legal disability, a claimant 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.

3. Liquidated demand

Where the claim in the originating process is a liquidated demand and the defendant or all of several defendants fail to appear, a claimant 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.

4. Liquidated demand several defendants

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

5. Detention of goods

Where the claim in the originating process is for pecuniary damages, or for detention of goods with or without a claim for pecuniary damages, and the defendant or all of several defendants fail to appear, a claimant may apply to 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.

6. Several defendants

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 claimant 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.

7. Detention of goods damages and liquidated demand

Where the claim in the originating process is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand

and any of the defendants fail to appear, a claimant may apply to the Court for judgment. The value of the goods and the damages, or 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.

8. Recovery of land

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

9. *Mesne profits*

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

10. Judgment for costs, upon payment, satisfaction, etc.

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, it is unnecessary for a claimant 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.

11. Setting aside judgment

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

12. Default of appearance in actions not otherwise specifically provided for

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

13. Compulsory service

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

ORDER 18

Arrest of Absconding Defendant

1. Defendant leaving jurisdiction or removing property

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 claimant may, either at the institution of the suit or at any time thereafter until final judgment, apply by ex parte motion to the judge for an order that the defendant do show cause why security should not be taken for his appearance to answer and satisfy any judgment that may be passed against him in the suit.

2. Warrant to arrest

(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.

[Form 16.]

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

3. Bail for appearance or satisfaction

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 bail bond for the satisfaction of such judgment; and the surety or sureties shall undertake in default of such appearance or satisfaction to pay any sum of money that may be adjudged against the defendant in the suit with costs.

4. Deposit in lieu of bail

(1) Where a 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 and direct that the deposit be paid into an interest yielding account in a

bank.

(2) Where a 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.

5. Committal in default

(1) If the defendant fails to furnish security or offer a sufficient deposit, the judge may commit him into custody until the decision of the suit or if judgment has been given against the defendant until the execution of the judgment.

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

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

(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.

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

ORDER 19

Interim Attachment of Property

1. In what cases 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 in the State, or such person is indebted to the defendant,

then in either such case the claimant 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 fulfil 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.

2. Application for attachment

The application shall contain a specification of the property required to be attached and the estimated value thereof so far as the claimant can reasonably ascertain, and the claimant 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.

3. Form of order

(1) 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 fulfil the decree, or to appear and show cause why he should not furnish security.

[Form 17.]

(2) Pending the defendant's compliance with such order, the Court may by warrant as in Form 17 direct the attachment until further order of the whole, or any portion of the property specified in the application.

4. Where defendant fails to show cause or give security

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 as shall be sufficient to fulfil the decree, be attached until further order. If the defendant shows such cause, or furnishes 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.

5. Rights of third parties not to be affected

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.

6. Removal of attachment

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

1. Summary order for account

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

[Form 18.]

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

(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.

2. Court may direct taking of accounts, etc.

(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 by a number.

3. Direction as to manner of taking account

- (1) Where the Court orders an account to be taken, it may be 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 subrule (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.

4. Account to be made, verified, etc.

- (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 to which the account shall be exhibited.
- (2) The items on each side of the account shall be numbered consecutively.
- (3) Unless the order for the taking of the account otherwise directs, the accounting party shall lodge the account with the Court and shall at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

5. Erroneous account

Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any item in his account is erroneous in respect of amount or in any other respect shall give him notice thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or, as the case may be, the grounds for alleging that the item is erroneous.

6. Allowances

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

7. Delay in prosecution of accounts, etc.

- (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.

8. Distribution of fund before all persons entitled are ascertained

Where some of the persons entitled to share in a fund are ascertained and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons ascertained and reserving the remainder of the fund to meet the subsequent costs of ascertaining those other persons and their shares.

ORDER 21

Arbitration

I. Reference to Arbitration

1. Nomination of arbitrators and appointment

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

[Cap. H2.]

2. Court may appoint arbitrators

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.

3. Form of order of reference

The Court shall by an order under its seal refer to the arbitrators the matters 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.

[Form 19.]

4. Umpire where necessary

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.

5. Attendance of witnesses

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 suit, 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.

6. Extension of time for making award

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

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

(1) If, in any case of reference to arbitration by an order of Court, the arbitrators 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.

8. Finding

The award shall contain a conclusive finding, and may not find on the contingency of any matter of fact being afterwards substantiated or deposed to. It shall comprehend a finding on each of the several matters.

9. Special case for opinion of the court

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.

10. Court may modify for correct award

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.

11. Power as to costs

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.

12. Power of court to remit award for reconsideration

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

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

13. Setting aside award

- (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.

14. Filing award, effect of

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

15. Applications under Arbitration and Conciliation Act

Every application in this rule to the Court under the Arbitration and Conciliation Act—

[Cap. At 8 LFN 2004.]

- (a) to revoke an arbitration agreement under section 2 thereof;
- (b) to appoint an arbitrator under section 7 (3) thereof;
- (c) to stay proceedings under section 5 thereof;
- (d) to remove an arbitrator or umpire under section 30 thereof;
- (e) to direct an arbitrator or umpire to state the reasons for an award under section 26 thereof;
- (f) to ask that a case on trial which is the subject of an arbitration agreement be referred to an arbitration under section 4 thereof;
- (g) to set aside an award under section 29 thereof;
- (h) for declaration that an award is not binding on a party to the award on the ground that it was made without jurisdiction or because the arbitrator misconducted himself or that the proceedings were arbitrary or that the award has been improperly procured under section 30 thereof;
- (i) generally to determine any question of law arising in the course of or concerning any arbitration agreement or proceedings referred to the Court;
- (j) to subpoena witness to attend under section 23 thereof, shall be made by originating motion.

16. Application to be made within 15 days

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 Awards

17. Mode of enforcing awards

- (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

18. Awards made on proceedings in foreign territory

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 proceeding of the Foreign Judgments (Reciprocal Enforcement) Act shall apply in relation to the award as it applies in relation to a judgment given by that court.

[Cap. F 35 LFN 2004.]

ORDER 22

Reference to Referees

1. Reference to referees

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.

2. Instruction to referee

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

3. Interim inquiries or accounts

The Court may at any stage of the proceeding direct any such 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.

4. General power of the referee

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.

5. Evidence

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.

6. Referee's authority in the inquiry

Subject to any order of Court, the referee shall have the same authority in the conduct of any inquiry as a judge of the Court when presiding at any trial.

7. Limitations in certain particulars

Nothing in these Rules shall authorise any referee to commit any person to prison 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.

8. Report made in pursuance of reference

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.

9. Referee may report questions of facts specifically

(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 think 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 the hearing by the Court or the further notice thereof, and 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

The Undefended List

1. Where claimant believes there is no defence. The undefended list: affidavit

Where a claimant files a writ of summons endorsed with a claim to recover a debt or liquidated money demand only and the writ is supported by affidavit setting forth the grounds upon which the cause of action is based and stating that in the deponent's belief

there is no defence to the action, the judge shall if satisfied that there are good grounds for believing that there is no defence thereto, enter the suit for hearing in what shall be called the "Undefended List" and cause the writ of summons to be marked accordingly, and enter thereon a date for hearing.

2. Delivery of extra copies. Copy of affidavit to be served

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

3. Where a defendant intend to defend. Notice of Intention to defend

(1) If the party served with the writ of summons and affidavit delivers to the Registrar, not less than 5 days before the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the merit, the Court may give him leave to defend upon such terms as the Court may think just.

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

4. Judgment in undefended suit

Where any defendant neglects to deliver the notice of defence and affidavit prescribed by rule 3 (1) or is not given leave to defend by the Court, the suit shall be heard as an undefended suit, and judgment given thereon, without calling upon the claimant to summon witnesses before the Court to prove his case formally.

5. Where there are several defendants Oral evidence

Nothing herein shall preclude the Court from hearing or requiring oral evidence, should it so think fit, at any stage of the proceedings under rule 4.

ORDER 24
Summary Judgment

1. Where claimant believes there is no defence

Where a claimant believes that there is no defence to his claim, he shall file with his writ of summons the statement of claim, copies of the exhibits, the depositions of his witnesses and an application for summary judgment which application shall be supported by an affidavit

stating the grounds for his belief and a written address in respect thereof.

2. Delivery of extra copies

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

3. Service

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

4. Where defendant intends to defend

Where a party served with the processes and documents referred to in rule 1 intends to defend the suit he shall, not later than the time prescribed for defence, file his statement of defence, depositions of his witnesses, the exhibits to be used in his defence and a written address in reply to the application for summary judgment.

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

(1) Where it appears to the Court that a defendant has a good defence 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 defence, the Judge may thereupon enter judgment for the claimant.

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

6. Where there are several defendants

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

ORDER 25

Joinder of Causes of Action

1. All causes of action may be joined

(1) Subject to rule 3, a claimant may in one action claim relief against the same defendant in respect of two or more cause of action—

(a) if the claimant claims and the defendant is alleged to be liable in the same capacity in respect of all the causes of action; or

(b) if the claimant 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.

2. Counter claim against claimant

(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 claimant 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 counterclaim to his defence.

(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 claimant 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 claimant in his action, or that the action is stayed, discontinued or dismissed.

3. Court may order separate trials.

(1) If claims in respect of two or more causes of action are included by a claimant in the same action or by a defendant in a counter-claim, or if two or more claimants or defendant are parties to the same action, and it appears to the Court that the joinder of such cause 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 order 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 counter-claim 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 26

Proceedings in Lieu of Demurrer

1. Demurrer abolished

No demurrer shall be allowed.

2. Points of law may be raised by pleadings

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

3. Dismissal of action

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 defence, set-off, counter-claim, or reply therein, the Judge may thereupon dismiss the action or make such other order therein as may be just.

4. Striking out pleading where no reasonable cause of action disclosed

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 defence 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.

5. Declaratory judgment

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

ORDER 27

Pleadings

1. Filing of pleadings

(1) The claimant 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 claimant's originating process and accompanying documents, file his statement of defence, set off or counter-claim, if any, together with a written statement on oath of each witness to be called and a copy of every document to be relied on at the trial.

(3) A claimant shall within 14 days of service of the statement of defence and counterclaim if any, file his reply, if any, to such defence or counter-claim. Provided that where a defendant sets up a counter-claim, if a claimant or any other person named as a party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent proceeding, the Court may at any time order that such counter-claim be excluded.

(4) Where a claimant files both a reply and a defence to counter-claim, he shall include then in the same document.

2. Pleadings to state material facts and not evidence

(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 defence, as the case may be, but not the evidence by which they 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.

3. Particulars to be given where necessary

(1) In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful 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 claimant alleges that the words or matter complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of his allegation.

4. Matters which must be specifically pleaded

(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 subrule (1), a defendant in an action for the recovery of land shall plead specifically every ground of defence on which he relies.

5. Further and better statement of particulars

(1) A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, 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 defence.

6. Order for particulars not a stay

(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 upon 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.

7. Specific denial

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

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

8. Joinder of issue

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

9. Pleadings to be consistent

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.

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

Where the claimant 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-claim founded upon separate and distinct facts.

11. The relief claimed to be stated

Every statement of claim shall state specifically the relief which the claimant claims either simply or in the alternative, and may also ask for general relief; and the same rule shall apply to any counter-claim made or relief claimed by the defendant in his defence.

12. Allegations shall not be made generally but specifically

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.

13. Denial of fact must answer point of substance

(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.

14. Admissions

(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 defence 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 subrule (3) shall be by motion on notice.

15. Set-off or counter-claim to be pleaded

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 defence, 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.

16. Striking out of pleadings

The Court may at the pre-trial conference 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 Legal Practitioner and client.

17. Where pleadings disclose no reasonable cause of action

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 defence 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 claimant or the defendant, as the case may be, or may make such other order, and upon such terms and conditions as may seem just.

18. Denial of contract

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.

19. Effect of documents to be stated

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.

20. Malice, knowledge, or other condition of mind

(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 out 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 claimant shall, if he intends to allege that the defendant was actuated by express malice, deliver a reply giving particulars of the facts and matters from which 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 fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he shall give particulars stating which of the 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.

21. Notice

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.

22. Implied contract or relation

(1) Whenever 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 subrule (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.

23. Presumptions of law

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.

24. Pleadings, probate actions

(1) In probate actions it shall be stated 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 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 defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will; and he shall thereupon be at liberty to do so, and shall not in any event be liable to pay the costs of the other side unless the Judge is of opinion that there was no reasonable ground for opposing the will.

25. Technical objection

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

26. Stated or settled account

In every case in which the cause of action is a 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.

27. Defence of tender

Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the claimant, it may be

included in the defence and set-off against the claimant's claim, whether or not it is also added as a counter-claim.

28. Judgment for balance

(1) Where in any action a set-off or counter-claim is established as a defence against the claimant'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) Subrule (1) shall apply mutatis mutandis where the balance is in favour of the claimant.

29. Close of pleadings

(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 defence to counter-claim, after service of the defence to counterclaim; or

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

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

ORDER 28

Amendment

1. Amendment of originating process and pleadings

A party may amend his originating process and pleadings at any time before the Judgment.

2. Application

Application to amend may be made to the Court and such application shall be accompanied with a copy of the proposed amendment and may be allowed upon such terms as to costs or otherwise as may be just.

3. Amendment of originating process

Where any originating process and or 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.

4. Failure to amend after order

If a party who has obtained an order to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within 7 days from the date of the order, such party shall pay an additional fee of N100. for each day of default until the expiration of additional 7 days, when the order shall lapse.

5. Filing and service of amended process

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

6. Date of order and amendment to be displayed

Whenever any endorsement or pleading is amended, it shall be marked in the following manner—

"Amended day ofpursuant to order of
(name of Judge) dated theday of"

7. Clerical mistakes and accidental omissions

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

ORDER 29

Default of Pleadings

1. Claim for debt or liquidated demand

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

2. Several defendants: default of one

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

3. Default of defence. claim for unliquidated damages

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

4. Default of defence. claim in detinue

Where the claim against the defendant relates to the detention of goods only, if the defendant makes default in filing his defence the claimant 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.

5. Default of defence. claim for possession of land

(1) Where the claim against a defendant is for possession of land only, if the defendant makes default in filing his defence, the claimant 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 for costs, and proceed with the action against other defendants, if any.

(2) Where there are more than one defendant, judgment entered under subrule (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.

6. Claim for *mesne profits*, arrears or damages

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

7. Default of defence, mixed claims

Where the claimant makes against a defendant two or more of the claims mentioned in rules 3 to 6, if the defendant fails to file a defence, the claimant 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.

8. Default of defence, other claims

Where the claimant makes against a defendant or defendants a claim of a description not mentioned in rules 3 to 6, if the defendant or all the defendants fails or fail to serve a defence on the claimant, the claimant may apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the claimant appears entitled to on his statement of claim.

9. Default of defence, severable claims

(1) Where the claimant 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 claimant 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 for motion for judgment against the other defendant.

(2) An application under subrule (1) shall be by motion on notice.

10. Default of third party

In any case in which issues arise in a proceeding other than between claimant and defendant, if any party to any such issue makes default in filing any pleading, the 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.

11. Default of defence to counter-claim

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

12. Setting aside default judgment

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, 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.

13. Interpretation

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

ORDER 30

Interpleader

1. Where relief by interpleader is granted

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

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 Sheriffs and Civil Process Act and the rules made under it shall apply.

2. Matters to be proved by application

The applicant must satisfy the Judge by affidavit or otherwise that he—

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

3. Adverse titles of claimants

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

4. When application to be made by a defendant

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

5. Summons by applicant

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

6. Stay of action

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

7. Order upon summons

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

8. Failure of claimant to appear, or neglect to obey summons

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

9. Costs

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

ORDER 31

Withdrawal and Discontinuance

1. Discontinuance of action by parties

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

(2) A defendant may—

- (a) withdraw his defence or any part of it at any time;
- (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 defence to the counter-claim or, if the counter-claim is made against two or more parties, of the defence to the counter-claim last served by serving a notice to that effect on the claimant or other party concerned.

2. Withdrawal by consent

When a cause is ready for trial, it may be withdrawn by either claimant or defendant upon producing to the Registrar 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.

3. Discontinuance of action, etc. with leave

- (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 counterclaim to be discontinued or any particular claim therein to be struck out as against any or all of the parties on such terms as to costs.
- (2) An application for the grant of leave under subrule (1) shall be by motion on notice.

4. Effect of discontinuance

A withdrawal or discontinuance by a party of an action or counter-claim or a particular claim made by him in an action shall not be a defence to a subsequent action for the same or substantially the same cause of action

5. Stay of subsequent action until costs paid

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

6. Withdrawal of summons and motions

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 32

Payment Into and Out of Court

1. Payment into and out of court

(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 an interest yielding account in a commercial bank and he shall file the teller for such payment with the Registrar.

[Form 20.]

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

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

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

(5) Where the money is paid into Court in satisfaction of one or more of several causes of action, the notice shall specify the cause or causes of action in respect of which payment is made and the sum paid in respect of each such cause 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 claimant within 3 days. The notice may be modified or withdrawn or delivered in an amended form by leave of Court.

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

2. Claimant may take out money

(1) Where money is paid into Court under rule 1, the claimant 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 any one or more of the specific sum in satisfaction of the cause or causes of actions to which the specified sum or sums relate by giving notice to the defendant in Form 21 with such modifications or variation as circumstances may require and thereupon shall be entitled to receive payment of the accepted sum or sums in satisfaction as aforesaid.

[Form 21.]

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

(3) If the claimant accepts money paid into Court in satisfaction of his claim, or if he accepts a sum or sums paid in respect of one or more specified 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 claimant 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.

3. Money remaining in court

If the whole of the money in Court is not taken out under rule 2, the money remaining in Court shall not be paid out except in satisfaction of the claim or specified cause or causes 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.

4. Several defendants

(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.

[Forms 21 and 22.]

(2) If the claimant elects within 14 days after receipt of notice of payment into Court to accept the sum or sums paid into Court, he shall give notice as in Form 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 or causes of action

(as the case may be) shall abate.

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

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

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

5. Counter-claim

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.

6. Persons under legal disability

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

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

(3) All money so recovered or adjudged or ordered or awarded or agreed to be paid shall be dealt with as the 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 claimant or to the guardian in respect of monies paid or expenses incurred or for maintenance or otherwise for or on behalf of or for the benefit of the person under legal disability or otherwise, or to the claimant's Legal Practitioner in respect of costs, or of the difference between party and party, and Legal Practitioner and client costs.

7. Application to be made *ex parte*

Every application for payment into or transfer out of Court shall be made *ex parte*.

ORDER 33

Pre-trial Conferences and Scheduling

1. Issues of facts

- (1) In all proceedings, issues of facts in dispute shall be defined by each party and filed within 7 days after close of pleadings
- (2) If the parties differ on the issues the pre-trial judge may settle the issues.

2. Pre-trial conference notice

- (1) Within 14 days after close of pleadings, the claimant shall apply for the issuance of pre-trial conference notice in Form 23.

[Forms 23 and 24.]

- (2) Upon application by a claimant under subrule (1), the Court shall cause to be issued to the parties and their Legal Practitioners (if any) a pre-trial conference notice as in Form 23 accompanied by pre-trial information sheet as in Form 24 for the purposes set out hereunder—

- (a) disposal of non-contentious matters which must or can be dealt with on interlocutory application;
 - (b) giving such directions as to the future course of the action as appear best adapted to secure its just and expeditious disposal;
 - (c) promoting amicable settlement of the case or adoption of alternative dispute resolution.
- (3) If the claimant does not make the application in accordance with subrule (1), the defendant or defendants may do so or apply for an order to dismiss the action.

3. Scheduling and planning

At the pre-trial conference, the Court shall enter a scheduling Order for—

- (a) joining other parties;
- (b) amending pleadings or any other processes;

- (c) filing motions;
- (d) further pre-trial conference;
- (e) any other matters appropriate in the circumstances of the case.

4. Agenda

At the pre-trial conference, the Court shall consider and take appropriate action with respect to such of the following (or aspects of them) as may be necessary or desirable—

- (a) formulation and settlement of issues;
- (b) amendments and further and better particulars;
- (c) the admission of facts and other evidence by consent of the parties;
- (d) control and scheduling of discovery, inspection and production of documents;
- (e) narrowing the field of dispute between expert witnesses by their participation at pre-trial conference or in any other manner;
- (f) eliciting preliminary objections on points of law;
- (g) hearing and determination of non-contentious motions;
- (h) giving orders or direction for separate trial of a claim, counter-claim, setoff, or third party claim or of any particular issue in the case;
- (i) settlement of issues, inquiries and accounts;
- (j) securing statement of special case of law or facts under Order 34;
- (k) determining the form and substance of the pre-trial order;
- (l) such other matters as may facilitate the just and speedy disposal of the action.

5. Timetable

The pre-trial conference or series of pre-trial conferences with respect to any case shall be completed within 45 days of close of pleadings. As far as practicable, pre-trial conferences shall be held from day to day or adjourned only for purposes of compliance with pre-trial conference orders.

6. Report

After a pre-trial conference or series of pre-trial conferences, the Judge shall issue a Report. This Report shall guide the subsequent course of the proceedings unless modified by the trial court.

7. Sanctions

- (1) If a party or his Legal Practitioner fails to attend the pre-trial conference or obey a scheduling or pre-trial order or is substantially unprepared to participate in the conference or fails to participate in good faith the Judge shall—
- (a) in the case of the claimant dismiss the claim; or

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

(2) A Judgment given under subrule (1) may be set aside upon an application made within 7 days of the judgment or such other period as the Pre-trial court may allow not exceeding the pre-trial conference period. The application shall be accompanied by an undertaking to participate effectively in the pre-trial conference.

8. Management

The Judge shall direct the pre-trial conference with due regard to its purposes and agenda as provided under this Order.

ORDER 34

Special Case

1. Special case by consent of parties

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

2. Special case by order before trial

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

3. Special case to be signed

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

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

An application to set down a special case in any cause or matter to which a person under

legal disability is a party shall be supported by sufficient evidence that the statements contained in such case, so far as the same affects the interest of such persons, are true.

5. Agreement as to payment of money and costs

(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.

6. Application of order

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

ORDER 35

Discovery and Inspection of Documents

1. Discovery by interrogatories

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 and shall form part of the agenda of pre-trial conference.

2. Form 25

Interrogatories shall be in Form 25 with such modifications or variations as circumstances may require.

3. Corporation or companies

If any party to a cause or matter is a limited or unlimited company, body corporate, firm,

enterprise, friendly society, 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.

4. Objection to interrogatories by answer

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

5. Affidavit in answer, filing

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

6. Form of affidavit in answer

An affidavit in answer to interrogatories shall be in Form 26 with such modifications or variations as circumstances may require.

[Form 26.]

7. Order to answer or answer further

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

8. Application for discovery of documents

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

[Form 27.]

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

(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 27 with such modifications or variations as circumstances may require.

9. Processes filed after pre-trial conference

- (1) Any process to be filed after the pre-trial conference shall be accompanied by copies of documents referred to in the process.
- (2) Where a process filed is not accompanied by a document referred to therein the Court may on application strike out the process.

10. Verification of business books

- (1) Where any document required to be attached to any process or produced under this or any other rule is a business book, 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 of document has been ordered or filed, make an order requiring any party to state by affidavit whether any particular document or any class of documents is or has at any time been in his possession, custody, power or control, when he parted with the same and what has become of it.

11. Attachment of party after service on legal practitioner

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.

12. Attachment of legal practitioner

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 attachment.

13. Using answers to interrogatories at trial

Any party may, at the trial of a cause, matter or issue, use in evidence anyone or more of the answers or any part of an answer of the other party answering the interrogatories without putting in the others or the whole of such answer:

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

14. Discovery against sheriff

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.

15. Interrogatories not related to matters deemed irrelevant

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.

16. Order to apply to person under legal disability

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

ORDER 36

Transfer and Consolidation

1. Re-assignment of cause or matter

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.

2. Action by chief judge on transfer of cause

If for any reason a Judge hearing a cause or matter, and who has taken any step in the proceedings, considers it necessary either at 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.

3. Evidence of part heard cause or matter

Where a Judge retires or is transferred to another Division and having part-heard a cause or matter which is being heard denovo by another Judge, the evidence already given before the former Judge can be adopted at the re-hearing subject to section 34 (1) of the Evidence Act.

[Cap. E14 LFN 2004.]

4. Order transferring proceedings from district to the high court

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 forthwith 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.

5. Payment of filing fees

(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 claimant, to attend at the Registry and pay the fees for filing the documents. Such payment shall be without prejudice to the question of how 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.

6. Duties of registrar

(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 Practitioner 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.

7. Party failing to attend

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

8. Construction

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

9. Consolidation

(1) The Judge may on application consolidate several actions pending before him where it appears that the issues are the same in all the action, 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 claimant and the same defendant or between the same claimant and different defendants or between different claimants and the defendant or between different claimants and different defendants.

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

(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 37

Applications and Proceedings in Chambers

1. Representation in chambers

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

2. Business to be disposed of in chambers

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 process out of the jurisdiction;
- (b) application for substituted service of a writ or other process;
- (c) applications to have cases heard during vacations;
- (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) applications 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.

3. Procedure on applications in chambers

The provisions of Order 9 with regard to interlocutory applications by way of motion in Court shall apply mutatis mutandis to applications to a Judge in Chambers.

4. Notes of proceeding in chambers

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 question or points decided or ruled at every hearing.

5. Drawing up any entry of orders made in chambers

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.

6. Effect of order in chambers

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 38

Cause Lists

1. List of causes for hearing

(1) The Registrar shall keep a list (hereinafter called "the Pre-Trial List") of actions directed to be set down for pre-trial conference under Order 33.

(2) The Registrar shall also keep a Weekly Cause List of all other actions which are ready for trial or hearing.

2. Pre-trial and weekly cause list

(1) The Registrar shall post up every Friday a Pre-Trial and Weekly Cause List which shall set out the arrangement of causes before the Judge during the following week.

(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.

3. Public holidays

Where any Friday is a public holiday, the Pre-Trial List and Weekly Cause List shall be posted up on the day last preceding which is not a public holiday.

4. Judge unable to sit

On any day when a Judge shall be unable to sit in court and deal with any cause or matter fixed for hearing, a minute, recording the parties present and the step taken by the registrar, shall be entered in the Court file.

5. Notice boards

Pre-trial Lists and Weekly Cause Lists and other such lists shall be posted up on one or more notice boards set up in such place or places within or near the Court premises as the Chief Judge may designate.

ORDER 39

Proceedings at Trial

1. Attendance by proxy

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.

2. Non-appearance of both parties

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

3. Default of appearance by defendant

When a cause is called for hearing if the claimant appears and the defendant does not

appear, the claimant may prove his claim, so far as the burden of proof lies upon him.

4. Default of appearance by claimant

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

5. Judgment by default may be set aside on terms

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

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

6. Application to re-list cause or set aside judgment

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.

7. Adjournment of trial

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.

8. Time of commencement and termination of trial

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 and the time it actually occupies on each day it goes on for communication to the Taxing Officer if required.

9. Order of proceeding

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

10. Burden of proof by party to begin

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

11. Documentary evidence

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

12. Additional witness

- (1) A party who desires to call any witness not being a witness whose deposition on oath accompanied his pleading shall apply to the Judge for leave to call such witness.
- (2) An application for leave under subrule (1) shall be accompanied by the deposition on oath of such witness.

13. Close of case of parties

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

14. Exhibits during trial

- (1) The Registrar shall take charge of every document or, object put in as an exhibit during the trial of an action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in (or where more convenient the witness by whom the exhibit is proved) and with a number, so that all 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.

15. Rejected exhibits

- (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.

16. Written address

- (1) When the party beginning has concluded his evidence, the Judge shall ask the other

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

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

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

17. Right of reply

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

18. Custody of exhibit after trial

(1) An exhibit shall not be released after the trial to the party who has 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—

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

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

19. Office copy of list of exhibits

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

20. Indolent prosecution

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

ORDER 40

Procedure Relating to Evidence

1. Proof of facts

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

(2) The oral examination of a witness 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 Legal Practitioner.

2. Particular facts

(1) A Judge may, at the pre-trial conference, order or direct that evidence of any particular fact be given at the trial in such manner as may be specified by the order or direction.

(2) The power conferred by subrule (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; or
- (d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact.

3. Limitation of expert evidence

A Judge may, at the pre-trial conference, 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.

4. Limitation on use of documentary evidence

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

5. Revocation and variation

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.

6. Office copies admissible in evidence

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

[Cap. E14 LFN 2004.]

7. Examination of witnesses abroad

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

[Forms 28 and 29.]

- (a) the party obtaining such order shall file in the Registry an undertaking in Form 28, which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used;
- (b) such undertaking shall be accompanied by—
 - (i) a request in form 29, with such modifications or variations as may be directed in the order for its issue, together with a translation in the language of the country in which it is to be executed (if not English);
 - (ii) a copy of the interrogatories (if any) to accompany the requests, with a translation if necessary;
 - (iii) a copy of the cross-interrogatories (if any) with a translation if necessary.

8. Form of order for examination of witnesses abroad

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

[Form 30.]

9. Order for attendance of person to produce document

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

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

10. Disobedience to order for attendance

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

11. Expenses of persons ordered to attend

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

12. Contempt of court

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.

13. Examination of witnesses

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.

14. Depositions not to be given in evidence without consent or by leave of court

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

15. Oaths

Examination of any witness or any person nominated or appointed to take the examination of any witness or person pursuant to the provisions of any Convention now made or which

may hereafter be made with any foreign country, may administer oaths.

16. Attendance of witness under subpoena for examination or to produce documents

A party may by *subpoena ad testificandum* or *duces tecum* require the attendance of any witness before an officer of the Court or other person appointed to take the, 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 or trial; and any party or witness having made an affidavit to 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.

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

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

18. Special directions as to taking evidence

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

19. Evidence in proceedings subsequent to trial

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

[Cap E.14 LFN 2004.]

20. Form of *praecipe* for a subpoena

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

21. Form of subpoena

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

22. Subpoena for attendance of witness in chambers

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

23. Correction of errors in subpoena

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

24. Personal service of subpoena

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.

25. Duration of subpoena

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

26. Action to perpetuate testimony

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

27. Examination of witnesses to perpetuate testimony

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

28. Such action not to be set down for trial

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

29. Disallowance of irrelevant questions

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 41

Filing of Written Address

1. Application

This Order shall apply to all applications, all actions, final addresses, and appeals.

2. Content of written address

A written address shall be printed on white opaque paper and set out in 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;
- (d) a succinct statement of argument on each issue incorporating the purport of the authorities referred to together with full citation of each such authority.

3. Summation of address

All written addresses shall be concluded with a numbered summary of the points raised and the party's prayer. A list of all authorities referred to shall be submitted with the address.

Where any unreported judgment is relied upon the Certified True Copy shall be submitted along with the written address.

4. Copies of written address

Each party shall file enough copies of his written address in Court for service on every other party.

5. Oral argument

(1) Oral argument of not more than one hour shall be allowed each party to emphasize and clarify the written address already filed.

(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.

(3) When a case is called and the parties have been duly served with the notice of hearing, but if any party or any Legal Practitioner appearing for him does not appear to present oral argument even though written address has been filed by him, he shall not be heard in oral argument, save with the leave of the Court.

6. Late filing of written address

A party that fails to file his written address within the prescribed period shall pay to the Court at the time of filing his application for extension of time a fee of N100, for each day of such default.

ORDER 42

Discontinuance and Non-Suit

1. Discontinuance of suit

(1) If before the date fixed for hearing, the claimant desires to discontinue any suit against all or any of the defendants, or to withdraw any part of his claim, he shall give notice in writing of discontinuance or withdrawal to the Registrar, and to every defendant as to whom he desires to discontinue or withdraw. After the receipt of such notice such defendant shall not be entitled to any further costs with respect to the matter so discontinued or withdrawn than those incurred up to the receipt of such notice, unless the Court shall otherwise order, and such defendant may apply ex parte for an order against the claimant for the costs incurred before the receipt of such notice and of attending the Court to obtain the order. Such discontinuance or withdrawal shall not be a defence to any subsequent suit.

(2) If in any other case the claimant desires to discontinue a suit or to withdraw any part of his claim, or if the defendant desires to discontinue his counter claim, or to withdraw any part thereof, such discontinuance or withdrawal may be allowed on such terms as to costs, and as to any subsequent suit and otherwise as to the Court may seem just.

2. Stay of subsequent suit

If any subsequent suit shall be brought before payment of the costs of a discontinued suit for the same or substantially the same cause of action, the Court shall order a stay of such subsequent suit until such costs have been paid.

3. Power of court to non-suit

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

ORDER 43

Judgments and Orders

1. Delivery of judgment in open court

The Judge shall, at the pre-trial conference or after trial, deliver judgment in open court.

2. Notice when judgment reserved

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

3. When parties deemed to have had notice

All parties shall be deemed to have notice of the decision or judgment if pronounced at the hearing, and all parties served with notice to attend and hear judgment shall be deemed to have notice of the judgment when pronounced.

4. Effect of minute of judgment

(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.

5. Date of judgment pronounced in Court

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

6. Date of judgment directed to be entered

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

7. Where set-off allowed

(1) If the defendant has been allowed to set off any demand or counter-claim against the claim of the claimant, the judgment shall state what amount is due to the claimant, 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 had been claimed by the defendant in a separate suit against the claimant

8. Judge may direct time for payment or performance and interest

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

9. Payment by instalments

(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 instalments, 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 at any time.

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

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

11. Entry on production of affidavit document

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.

12. Judgment by consent

(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.

13. Date of order when drawn

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

14. What orders need not be drawn up

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

- (a) for the issue of any writ other than a writ of attachment;
- (b) for the amendment of any writ or pleadings;
- (c) for the filing of any document; or
- (d) for any act to be done by any officer of the Court other than a Legal Practitioner,

it shall not be necessary to draw up such order unless 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.

15. Filing of orders

(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.

[Form 35.]

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

(3) An order shall be in Form 35 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.

ORDER 44

Writ of Execution: General

1. Definition

In this Order, unless the context otherwise requires, "writ of execution" includes a writ of *fiery 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.

2. When leave to issue any writ of execution is necessary

(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) six 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 fulfilment of any condition which it is alleged has been fulfilled;
- (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) Subrule (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 the 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.

3. Leave required for issue of writ in aid of other writ

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

4. Application for leave to issue writ

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

(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;
 - (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 or question, a 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 an action may be tried and, in either case, may impose such terms as to costs or otherwise as he thinks just.

5. Application for leave to issue writ of sequestration

- (1) Notwithstanding anything in rules 2 and 4, an application for leave to issue a writ of sequestration shall be made to a judge by motion.
- (2) Subject to subrule (3), 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.

6. Issue of writ of execution

- (1) The issue of writ of execution takes place on its being sealed by the Registrar.
- [Form 36.]
- (2) A praecipe for the issue of a writ as in Form 36 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 or 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 of it.
- (b) 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.

7. Duration and renewal of writ of execution

- (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 of 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 subrule 3), purporting in either case to be sealed as mentioned in that subrule, 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.

8. Return of writ of execution

- (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 him, 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 45

Garnishee Proceedings

1. Attachment of debt due to judgment debtor

(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 due 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 subrule (1) or so much thereof as may be specified in the order and the costs of the garnishee proceedings.

(3) An order under this rule shall not require a payment which would reduce below N1000, the amount standing in the name of the judgment debtor in an account with a bank or a credit union.

2. Application for order

An application for an order under rule 1 shall be made ex parte supported by an affidavit—

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

(b) identifying the judgment or order to be enforced and stating the amount of the judgment or 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.

3. Service and effect of order to show cause

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

(a) on the garnishee personally, at least 15 days before the appointed day 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 the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

4. No appearance or dispute of liability by garnishee

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

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

5. Dispute on liability of garnishee

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.

6. Claims of third persons

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.

7. Discharge of garnishee

Any payment made by a garnishee in compliance with an order absolute under this Order, and any execution levied against him in pursuant of such 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 46

Habeas Corpus Proceedings

1. Habeas corpus ad subjucendum

Where a person is alleged to be wrongfully detained, an application for an order of habeas corpus ad subjucendum may be made for his release.

2. Application: how made

(1) An application under rule 1 shall be made to the Court, except that in vacation or at anytime 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 by the person detained setting out the nature of the detention and the grounds on which the application is made.

(3) Where the person detained is unable owing to the detention to make the affidavit, the application shall be accompanied by an affidavit to the like effect made by some other person which shall state that the person detained is unable to make the affidavit himself.

3. Power to issue order of release

(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.

4. Service of notice

(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.

5. Copies of affidavits

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.

6. Service of order to release

(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.

7. Statement and verifying affidavit

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.

8. Bringing up prisoner to give evidence, etc.

(1) An application for a writ of *habeas corpus ad testificandum* or of *habeas corpus ad respondendum* may be made to the Court and shall be supported by an affidavit.

(2) Every application for an order to bring up a prisoner, otherwise than by writ of habeas corpus, to give evidence in any cause or matter, civil or criminal before any court or tribunal shall be supported by an affidavit.

9. Form of writ

A writ of habeas corpus shall be in Form 37, 38 or 39 whichever is appropriate.

ORDER 47

Committal for Contempt of Court

1. Committal for contempt of court

- (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 consist 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.

2. Application to court

- (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.

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

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

4. Provision as to hearing

- (1) Subject to subrule (2), the Judge hearing an application for an order of committal may sit in chambers in the following cases, that is to say—
 - (a) where 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) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder;

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

(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 subrule (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.

5. Contempt in face of court: saving for

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.

6. Power to suspend execution of committal order

(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 subrule (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.

7. Discharge of person committed

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

(2) Where a person has been committed for 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 subrule (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the sheriff as it thinks fit.

8. Procedure on disobedience of order of court

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 prison.

Dated this day of, 20

.....

.....

Registrar

9. Saving for other powers

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.

10. Return

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 inventus* (not found) is made, one or more writs may be issued on the return of the previous writ.

ORDER 48

Application for Judicial Review

1. Cases appropriate for application for judicial review

(1) An application for—

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

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

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

(2) An application for a declaration or an injunction (not being an injunction mentioned in subrule (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.

2. Joinder of claims for relief

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 or relates to or is connected with the same matter.

3. Grant of leave to apply for judicial review

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

(2) An application for leave shall be made ex parte to the Court, except in vacation when it may be made to a judge in Chambers, and shall be supported by—

(a) a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought; and

(b) affidavit verifying the facts relied on.

(3) The applicant shall file the application not later than the day preceding the date of hearing, and shall at the same time lodge sufficient copies of the motion on notice, supporting affidavit and a written address.

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

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

(6) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired

(7) The Judge may in granting leave, impose such terms as to giving security for costs as he thinks fit.

(8) Where an application for leave is refused, the applicant may make a fresh application not later than 10 days after the refusal.

(9) Where leave to apply for judicial review is granted, then—

- (a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;
- (b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

4. Delay in applying for relief

(1) Subject to the provisions of this rule, where in any case or series of cases, the applicant fails to bring within 3 months of the judicial review or in a case to which subrule (2) applies, application for leave under rule 3 is made after the relevant period has expired, the Court may refuse to grant—

- (a) leave for the making of the application; or
- (b) any relief sought on the application,

if in the opinion of the Court the granting of the relief sought would be likely to cause substantial hardship to, or substantial prejudice to the rights of, any person or would be detrimental to good administration.

(2) In the case of an application for an order of certiorari to remove any judgment, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of subrule (1) is 3 months after the date of the proceeding.

(3) Subrule (1) is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

5. Mode of applying for judicial review

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

(2) The notice of motion or summons 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 notice or summons 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.

(3) Unless the Judge granting leave has otherwise directed, there shall be at least 7 days

between the service of the notice of motion or summons and the day named therein for the hearing.

(4) A motion shall be entered for hearing within 14 days after the grant of leave.

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

(6) If on the hearing of the motion or summons the Judge is of opinion that any person who ought, whether under this rule or otherwise, to have been served, the Judge may adjourn the hearing on such terms (if any) as he may direct in order that the notice or summons may be served on that person.

6. Statements and affidavits

(1) Copies of the statement in support of an application for leave under rule 3 shall be served with the notice of motion or summons and, subject to subrule (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may on the hearing of the motion or summon 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 affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

(4) Each party to the application shall supply every other party a copy of every affidavit which he proposes to use at the hearing including, in the case of the applicant, the affidavit in support of the application for leave under rule 3.

7. Claim for damages

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 for leave under rule 3

a claim for damages arising from any matter to which the application relates; and

(b) the Court is satisfied that if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

8. Interlocutory application

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

9. Hearing of application for judicial review

(1) On the hearing of any motion or summons under rule 5, any person who desires to be heard on the motion or summons, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or the summons.

(2) Where the relief sought is or includes an order of *certiorari* to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has filed a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the judge hearing the motion or summons.

(3) Where an order of *certiorari* is made in any such case as is referred to in subrule (2), the order shall, subject to subrule (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 had 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.

10. Saving for person acting in obedience to *mandamus*

No action or proceeding shall be begun or prosecuted against any person in respect of

anything done in obedience to an order of mandamus.

11. Consolidation of applications

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

ORDER 49

Appeals from District Courts, etc.

1. Notice of appeal

Every appeal shall be brought by notice of appeal which shall be filed in the lower court within 30 days of the decision appealed from and served on all other parties affected by the appeal within that period.

2. Contents of notice of appeal

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

[Form 40.]

(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 40 and may be varied to suit the circumstances of the case.

3. Copies of proceedings

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

4. Copies of proceedings to be sent to high court

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.

5. Respondent to be supplied with copy of proceedings

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

6. Proceedings time

The times 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.

7. Where time expires

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

8. Constitution of court hearing appeals

Appeals from lower courts may be heard by one or more Judges of the Court.

9. Time and place for hearing

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

10. Where appellant fails to appear

(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.

11. Where appellant appears

If, on the day of hearing and at any adjournment of the case, the appellant appears, the Court shall, whether the respondent appears or not, proceed to the hearing or further hearing and determination of the appeal and shall give judgment according to the merits of the case without regarding any imperfection or defect 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.

12. Appeal limited to grounds given in notice

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.

13. Request to confirm judgment on other grounds

(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.

14. Cross-appeal

(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 appellants notice of appeal and shall be served on the appellant or his Legal Practitioner before hearing.

15. Objections to form of grounds of appeal

(1) No objection on account of any defect in the form of setting forth any ground of appeal shall be allowed, unless the Court is of opinion that the ground of appeal is so

imperfectly or incorrectly stated as to be insufficient to enable the respondent to enquire into the subject-matter thereof or to prepare for the hearing.

(2) In any case where the Court is of opinion that any objection to any reason for appeal ought to prevail, the Court may, if it thinks fit, cause the reason for appeal forthwith to be amended upon such terms and conditions, if any, as the Court may think just.

16. Defects in proceedings under appeal

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.

17. Defects in notice of appeal or recognisance

No objection shall be taken or allowed, on any appeal, to any notice of appeal which is in writing or to any recognisance entered into under this Order for the due prosecution of the appeal for any alleged error or defect therein; but if the error or defect appears to the Court to be such that the respondent on the appeal has been thereby deceived or misled the Court may amend it 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.

18. Additional evidence

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.

19. Mode of taking evidence

(1) When additional evidence is to be taken by the lower court and specific findings of fact reported, it shall certify 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 demeanour of the witnesses and of the value of their evidence and may also, if it is the same court against whose decision the appeal has been made, state whether or not it would have come to a different decision had the additional evidence been brought forward at the trial.

20. Allowances to witnesses

Allowances may be made to witnesses as prescribed.

21. Stay of execution pending appeal

Where any application is made to the Court for a stay of execution or of proceedings under any judgment or decision 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.

22. Court may grant or refuse order for stay

(1) The Court may make or refuse an order for a stay of execution or of proceedings.

(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.

23. Formal order to be drawn

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.

24. Costs

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.

25. Security for costs

(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 subrule (1), costs shall not normally be granted to the applicant except where the net proceeds of proceeds of execution levied on the appellant's goods are insufficient to satisfy the amount payable under the judgment or decision appealed from.

26. Orders of high court to be certified to lower court

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.

27. Enforcement of judgment

After the pronouncement of the judgment of the Court, the lower court from which the

appeal came shall have the same jurisdiction and power to enforce, and shall enforce, any decision which may have been affirmed, modified, amended, or substituted by the Court or any judgment which may have been pronounced by the Court in the same manner in all respect as if such decision or judgment had been pronounced by itself.

28. Enforcement of orders

Any order given or made by the Court may be enforced by the Court or by the lower court as may be most expedient.

29. High court may enlarge time

The Court may, if it thinks fit, enlarge any period of time prescribed by this Order.

30. Interpretation

In this Order—

"the lower court" means the court whose judgment is appealed against and includes district court, area court, an arbitrator or a referee;

"judgment" includes an order or a ruling.

ORDER 50

Stay of Execution Pending Appeal to the Court of Appeal

1. Stay of execution pending appeal

Where any application is made to the Court for a stay of execution or of proceedings under any judgment or decision 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.

2. Court may grant or refuse order for stay

- (1) The Court may make or refuse an order for a stay of execution or of proceedings.
- (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.

3. Formal order to be drawn

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 51

Foreclosure and Redemption

1. Originating summons for foreclosure

Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out 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 monies secured by the mortgage or charge;
- (b) sale;
- (c) foreclosure;
- (d) delivery of possession (whether before or after foreclosure) to the mortgagee or person entitled to the charge, by the mortgagor or person having the property subject to the possession of, the property;
- (e) redemption;
- (f) reconveyance;
- (g) delivery of possession by the mortgagee.

2. Forms 41, 42 and 43

Orders for payment and for possession shall be in Forms 41, 42 and 43 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.

3. Service and execution of judgment

The Judge may give any special directions concerning the execution of the judgment, or the service thereof upon persons not parties to the cause or matter as he deems fit.

ORDER 52

Probate and Administration

I. Grant of Probate or Administration in General

1. Petition to be made to probate registrar

(1) Subject to rules 44 and 45, 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 out any such request as far as practicable and report to the Chief Judge.

(3) No grant of administration with the Will annexed shall issue within 7 days of the death of the deceased; and no grant of administration (not with the Will annexed) shall issue within 14 days of such death.

2. Preservation of property

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 authorise an officer of the Court, or some other fit person, to take possession of his property within its jurisdiction, or put it under seal and so keep it until it can be dealt with according to law.

3. Unauthorised persons intermeddling with property

If any person other than the person named executor or administrator, or an officer of the Court or person authorised 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 not less than \$10,000, 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.

4. Production of testamentary papers

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 N2,000 as the Court having regard to the condition of such person in default and other circumstances of the case may deem fit to impose.

5. Court may order production

Where it appears that any paper of the deceased, being or purporting to be testamentary is in the possession of, or under the control of any person, the Court may 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.

6. Examination respecting papers

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 attend for that purpose, and after examination that he produce the paper and bring it into Court.

7. Notice to executor to come in and prove

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.

8. Liability of executor neglecting to apply for probate

If any person named executor in the Will of the deceased takes possession and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within 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 N 10,000, as the Court deems fit to impose.

9. Identity

The Court shall require evidence, in addition to that offered by the applicant, where additional evidence in that behalf seems to the Court necessary or desirable, in regard to the identity of the deceased or of the applicant, or in regard to the relationship of the applicant to the deceased, or in regard to any person or persons in existence with a right equal or prior to that of the applicant or in regard to any other matter which may be considered by the Court relevant to the question whether the applicant is the proper person to whom the grant should be made.

Provided that the Court may refuse the grant unless the applicant produces the required evidence on these points or any of them as required by the Court.

10. Court may refuse grant until all persons interested are given due notice

Where it appears to the Court that some person or persons other than the applicant may have at least an equal right with the applicant to the grant sought, the Court may refuse the grant until due notice of the application has been given to such other person or persons and an opportunity given for such person or persons to be heard in regard to the application. Provided that the Court may in its discretion refuse the grant unless and until all persons entitled to the grant in priority to the applicant shall have expressly renounced their prior right.

11. Value of property

Every applicant for a grant of Letters of Administration shall file in the Court a true declaration of all 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, to the estate of any person formerly employed by either of such Governments or by a Statutory Corporation;
- (b) any sum of money payable to an estate from a Provident Fund established under the provisions of any applicable law.

12. Answers required before grant

All inquiries the court sees fit to institute shall be answered to the satisfaction of the Court before issue of Letters of Administration. The Court shall, however, afford as great a facility for the obtaining of Letters of Administration as is consistent with due regard to the prevention of error and fraud.

13. Form of suits

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 Wills

14. Testator may deposit will

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.

15. Custody of wills which probate is given

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 at once its due preservation and convenient inspection. A copy of every such Will and of the probate or administration shall be preserved in the Registry.

16. Will not given out without order of court

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

17. Examination of will as to its execution

(1) On receiving an application for administration with Will annexed, the Court shall inspect the Will, and see whether it appears to be signed by the testator or by some other person in his presence and by his direction, and 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.

18. Evidence as to due execution of will

(1) Where a Will contains no attestation clause or the attestation clause is insufficient or where it appears to the Registrar that there is some doubt about the due execution of the Will, he shall before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witness 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 subrule (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 of any other matter which may raise a presumption in favour of the due execution of the Will.

(3) If the Registrar, after considering the evidence—

(a) is satisfied that the Will was not duly executed, he shall refuse probate and shall mark the Will accordingly;

(b) is doubtful whether the Will was duly executed, he may refer the matter to the Court by motion.

19. Evidence on failure of attesting witnesses

If both the subscribing witnesses are dead or if from other circumstances such an affidavit cannot be obtained from either of them, resort for such an affidavit shall be had to other persons (if any) present at the execution of the Will; but if no such affidavit can be obtained, proof shall be required for that fact, and of the handwriting of the deceased and of the subscribing witness, and also of any circumstances raising a presumption in favour of the due execution of the Will.

20. Evidence as to terms, conditions and date of execution of will

(1) Where in a Will, there is any obliteration, interlineation or other alteration which is not authenticated in the manner prescribed by law or by re-execution of the Will or by the execution of a codicil, the Registrar shall require evidence to show whether the alteration was present at the time the Will was executed and shall give directions as to the form in which the Will is to be proved.

Provided that this subrule shall not apply to any alteration which appears to the Registrar to be of no practical importance.

(2) If from any mark on the Will it appears to the Registrar that some other document has been attached to the Will or if a Will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the Will, the Registrar may require the document to be produced and may call for such evidence in regard to the attaching or incorporation of the document as he may deem fit.

(3) Where there is doubt as to the date on which a Will was executed, the Registrar may require such evidence as he deems necessary to establish the date.

21. Attempted revocation of a Will

Any appearance of attempted revocation of a Will by burning, tearing or otherwise and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the Registrar's satisfaction.

22. Affidavit as to due execution, terms, etc., of Will

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.

23. Wills of person in military service and seamen

If it appears to the Registrar that there is prima facie evidence that a Will is one to which section 9 of the Wills Act 1837 or any provision of the equivalent enactment in force in the State applies, the Will may be admitted to proof if the Registrar is satisfied that it was made by the testator in accordance with the provisions of that section or enactment as the case may be.

24. Evidence of foreign law

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.

25. Order of priority for grant where deceased left a will

Where the deceased died after the commencement of this Order, the person or persons entitled to a grant of probate or administration with the Will annexed shall be determined in accordance with the following order of priority—

- (a) the executor;
- (b) any residuary legatee or devisee holding in trust for any other person;
- (c) any residuary legatee or devisee for life;
- (d) the ultimate residuary legatee or devisee, including one entitled on the happening of any contingency or where the residue is not wholly disposed of by the Will, any person entitled to share in the residue not so disposed of, or the personal representative of any such person.

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 subrule (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 accretion to it;

(f) any specific legatee or devisee entitled on the happening of any contingency, or any person having no interest under the Will who would have been entitled to a grant if the deceased had died wholly intestate.

26. Joinder of administrator

In the absence of a proving executor—

(a) an application to join with a person entitled to a grant of administration with the Will attached, a person in a lower degree shall, in default of renunciation by all persons entitled in priority to the latter, be made to the Registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Registrar may require;

(b) an application to join with a person entitled to a grant of administration with the Will attached, a person having no right to it shall be made to the Registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Registrar may require.

Provided 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;

(iii) a trust corporation.

27. Will of blind or illiterate testator

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.

28. Interlineations erasures, obliterations

(1) The Court, on being satisfied that the Will was duly executed, shall carefully inspect it to see whether there are any interlineations, alterations, erasures, or obliterations appearing in it and requiring to be accounted for.

(2) Interlineations, alterations, erasures, and obliterations are invalid unless they existed in the Will at the time of its execution or unless, if made afterwards, they have been executed and arrested 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.

29. Documents referred to in a will or annexed or attached

(1) Where a Will contains a reference to any document of such a nature as to raise the question whether it ought or ought not to form a constituent part of the Will, the Court shall require the production of the document, with a view to ascertaining whether or not it is entitled to probate; and if it is not produced, a satisfactory account of its non-production shall be proved. A document cannot form part of a Will unless it was in existence at the time when the Will was executed.

(2) If there are vestiges of sealing wax or wafers, or other marks on the Will, leading to the inference that some document has been at sometime annexed or attached thereto, a satisfactory account of its non-production shall be proved.

30. Executor dying without proving or not appearing

Where a person appointed executor in a Will survives the testator but either dies without having taken probate or having been called on by the Court to take probate 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 on and be committed as if that person had not been appointed executor.

31. Making of wills

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.

32. Viva voce examination of persons making affidavits

In every case where evidence is directed or allowed to be given by affidavit, the Court may require the personal attendance of the deponent if within the jurisdiction, before the Court, to be examined viva voce respecting the 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)

33. Letters of administration

(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.

34. Administration bond

(1) The person to whom administration is granted shall give a bond with two or more responsible sureties to the satisfaction of the Probate Registrar. The bond shall affirm that the administrator shall be duly conditioned to collect, get 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 N100,000 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.

35. Guarantee

(1) The Registrar shall not require a guarantee as a condition of making a grant where it is proposed to make it—

[Form 44.]

(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 the use and benefit of a person who by reason of mental or physical incapacity is incapable of managing his affairs;

(f) to an applicant who appears to the Registrar to be resident elsewhere than in the State;
or

(g) except where the Registrar considers that there are special circumstances making it desirable to require a guarantee.

(2) Notwithstanding that it is proposed to make a grant as aforesaid, a guarantee shall not be required, except in special circumstances, on an application for administration where the applicant or one of the applicants is the Administrator-General or a trust corporation.

(3) Every guarantee entered into by a surety for the purpose of the Order shall be in Form 44 with such variations as circumstances may require.

(4) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an authorised officer, commissioner for oaths or other person authorised by law to administer an oath.

(5) Unless the Registrar otherwise directs—

(a) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed N 1,000 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.

36. Assignment of bond

The Probate Registrar may, on being satisfied that the condition of the bond has been broken, assign to some person, and that person may thereupon sue on the bond in his own name as if it had been originally given to him instead of the Probate Registrar, and may recover thereon, as trustee for persons interested, the full amount recoverable in respect of any breach of the bond.

D. Administration of Property

37. Administration summons

Any person claiming to be a creditor or legatee or the next-of-kin or one of the next-of-kin of a deceased, may apply for and obtain a summons from the Court requiring the executor or administrator (as the case may be) of the deceased to attend Court and show cause why an order for the administration of the property of the deceased should not be made.

38. Order for administration

(1) On proof of service of the summons or on appearance of the executor or administrator, and on proof of all such other things (if any) as the Court may direct, the Court may, if it 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 claimants or classes of claimants, 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 deems fit.

39. Order relating to property

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.

40. Administration may be granted to officer

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.

41. Officer to act under the direction of court

(1) The officer or person so appointed shall act under the direction of the Court, and shall be indemnified thereby.

(2) The Court shall require and compel him to file in the Court his accounts of his administration at intervals not exceeding 3 months.

42. Court may appoint person to be administrator

Where a person has died intestate as to his personal estate or leaving a Will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate or where the executor shall, at the time of the death of such person, be resident out of the jurisdiction, and it shall appear to the Court to be necessary or convenient in any such case to appoint some person 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.

43. Remuneration of administrators

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 realised property, or, when not converted into money, on the value of the property duly administered and accounted for by him.

Provided that where the Court shall be satisfied that by reason of exceptional circumstances the administration of the property has required an extraordinary amount of labour to be bestowed on it, the Court may allow in respect of such property a higher rate of remuneration.

44. Securing and collection of estate

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 monies 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.

45. Application by consular officer or person authorised by him to administer estate

Application may be made to the Court by any such Consular Officer or by any person authorised by him in writing and under the consular seal, for leave to administer the estate of the deceased, and the Court may make such order as to security for payment of 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

46. Accounts to be filed

(1) Every person to whom a grant of probate or Letters of Administration shall have

been made, and every administrator appointed by the Court shall 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 \$100 for every day of default. Every such fine shall on non-payment be enforceable by distress, and failing sufficient distress, by imprisonment for a term not exceeding 6 months.

(3) When an account is filed in Court under this rule, the Court shall scrutinise 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 be deemed to have failed to file an account within the meaning of this rule and proceedings may be taken against such person accordingly.

(4) 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 above, and the procedure for bringing him before the Court shall be as set out above.

(8) Such accounts shall be open to the inspection of all persons satisfying the Probate Registrar that they are interested in the administration.

(9) In this rule, the word "**accounts**" shall 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.

47. Court may refuse application to review

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.

48. Grant to be signed by probate registrar

The grant of Letters of Administration under this Order shall be signed by the Probate Registrar on behalf of the Court.

II. Probate (Non-Contentious) Procedure

49. Application

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.

50. Application for grants through legal practitioners

Every Legal Practitioner through whom an application for a grant is made shall give the address of his place of business within the jurisdiction.

51. Personal applications

- (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;
 - (c) the Registrar otherwise directs.
- (4) After a Will has been deposited in the Registry by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the Registrar so directs.
- (5) A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as the Registrar may approve.

(6) A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared in the Registry or may himself prepare such papers and lodge them unsworn.

(7) Unless the Registrar otherwise directs, every oath, affidavit or guarantee required of a personal application shall be sworn or executed by all the deponents or sureties before an authorised officer.

52. Duty of registrar in receiving application or grant

(1) The Registrar shall not allow any grant to issue until all inquiries which he may deem fit to make have been answered to his satisfaction.

(2) The Registrar may require proof of the identity of the deceased or of the applicant for the grant beyond those contained in the oath.

(3) No grant of probate or of administration with the Will annexed shall issue within 7 days of the death of the deceased; and no grant of administration (not with the Will annexed) shall issue within 14 days of such death.

53. Oath in support of grant

(1) Every application for a grant shall be supported by an oath in the form applicable to the circumstances of the case, which shall be contained in 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.

54. Grant in additional name

Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the oath the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name; or as to any other reason that there may be for the inclusion of other name in the grant.

55. Engrossment for purposes of record

(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 subrule (2) applies, it shall be made bookwise 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.

56. Grant to attesting witnesses.

Where a gift to any person fails by reason of the fact that he is an attesting witness or the spouse of an attesting witness, such person shall not have any right to a grant as a beneficiary named in the Will, without prejudice to his right to a grant in any other capacity.

57. Right of assignee to a grant

(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 any one or more (not exceeding four) of them.

(3) In any case where probate is applied for by an assignee, a copy of the instrument of assignment of assignment shall be lodged in the Registry.

58. Additional personal representatives

(1) An application to add a personal representative shall be made to the Registrar and shall be supported by an affidavit by the personal applicant, the consent of the person proposed to be added as personal representative and such other evidence as the Registrar may require.

(2) On any such application the Registrar may direct that a note shall be made on the original grant of the addition of a further personal representative, or he may impound or revoke the grant or make such order as the circumstances of the case may require.

59. Grants where two or more persons entitled in same degree

- (1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same degree.
- (2) A dispute between persons entitled to a grant in the same degree shall be brought by application before the Registrar.
- (3) If an application under this rule is brought before the Registrar, he shall not allow any grant to be sealed until such application is finally disposed of.
- (4) Unless the Register 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 person not under disability in preference to an infant entitled in the same degree.

60. Prevention of grant

- (1) Nothing in rule 57, 60 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 subrule (1) shall not apply where the deceased died domiciled outside the State, except in a case to which the provisions of rule 63 applies.

61. Grants to person having *spes successionis*

When the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant of administration with the Will attached and has consented to such administration being granted to the person or persons who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or one or more (not exceeding four) of such persons:

Provided that a surviving spouse shall not be regarded as person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate, whatever its value may be.

62. Grants where deceased was domiciled outside the State

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—

(i) if the Will is in English or in the local vernacular, to the executor named therein;

(ii) if the Will described the duties of a named person in terms sufficient to constitute him executor according to the tenor of the Will, to that person.

(b) where the whole of the estate in the State consists of immovable property, a grant limited thereto may be made in accordance with the Law that would have been applicable if the deceased had died domiciled in the State.

63. Grant to attorney

(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.

64. Grants on behalf of minors

(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 subrules (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 subrule (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 subrule (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 subrule (3) and authorised to renounce by the Registrar.

65. Grants where minor is co-executor

(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 of 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.

66. Grants in case of mental or physical incapacity

(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 authorised by the Court to apply for

the grant;

(b) where there is no person so authorised or in the case of physical incapacity—

(i) if the person incapable is entitled as executor and has no interest in the residuary estate of the deceased, to the person entitled to such residuary estate;

(ii) if the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate; or to such other person as the Registrar may by order direct.

(2) Unless the Registrar otherwise directs, no grant shall be made under this rule unless all persons entitled in the same degree as the person incapable have been considered and excluded.

(3) In the case of mental incapacity, notice of intended application for a grant under this rule shall, unless the Registrar otherwise directs, be given to the person alleged to be so incapable.

67. Renunciation of probate and administration

(1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to 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.

68. Notice to state of intended application for grant

In any case in which it appears that the State is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Kwara State Attorney-General and the Registrar may direct that no grant shall issue within a specified time after the notice has been given.

69. Resealing

(1) An application for the resealing of probate or administration with the Will attached granted by a court outside the State shall be made by the person to whom the grant was made or by any person authorised in writing to apply on his behalf.

(2) On any such application—

(a) an Inland Revenue Affidavit shall be lodged as if the application were one for a grant in the State;

(b) the application shall be advertised in such manner as the Registrar may direct and shall be supported by an oath sworn by the person making the application.

(3) On an application for the resealing of such a grant—

(a) the Registrar shall not require sureties except where it appears to him that the grant is made to a person or for a purpose mentioned in paragraphs (a) to (f) of rule 35 (1) or except where he considers that there are special circumstances making it desirable to require sureties;

(b) Rules 35 (2), (4), (5), (6) and 51 (4) shall apply with any necessary modifications; and

(c) a guarantee entered into by a surety shall be in Form 45 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 as correct by or under the authority of the court by which the grant was made.

(7) The Registrar shall send notice of the resealing to the court which made the grant.

(8) Where notice is received in the Registry from outside the State of the resealing of a grant made in the State, notice of any amendment or revocation of the grant shall be sent to the court by which it was resealed.

70. Amendment and revocation of grant

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.

71. Notice to prohibit grant: caveats

(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.

(3) Any person who wishes to enter a caveat (in this rule called "the caveator") may do so by completing Form 46 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 46 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 46.

(5) Except as otherwise provided by this rule, a caveat shall remain in force for 3 months from the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

(6) The Registrar shall maintain an index of caveats entered in the Registry and on receiving an application for a grant in the Registry he shall cause the index to be searched and shall notify the applicant in the event of any caveat having been entered against the sealing of a grant for which application has been made.

(7) The Registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect thereof.

Provided that no caveat shall operate in the sealing of a grant on the day on which caveat is entered.

(8) A warning in Form 47 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.

(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 subrule (12) enter an appearance in the Registry by filing Form 48 and making an entry in the appropriate book, and shall forthwith thereafter serve on the person warning a copy of Form 48 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 subrule (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 subrule (11), and thereupon the caveat shall cease to have effect.

(13) Upon commencement of a probate action the Probate Registrar shall, if a caveat is in force (other than a caveat entered by the claimant) give to the caveator notice of the commencement of the action and, upon the subsequent entry of a caveat at any time when the action is pending, shall likewise notify the caveator of the existence of the action.

(14) Unless the Registrar otherwise directs—

(a) any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to subrule (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 subrule (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 subrule (12) or (14).

72. Citation

(1) Notices 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.

(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 subrule (5) of rule 35 or subrule (2) of rule 69 enter an appearance in the Registry by filing Form 48 and making an entry in the appropriate book, and shall thereafter serve on the citor a copy of Form 48 sealed with the seal of the Registry.

73. Citation to accept or refuse a grant

(1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the Will or the executors of the last survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of 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 Registrar for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may—

(a) in the case of a citation under subrule (1), apply to the Registrar for an order for a grant to himself;

(b) in the case of a citation under subrule (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) in the case of a citation under subrule (3), apply to the Registrar by summons (which shall be served on the person cited) for an order requiring such person to take a grant within a specified time or for a grant to himself or some other person specified in the summons.

(6) An application under subrule (5) shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance but has not applied for a grant under subrule (4) or has failed to prosecute his application with reasonable diligence, the citor may—

(a) in the case of a citation under subrule (1), apply by summons to the Registrar for an order for a grant to himself;

(b) in the case of a citation under subrule (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 subrule (5);

(c) in the case of a citation under subrule (3), apply by summons to the Registrar for an order requiring the person cited to take a grant within a specific time or for a grant to himself or some other persons specified in the summons, and the summons shall be served on the person cited in each case.

74. Citation to propound a will

(1) A citation to propound a Will shall be directed to the executors named in the Will and to all persons interested thereunder, and may be issued at the instance of any citor having any interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired, the citor may—

(a) in the case where no person cited has entered an appearance, apply to the Registrar for an order for a grant as if the Will were invalid;

(b) in the case of a citation under subrule (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 subrule (5) of rule 73;

(c) in the case of a citation under subrule (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 person specified in the summons, and the summons shall be served on the persons cited in each case.

75. Address for service

All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

76. Application for order to bring or to attend for examination

(1) An application for an order requiring a person to bring in a Will or to attend for examination may, unless a probate action has been commenced, be made to the Court by summons, which shall be served on every such person as aforesaid.

(2) An application for the issue by the Registrar of a subpoena to bring in a Will shall be supported by an affidavit setting out the grounds 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.

77. Limited grants

An application for an order for a grant limited to part of an estate may be made to the Registrar and shall be supported by an affidavit stating—

- (a) whether the application is made in respect of the real estate only or any part thereof, or real estate together with personal estate, or in respect of a trust estate only;
- (b) whether the estate of the deceased is known to be insolvent;
- (c) that the persons entitled to a grant in respect of the whole estate in priority to the applicant have been considered and excluded.

78. Grants *ad colligenda bona*

An application for an order for grant of administration *ad colligenda bona* may be made to the Registrar and shall be supported by an affidavit setting out the grounds of the application.

79. Application for leave to swear to death of a person

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.

80. Grants in respect of codicils and copies of Will

(1) An application for an order admitting to proof a codicil or a Will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original Will is not available may be made to the Registrar:

Provided that where a Will is not available owing to its being retained in the custody of a foreign court or official, a duly authenticated copy of the Will may be admitted to proof without any such order as aforesaid.

(2) The application shall be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to—

- (a) the due execution of the Will;
- (b) its existence after the death of the testator;
- (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.

81. Grants *durante absentia*

An application for an order for a grant of special administration where a personal representative is residing outside the State shall be made to the Court by a motion.

82. Notice of election by surviving spouse to redeem life interest

(1) Where a surviving spouse who is the sole personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to the Registrar by filing a notice in Form 49 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.

83. Photocopy of Wills or other documents may be certified and sealed

(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.

84. Power to require application to be made by summons or motions

The Registrar may require any application under this Order to be made by motion or summons.

85. Duties and powers to be performed and exercised by probate registrar

The duties imposed and powers conferred upon the Court by rules 5, 6, 7, 9, 10, 11, 12, 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.

86. Exercise of power of judge

(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 subrule (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.

87. Court may refuse application to review

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.

88. Service of notice of motion and summons

(1) A Judge or the Registrar may direct that a notice of motion or summons for the service of which no other provision is made in this Order shall be served on such person or persons as the Judge or Registrar may direct.

(2) Where by the provisions of this Order or by any direction given under subrule (1) a notice of motion or summons is required to be served on any person, it shall be served not less than 5 days before the hearing of the motion or summons.

89. Notices, etc.

Unless the Registrar otherwise directs or this Order provides, any notice or other document required to be given or served on any person may be given or served by leaving it at, or by sending it by courier to that person's address for service, or if he has no address for service, his last known address.

90. Affidavit

Every affidavit used in non-contentious probate business shall satisfy the requirements of Order 13.

91. Time

The provisions of Order 10 shall apply to the computation, enlargement and abridgement of time under this Order.

92. Application

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 to 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.

93. Contentious probate, form of suits

Suits in respect of probate shall be instituted and carried on as nearly as possible in the like manner and subject to the same rules of procedure as suits in respect of civil claims.

III. Proceeding Generally

94. Probate actions

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

95. Service of writ of summons

In probate actions, service of a writ of summons may by leave of the Court be allowed out of Nigeria.

96. Pleadings and further action

In probate actions a party shall state with regard to every defence which is pleaded, what is the substance of the case on which it is intended to rely; and further where it is pleaded that

the testator was not of sound mind, memory and understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial and except by leave of the Court no evidence shall be given of any other instances at the trial.

97. Where claimant disputes defendant's interest

In probate actions, where the claimant disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

98. Notice in probate actions

In probate actions the party opposing a Will may, with his defence, give notice to the party setting up the Will that he merely insists upon the Will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the Will, and he shall thereupon be at liberty to do so and shall not in any event be liable to pay the costs of the other side unless the Court finds that there was no reasonable ground for opposing the Will.

99. Inquiry as to outstanding personal estate

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.

100. Discretion to order costs

Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the 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 or the mortgaged property, as the case may be; and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

101. Originating summons relating to deceased person

The executors or administrators of deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, beneficiary, next-of-kin, heir-at-law of a deceased person, or as *cestui que* trust under the trust of any deed or instrument, or as claiming by assignment or administration otherwise under any such creditor or other person as aforesaid, may take out an originating summons for such relief as listed hereunder as may be specified by the summons and as the circumstances of the case may require; that is, the determination

without an administration of the estate or trust of any of the following questions or matters—

- (a) any question affecting the rights or interests of the person claiming to be creditor, beneficiary, next-of-kin, or heir-at-law or cestui que trust;
- (b) the ascertainment of any class of creditors, beneficiary, next-of-kin, or heirs;
- (c) the furnishing of any particular accounts by the executors or administrators or trustee 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.

102. Order for administration of estate of deceased and of trust

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.

103. Persons to be served

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 paragraph (a), (c), (j) 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 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 accounts;

(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) 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.

104. Court not bound to order administration

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.

105. Order to be made on application for administration or execution of trusts

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 the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the 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.

106. Interference with discretion of trustee

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.

107. Application of summons

Any of the following applications may be made by summons—

- (a) an application for the appointment of a new trustee with or without a vesting or other consequential order;
- (b) an application for 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 for a vesting or other consequential order in any case where a judgment or order has been given or made for the sale, conveyance, or transfer of any land or stock or the suing for or recovering any chose in action;
- (d) an application relating to a fund paid into Court.

108. Interpretation

- (1) The provisions of the Interpretation Law shall apply to the interpretation of this Order.

[Cap 78.]

- (2) In this Order, unless the context otherwise requires—

"authorised officer" means any officer of the Registry who is for the time being authorised by law to administer any oath or take any affidavit required for any purpose connected with his duties;

"gross value" in relation to any estate means the value of the estate without deduction for debts, encumbrances, funeral expenses or estate duty;

"oath" means the oath required by this Order to be sworn by every applicant for grant;

"personal applicant" means a person other than a trust corporation who seeks to obtain a

grant without employing a Legal Practitioner; and

"**personal application**" has a corresponding meaning;

"**Registrar**" means the Probate Registrar;

"**Registry**" or "**Probate Registry**" means the Probate Registry of the Court;

"**Will**" includes a codicil and any testamentary document or copy or reconstruction of it.

(3) Unless the context otherwise requires, any reference in this Order to any rule or enactment shall be construed as a reference to that rule or enactment as amended, extended or applied by any other rule or enactment.

ORDER 53

Summary Proceedings for Possession of Landed Property Occupied without the Owner's Consent

1. Proceedings to be brought by originating summons

Where a person claims possession of land which he alleges is occupied by a person not being—

- (a) a tenant; or
 - (b) a tenant holding over after termination of his tenancy; or
 - (c) a licensee of the owner or person entitled to possession; or
 - (d) a person who had the consent of the predecessor in title of the person who is entitled to possession,
- proceedings may be brought by originating summons in accordance with the provisions of this Order.

2. Form of originating summons

The originating summons shall be in Form 50 and no acknowledgement of service shall be required.

3. Affidavit in support

The claimant shall file in support of the originating summons an affidavit stating—

- (a) his interest in the land;
- (b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and
- (c) that he does not know the name of any other person occupying the land who is not named in the summons.

4. Service of originating summons

(1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit in support shall be served on him—

- (a) personally; or
- (b) by leaving a copy of the summons and of the affidavit or sending them to him at the premises; or
- (c) in such other manner as the Court may direct.

(2) The summons shall, in addition to being served on the named defendants, if any, in accordance with subrule (1) be served, unless the Court otherwise directs, by—

- (a) affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises; and
- (b) if practicable, inserting through the letter box at the premises, a copy of the summons and a copy of the affidavit enclosed in a sealed envelope addressed to "the occupiers".

(3) Every copy of an originating summons for service under subrule (1) or (2) shall be sealed with the seal of the Court out of which the summons was issued.

5. Application by occupier to be made a party

Without prejudice to rule 16 of Order 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.

6. Order of possession

(1) An order for possession in proceedings under this Order shall be in Form 51 with such variations as circumstances may require.

[Form 51.]

(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.

7. Writ of possession

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.

8. Setting aside of order

(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 54

Proceedings in Forma Pauperis

1. Who may sue or defend in *forma pauperis*

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 may be.

2. Conditions to be fulfilled

(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.

3. Fees and costs

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.

4. Procedure to be followed

(1) The Legal Practitioner shall not, except by leave of the Chief Judge, take or agree to take any payment whatsoever from the applicant or any other person connected with the applicant or 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.

5. Revocation of order, discontinuance, etc.

(1) The Chief Judge may at any time revoke the order granting the application and thereupon the applicant shall not be entitled to the benefit of this Order in any proceedings to which the application relates, unless otherwise ordered.

(2) Neither the applicant nor the Legal Practitioner assigned to him shall discontinue, settle or compromise the action without the leave of Court.

6. Payment to legal practitioner

(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 subrule (1), he may apply to the Chief Judge for payment by the Court of a brief fee not exceeding N5,000.

7. Duty of legal practitioner

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.

8. Appeals

No person shall be permitted to appeal in forma pauperis except by leave of the trial or the appellate court.

ORDER 55

Costs

1. Principle to be observed in fixing costs

(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 at the time of making the judgment or order and stated therein.

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

2. Security for costs

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

3. Security for costs by claimant temporarily within jurisdiction

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

4. Action founded on judgment or bill of exchange

In actions brought by persons resident out of the jurisdiction, when the claimant's claim is

founded on a judgment or order or on a bill of exchange or other negotiable instrument, the power to require the claimant to give security for costs shall be exercised at the Judge's discretion.

5. Bond as security for costs

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.

6. Costs at discretion of court

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

7. Costs out of fund or property

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

8. Stay of proceedings till costs paid

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.

9. When costs to follow the event

(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 filing any document or doing any other act (including the costs of any order made on the application) shall be borne by the party making the application unless the Judge otherwise orders.

10. State of proceedings at which costs to be dealt with

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.

11. Matters to be taken into account in exercising discretion

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

12. Costs arising from misconduct or neglect

(1) Where in any cause or matter anything is done or omission is made improperly or unnecessarily by or on behalf of a party, the Judge may direct that any costs to that party in respect of it shall not be allowed to him and that any costs occasioned by it to other parties shall be paid by him to them.

(2) Without prejudice to the generality of subrule (1), the Judge shall for the purpose of that subrule 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 a manner or at a time calculated to occasion unnecessary costs;

(c) any unnecessary delay in the proceedings.

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

13. Personal liability of legal practitioner for costs

(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) disallow wing the costs as between the Legal Practitioner and his clients; and

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

(c) directing the Legal Practitioner personally to indemnify such other parties against costs payable by them.

(2) Subrule (1) shall apply where proceedings in Court cannot conveniently proceed or fails or are adjourned without useful progress being made—

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

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

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

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

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

14. Taxation of costs

Every bill of costs (other than a bill delivered by a Legal Practitioner to his client which falls to be taxed under the Legal Practitioners Act) shall be referred to the Registrar for taxation and may be taxed by him or such other taxing officer as the Chief Judge may appoint.

[Cap. LI 1 LFN 2004.]

15. Notice to other party

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.

16. Power of taxing officer

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.

17. Supplementary powers of taxing officers

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

18. Extension of time

(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.

19. Power of taxing officer where party liable to be paid and to pay costs

Where a party entitled to be paid costs is also liable to pay costs, the taxing officer may—

- (a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or
- (b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

20. Mode of beginning proceedings for taxation

(1) A party entitled to require any costs to be taxed shall begin proceedings for the taxation of those costs by filing in the registry a bill of costs and obtain a day and time for the taxation thereof. Such party shall give at least 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 subrule (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.

21. Provisions as to bills of costs

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

(2) Before a bill of costs is left for taxation it shall be 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.

22. Provisions as to taxation proceedings

(1) If any party entitled to be heard in any taxation proceedings does not attend within a reasonable time appointed for the taxation, the taxing officer, if satisfied by affidavit or otherwise that the party had due notice of the time appointed, may proceed with the taxation.

(2) The taxing officer by who any taxation proceedings are being conducted may, if he deems it necessary to do so, adjourn those proceedings from time to time.

23. Certificate of taxing officer

Upon the completion of the taxation of any bill of costs the taxing officer shall certify the result of his taxation including the costs thereof.

24. Fees on taxation

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

25. Application for review

Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by a taxing officer or with the amount allowed by a taxing officer in respect of any item, may apply to a Judge for an order to review the taxation as to that item.

26. Application by summons

(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 Judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on taxation but, except as aforesaid, on the hearing of any such application the Judge may exercise all such powers and discretion as are vested in the taxing officer in relation to the subject matter of the application.

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

ORDER 56

Miscellaneous Provisions

1. What orders to be made

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.

2. Recovery of penalties and costs

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.

3. Notice

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.

4. Office hours

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

5. Filing

A document shall not be filed unless it has endorsed on it the name and number of the cause, the date of filing and whether filed by claimant or defendant; and on being filed such endorsement shall be initiated by the Registrar.

6. How process addressed

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

7. Framing of new forms

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.

8. Fees

(1) The fees payable under these Rules shall be as set out in Form 56.

(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 subrule shall be taken as paid and shall be recoverable from such person.

9. Regulations

The Regulations in Form 55 shall govern the payment and disposal of fees and the duties of Court officers in regard thereto.

10. Rules of Court Advisory Committee

(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 legal Practitioners, nominated by the Nigerian Bar Association; and
- (c) two State Counsel.

(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 High Court Law 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.

11. Saving

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.

List of Forms

NO.

1. General form of writ of summons.
2. Writ for service out of the jurisdiction.
3. General form of originating summons.
4. Originating summons.
5. Form of ex parte originating summons.
6. Form of memorandum for renewed originating process.
7. Request to Minister of Foreign Affairs to transmit Notice of writ to Foreign Government.
8. *Praecipe* of request for service abroad.
9. Letter forwarding request for substituted service.
10. Request for service abroad.
11. Receiver's security by undertaking.
12. Form of Guarantee for the acts and defaults of a receiver.
13. Receivers' Account.
14. Affidavit verifying Receiver's Account.
15. Memorandum of Appearance.
16. Warrant to Arrest Absconding Defendant.
17. Warrant to Interim Attachment.
18. Form of order to Account and Inquires.
19. Form of order referring proceedings to Arbitrator.
20. Notice of payment into court.
21. Acceptance of sum paid into court.
22. Acceptance of sum paid into court by one of several Defendants.
23. Hearing Notice for pre-trial conference.

24. Pre-trial information sheet.
25. Interrogatories.
26. Answer to Interrogatories.
27. Affidavit as to Documents.
28. Legal Practitioner's undertaking as to Expenses.
29. Letter of Request to take Evidence Abroad (convention country).
30. Order for Appointment of the Nigerian Diplomatic Agent as Special Examiner (Convention Country).
31. Form of *praecipe*.
32. *Subpoena ad testificandum*.
33. Habeas Corpus ad testificandum.
34. *Subpoena duces tecum*.
35. General Form.
36. *Praecipe* of writ of execution.
37. Writ of *Habeas corpus subjucendum*.
38. Notice to be served with Writ of *Hebeas corpus ad subjucendum*.
39. Writ of *Habeas corpus ad testificandum*.
40. Notice of Appeal.
41. Order for payment of principal money or interest secured by mortgage or charge.
42. Order for possession of property forming a security for payment to the claimant of any principal money or interest.
43. Order for payment of principal money or interest secured by mortgage or charge and for possession of property comprised therein.
44. Surety's Guarantee.
45. Surety's Guarantee on Application for resealing.
46. Caveat.
47. Warning to caveator.
48. Appearance to warning or citation.
49. Notice of Election to redeem life interest.
50. Originating summons for possession.
51. Order for possession.
52. Registrar's process book.
53. Certificate of the Chief Registrar.
54. Writ of attachment and sale against immovable property.
55. Regulations regarding fees.
56. Fees payable at the High Court.

HIGH COURT OF KWARA STATE (CIVIL PROCEDURE) RULES

FORM 1
[Order 2, Rule 3.]

General Form of Writ of Summons

Suit No.

(Here put the letter and number (see note (a) following this form).

In the High Court of Kwara State

In the Judicial Division

Between:

A.B.

Claimant

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 claimant may proceed therein and judgment may be given in your absence.

Dated this day of, 20
.....

By order of the Court.

.....
Registrar

Memorandum to be subscribed on the writ:

N.B.

This writ is to be served within six calendar months from the date thereof, or if renewed, within three calendar 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 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 claimant's claim is for,

.....

This writ was issued by G.H. of whose address for service is

.....,

agent for of Legal Practitioner for the said plaintiff
who

resides at (mention the City, town or district and also the name of the
street and number of the house of the claimant's residence if any) Endorsement to be made
on copy of writ 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)

FORM 1—*continued*

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 action, "In the Estate of A.B., deceased." A writ of summons claiming administration of a trust or settlement may be instituted "in the matter of the (Trust or settlement)"

(b) Endorsement of claim — if the claimant sues, or defendant is sued, in a representative capacity, the endorsement must state in what capacity the claimant sues or the defendant is sued. 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 5 rule 4.

(c) Address for service— The address must be within the jurisdiction.

(d) Address of claimant — In the case of a company in liquidation the claimant's address

should run " claimant'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 Part II Cap C20 of the Companies and Allied Matters Act, 2004 the claimants' address should run thus;

".....

..... claimants who are a foreign corporation within the meaning of the

Companies and Allied Matters Act, 2004. 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 claimant'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 Kwara State.

In the Judicial Division

A sufficient affidavit in verification of the endorsement on this writ to authorise the sealing thereof has been produced to me this day of, 20

.....
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 Kwara State in an action at the Suit of A.B.; and take notice, that in default of your so doing the claimant may proceed therein and judgment may be given in your absence.

DATED this day of , 20

FORM 2—*continued*

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 day of such date, and not afterwards.

The defendant (or defendants) may appear hereto by entering appearance (or appearances) either personally or by legal practitioner at the Registry of the Judicial Division in which the writ is issued.

This writ was served (as in Form No. 1) Endorsement to be made on the writ before the issue thereof.

N.B.:

This writ is to be used where the defendant or all the defendants or one or more 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 2 rule 3, 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 Kwara State

In the Judicial Division

(If the question to be determined arises in the administration of an estate or a trust entitle it

"In the matter of the estate or trust")

Between:

A.B.

Claimant

and

CD. and E.F.

.....Defendants

Letof

in within eight 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

.....

FORM 3—*continued*

ofwho claims (state the nature of the claim), for the determination
of the following questions:

(state the questions).

DATED this day of, 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 Kwara State

In the Judicial Division

In the matter of A.B. a legal practitioner (Re: Taxation of costs, etc.) (or as may be).

Let A. B. of attend the Court, (or Chief Registrar's
Office)

High Court of Kwara State on the day of, 20
.....

at 9 O'clock in the forenoon (on the hearing of an application on the part of
.....).

(State relief sought). (If for leave to enforce award under the Arbitration and Conciliation Act, add, "And that the respondent do pay the cost of this application to be taxed".

Dated this day of ,
20.....

This summonswas 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 Kwara 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 Kwara State, at the time specified in the margin hereof, on the hearing of an application on the part of the above named A. B., an infant, by C. D. his guardian, that (State relief sought).

FORM 5—*continued*

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 Kwara State presents his compliments to the Minister of Foreign Affairs,
and encloses herewith a Notice of Writ of Summons issued in an action of

.....
..... Versus

Pursuant

to Order out of the Judicial Division of the High Court of Kwara
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
Kwara

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 Kwara State, or declared upon Oath, or otherwise, in such manner as is consistent with the usage or practice of the Courts 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 of the said country be requested to certify the same to the High Court of Kwara 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 Kwara 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 claimant has obtained an
order
of the Judicial Division of the High Court of Kwara
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 or 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 Kwara 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 Director-General of the Ministry of Foreign Affairs.

FORM 10—*continued*

Dated this day of
20.....

.....
Legal Practitioner

[Order 12, Rule 12.]

Receiver's Security by Undertaking

In the High Court of Kwara State

In the Judicial Division

Suit No.:

Between:

Re: v

.....

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 monies 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 de-

fault 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 N 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.

[Order 12, Rule 12.]

Form of Guarantee for the Acts and Defaults of a Receiver

In the High Court of Kwara State

In the Judicial Division

Suit No.:

FORM 12—*continued*

Re: v

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, the above named

.....

the registered office of which is at in

(hereinafter

called "the Surety") of the second part and the Governor of Kwara
State.

By an order of the High Court of Kwara 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 Kwara State that the Receiver shall duly account for all monies 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 officer 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 Kwara 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 Kwara 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 Kwara 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.

FORM 12—*continued*

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 give 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 loss, damage, costs and expenses which the Surety or its funds or property may or might otherwise sustain by reason of the Surety having executed this guarantee at his request.

In witness whereof the Receiver has hereunder set his hand and seal and the Surety has caused its

Common Seal to 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 written guarantee has with the consent of the Receiver and the Surety been increased from N to N
..... 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 guarantee and his endorsement being limited to the increased sum above stated.

Sealed with the seal of the Receiver and also the Common Seal of the Surety this
.....
day of, 20 as evidence of such increased liability and
the
admission 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.]

HIGH COURT OF KWARA STATE (CIVIL PROCEDURE) RULES

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.	Date	Tenant's	Description	Annual	Arrears	Amount	Amount	Arrears	Observation
of	when	Name	of Promises	Rent	Due At	Due At	Received	remaining	
Item	received					Due	

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE

No. of Item	Date of payment of allowance	Names of persons to whom paid or allowed	For what purpose paid or allowed	Amount
			One year's insurance of due	
			Bill for repairs at house let to	
			Allowance for a half-year's income tax, due	
			Total payments N	

RECEIPTS ON ACCOUNT OF PERSONAL ESTATE ACCOUNT

No. of Item	Date when received	Names of persons from whom received	On what account received	Amount received
----------------	--------------------------	--	-----------------------------------	--------------------

PAYMENTS AND ALLOWANCES ON PERSONAL ESTATE

No. of Item	Date when paid or allowed	Names of persons to whom paid or allowed	For what purpose paid or allowed	Amount paid or allowed
----------------	------------------------------------	--	--	------------------------------

SUMMARY

	N	K	Amount of balance due from
Receiver on account of real estate on last account			
Amount of receipts on the above account of real estate			
.....			
Balance of last account paid into Court			
.....			
Amount of payments and allowances on the above account of real estate			
.....			
Amount of Receiver's costs of passing this account as to real estate			
.....			
Balance due from the Receiver's costs of passing this account as to real estate			
.....			
Amount of payments and allowances on the above account as to personal estate			
.....			
Amount of Receiver's costs of passing this account as to personal estate			
.....			
Balance due from the Receiver on account of personal estate			
.....			

FORM 14

[Order 12, Rule 16.]

Affidavit Verifying Receiver's Account

In the High Court of Kwara State

In the Judicial Division

Suit No.

Between:

A.B.

Claimant

and

C.D. 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.

[Order 16, Rule 1 (1).]

Memorandum of Appearance

In the High Court of Kwara State

In the Judicial Division

Suit No.

Between:

.....

Claimant(s)

and

.....

Defendant(s)

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

.....

.....

.....

FORM 15—*continued*

N.B.—

Additional notes for the guidance of defendants seeking to enter an appearance are given on the back. Please read carefully.

Notes.—

1 (a) A defendant appearing in person must give his residence or some other place within the Judicial Division of Kwara State to which communications for him should be sent.

Where he appears by a legal practitioner, the Legal Practitioner's place of business.

1 (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 admit the claimant's claim, the entry of appearance will delay judgment and may increase the cost payable by the defendant.

7. Acknowledgement 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

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;

FORM 16—*continued*

You are, therefore, hereby commanded to bring the said defendant before this court forthwith, in order that he may show 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 Bailiffs 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 (2).]

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 claimant is
beneficially entitled to the debts or, the property hereinafter specified;

And Whereas on the day of, 20 It
was

ordered that the said defendant should within days
thereafter

appear and show cause why he should not furnish security in the sum of N

.....;

(or to produce and place at the disposal of the court the value of the said property) (or such
portion of the said property as may be of the value of N
.....)

And Whereas it was further 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 to 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 of N) wheresover 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

.....)

FORM 17—*continued*

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 Sheriffs 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 of 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 Kwara State

In the Judicial Division

Suit No.

Between:

A. B. Claimant

and

FORM 18—*continued*

C.D., E.F., and G.H. Defendants

This court hereby orders that the following accounts and inquiry 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 32, Rule 1 (6).]

Notice of Payment into Court

In the High Court of Kwara State

In the Judicial Division

Suit No.

BETWEEN:

FORM 20—*continued*

A.B.

Claimant

and

C.D., E.F. and G.H.

Defendants

Take notice that the defendants have paid into court N

.....

..... and say that (..... part of) that sum is enough to satisfy the claimant's

claim (for N the other part of that sum is enough to satisfy the claimant's claim

claim for)

Dated this day of, 20
.....

P.Q. Legal practitioner for the defendants C.D.

To X. Y; the claimant's Legal practitioner, and to Mr. R. S. Legal practitioner for the defendant E.F.

(To be filed 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 32, Rules 2 (1) and 4 (4).]

Acceptance of Sum Paid into Court

In the High Court of Kwara State

In the Judicial Division

BETWEEN:

A.B.
Claimant

and

C.D.; E.F. and G.H.
Defendants.

Take notice that this claimant accepts the sum of N paid by the defendant

(C.D.) into court in satisfaction of the claim in respect of which it was paid in (and abandons his other claims in the action).

DATED this day of, 20
.....

.....
X. Y. Claimant's legal practitioner

TO:

Mr. P.Q. Legal Practitioner for the defendant C.D. and Mr. R.S. Legal Practitioner for the

defendant E.F.

FORM 22
[Order 32, Rule 4 (2).]

Acceptance of Sum Paid into Court by One of Several Defendants

In the High Court of Kwara State

In the Judicial Division

BETWEEN:

A.B.

Claimant

and

C.D.; E.F. and G.H.

Defendants

Take notice that the claimant accepts the sum of N paid by the
defendant

C.D. into court in satisfaction of his claim against the defendant CD.

Dated this day of, 20
.....

.....
X. Y. Claimant's Legal Practitioner

TO:

Mr. P.Q., Legal Practitioner for the defendant CD., and Mr. R.S. Legal Practitioner for the
defendant E.F.

FORM 23
[Order 33, Rule 2(1).]

Hearing Notice for Pre-trial Conference

In the High Court of Kwara State

In the Judicial Division

Suit No.

BETWEEN:

A.B. Claimant

and

C.D.

Defendant.

To (insert name of parties)

Take notice that you are required to attend the court No at the High Court of Kwara State at the Judicial Division, on the day

of, 20 at 9 o' clock in the forenoon, for a pre-trial Conference

for the purposes set out here—under—

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

(b) giving such directions as to the future course of the action as appear best adopted to secure its just and expeditious disposal;

(c) promoting amicable settlement of the case or adoption of alternative dispute resolution.

FORM 23—continued

2. Please answer the questions in the attached Pre-trial information sheet (Form 24) on a separate sheet and submit 7 clear days before the above mentioned date.

Take Notice that if you do not attend in person or by legal practitioner at the time and place mentioned, such proceeding will be taken and such order will be made as the court may deem just and expedient.

Dated this day of, 20

.....
Registrar.

FORM 24

[Order 33, Rule 2 (2).]

Pre-trial Information Sheet

In the High Court of Kwara State

In the Judicial Division

Suit No.

Between:

A.B.

Claimant

and

C.D.

Defendant.

This Pre-trial Information sheet is intended to include reference to all applications which the parties would wish to make at the pre-trial conference. Applications not covered by the standard questions raised in this pre-trial information sheet should be entered under item 12 below.

A party shall, not later than seven days before the first Pre-trial conference, file and serve on all other parties—

(a) all applications in respect of matters to be dealt with before trial including but not limited to the matters listed hereunder;

(b) Written answers to the questions contained in this Pre-trial Information Sheet.

1. Do you require that this action be consolidated with any other action(s)? If so, give particulars.

2. Are amendments to any writ or other process required?

3. Are further and better particulars of any pleading required? If so, specify what particulars are required.

4. Do you object to any interrogatories that may have been delivered pursuant to Order 35 rule 1 of the High Court (Civil Procedure Rules)? If so, state the grounds of such objection in compliance with Order 35 rule 4 of the Rules.

5. Do you object to producing any document in respect of which a request for discovery has been made pursuant to Order 35 Rule 8 (1) of the High Court (Civil Procedure) Rules? If so, state the grounds of such objection in compliance with Order 35 rule 8 (3).

6. If you intend to make any additional admissions give details.

7. Will interpreters be required for any witness? If so, state in what language.

8. Is this a case in which the use of a single or joint expert might be suitable? If not state reasons.

9. Is there any way in which the court can assist the parties to resolve their dispute or particular issues in it without the need for a trial or full trial?

10. Have you considered some form of Alternative Dispute Resolution (ADR) procedure to resolve or narrow the dispute or particular issues in it? If yes, state the steps that have been taken. If not state reasons.

11. State any question or questions of law arising in your case, if any, which you require to be stated in the form of a special case for the opinion of the judge in accordance with Order 34 of the Rules.

12. List the applications you wish to make at the pre-trial conference.

DATED this day of,
20.....

Signed
(Legal Practitioner for the)

For Service on:

.....

FORM 25
[Order 35, Rule 2.]

Interrogatories

In the High Court of Kwara State

In the Judicial Division

Suit No.

Between:

A.B.

Claimant

and

CD.; 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 this day of, 20

.....

.....
Party/Legal Practitioner

FORM 26
[Order 35, Rule 6.]

Answer to Interrogatories

In the High Court of Kwara State

In the Judicial Division

Suit No.

BETWEEN:

A.B.

Claimant

and

C.D.; E.F. and G.H.

Defendants

The answer of the above-named defendant E. F.; to the interrogatories for his examination
by the above-named Claimant.

In answer to the said interrogatories, I the above-named E.F. make oath and say as follows—

1.

.....

2.

.....

etc.

I, the above-named defendant E. F; do hereby solemnly swear by Almighty God that this is
my name and handwriting and that the facts deposed by me in this affidavit are the truth,
the whole truth and nothing but the truth.

.....
Deponent

Dated this day of, 20

.....

Before me:

.....

Commissioner for Oaths

FORM 27

[Order 35, Rule 8 (3).]

Affidavit as to Documents

In the High Court of Kwara State

In the Judicial Division

Suit No.

BETWEEN:

A.B.

Claimant

and

C.D.; E.F; and G.H.

Defendants

I, the above-named defendant C.D. 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.

FORM 27—*continued*

2. I object to produce the said documents set forth in the second part of the said first schedule hereto (state grounds of objection).

3. I have had, but have not now, in my possession or power the documents relating to the matters in questions 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 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.

Date:

Deponent

(ILLITERATE JURAT)

.....
.....
.....

Sworn to at High Court Registry, this day of, 20
.....

Before me:

.....

Commissioner for Oaths

FORM 28

[Order 40, Rule 7 (a).]

Legal Practitioner's 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 on the and on

receiving due notification of the amount of such 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.

Claimant's Agent of

.....

Defendant's Agent of

.....

DATED thisday of, 20
.....

FORM 28—*continued*

.....
Legal Practitioners for
.....
.....

FORM 29

[Order 40, 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 Kwara State, Nigeria, in which

..... is the claimant and

.....is the defendant.

And in the said action the claimant claims

.....

And whereas it has been represented to the said court that it is necessary for the purpose of
jus-

tice and for the due determination of the matters in dispute between the parties, that the
following persons should be examined as witnesses upon oath touching such matters, that is

..... of and

..... of

..... and it appears that such witnesses are resident within your jurisdiction.

Now, I the Chief Judge of the High Court of Kwara 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 claimant and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before you, or such other person as according to your procedure is competent to take the examination of witnesses, and that you will cause such witnesses to be examined (upon the interrogatories which accompany this letter of request and viva voce) touching the said matters in question in the presence of the agents of the claimant 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 claimant and defendant or such of them as shall be present to be at liberty to examine (upon interrogatories and viva voce upon the subject matter thereof or arising out of the answers thereto) such witnesses as may after due notice in writing be produced on their behalf, and give liberty to the other party to cross-examine the said witnesses (upon cross-interrogatories and viva voce and the party producing the witness for examination at 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 Kwara State.

FORM 29—*continued*

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 Kwara State, Nigeria

This refers to a notice given by the Legal Practitioner having conduct of the action.

FORM 30

[Order 40, 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 Kwara State of Nigeria High Court Procedure.

The Legal Practitioners to give to 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 claimants 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 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 taken together with any documents referred to therein or certified copies of documents or of extracts therefrom, be transmitted by the examiner, under seal to the Chief Registrar of the High Court, Kwara 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.

FORM 30—*continued*

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 31

[Order 40, Rule 20.]

Form of Praecipe

In the High Court of Kwara State

In the Judicial Division

Suit No.

Between:

A.B. Claimant
and

C.D. and others
Defendants

Seal Writ of Subpoena on
behalf
of the directed to returnable
.....

Dated this day of, 20
.....

(Signed)

(Address):

Legal Practitioner for the

.....
Judge

FORM 32
[Order 40, Rule 21.]

Subpoena Ad Testificandum

In the High Court of Kwara State

In the Judicial Division

Suit No.

BETWEEN:

..... Claimant
and

FORM 32—*continued*

.....
Defendant.

To of

You are commanded in the name of the Governor of Kwara 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 33
[Order 40, Rule 21.]

Habeas Corpus Ad Testificandum

In the High Court of Kwara State

In the Judicial Division

Suit No.

Between:

.....
Claimant

and

.....
Defendant.

To the Comptroller of prison, at

.....

You are commanded in the name of the Governor of Kwara State to have

.....,

who it is said is detained in your custody in prison, 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 the above-named cause, and immediately after the said

.....shall

have so given his evidence you shall duly conduct him to the prison from which he shall
have been brought.

DATED this day of, 20

.....

Judge

FORM 34
[Order 40, Rule 21.]

Subpoena Duces Tecum

In the High Court of Kwara State.

In the Judicial Division

Suit No.

BETWEEN:

.....

Claimant

and

.....

Defendant.

To of

.....

You are commanded in the name of the Governor of Kwara State of attend before the court
at

..... On the day of

.....

20 at the hour ofo'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 35
[Order 43, Rule 15.]

General Form

(Title as in Form 1.)

Suit No.:

BETWEEN:

.....

Claimant

and

.....

Defendants

Upon hearing and upon reading the
affidavit

of filed on the

.....

day of, 20

It is ordered

and

that the defendant do pay the
claimant

N cost (or cost to be taxed).

The above cost have been taxed and allowed at N as appears
by a

FORM 35—*continued*

taxing officer's certificate dated the day of

.....

20

DATED this day of, 20

.....

.....

Judge

FORM 36

[Order 44, Rule 6 (2).]

Praeceptum of Writ of Execution

Claimant'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 the 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

Order

Committed on for
.....
Order suspended for on payment of
.....
Subsistence allowance per *diem*
to be
paid before issue of warrant.

FORM 36—*continued*

Date and time of application: the day of
.....
20 at h m.
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
.....
Draw amount paid since issue of judgment summons
.....
Draw amount paid since issue of judgment summons
.....
Fees on issue of this process
.....
Travelling 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 monies paid into
Court except under the execution against the goods of the defendant.

FORM 37

[Order 46, Rule 9.]

Writ of Habeas Corpus Subjucendum

To the Director of the prison 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 Kwara 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 38
[Order 46, Rule 9.]

Notice to be Served with Writ of Habeas Corpus Ad Subjiciendum

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 prison 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 Kwara State*

FORM 39

[Order 46, Rule 9.]

Writ of Habeas Corpus Ad Testificandum

To the Director of the prison 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 Prison at under your
custody,

as is said, then and there to testify the truth and give evidence on behalf of

.....

against for (description of
offence or

other proceeding) and so from day to day until the said
shall

have given his evidence as aforesaid. And when he shall have given his evidence, then you
take him back without delay to the said prison under your custody and cause him to be
detained therein under safe, until he shall be from thence discharged by due course of law.

.....

Judge/Magistrate

By order of

FORM 39—*continued*

ENDORSEMENT

This writ was issued by of

.....

Legal Practitioner for

FORM 40

[Order 49, Rule 2 (4).]

Notice of Appeal

In the District Court of the District

No.

A.B.

.....

vs.

C.B.

.....
Take notice that the claimant (or defendant as the case may be) A.B. (or CD.; 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 this grounds of appeal are

.....
.....
.....
.....
.....
.....
.....
.....
.....

Dated this day of, 20
.....

.....
A.B. (or C.D.)
(or the Legal Practitioner acting for him)

To C.D. (or A.B.)
of

.....
Note:

This notice must be filed with the registrar of the District 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 41
[Order 51, Rule 2.]

Order for Payment of Principal Money or Interest Secured by Mortgage or Charge

It is ordered that the claimant do recover against the defendant N
secured

by a mortgage (or charge) dated the day of, 20
.....

(being the total of the principal sum of N and N for
interest

thereon at N per cent, per annum less tax to the day
of

(date of order)) and N for cost (or his costs of the summons to be
taxed).

And it is ordered that upon the defendant paying to the claimant the monies ordered to be
recovered and all other monies (if any) secured to the claimant by the said mortgage (or
charge) the claimant (subject and without prejudice to the due exercise of any power of sale
for the time being vested in 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
.....

.....
Judge

FORM 42
[Order 51, Rule 2.]

*Order for Possession of Property Forming a Security for Payment to the Claimant of Any
Principal Money or Interest*

It is ordered that the defendant do give the claimant possession on or before the
.....
day of, 20 of the land hereinafter described and
comprised in
mortgage (or charge) dated the day of, 20
.....

that is to say (description of the property).

AND it is ordered that claimant 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 claimant the monies remaining due
to the claimant upon the security of the said mortgage (or charge) the claimant (subject and
without prejudice to the due exercise of any power of sale for the time being vested in him)
do re-deliver to the defendant possession of the property subject to the said mortgage (or
charge) and release to the defendant the security constituted by the said 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 43
[Order 51, 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 claimant do recover against the defendant N secured
by
a mortgage (or charge) dated the day of, 20
.....
(being the total of the principal sum of N and N for
interest
therein at percent per annum less tax to the
day of
(date of order), and N for costs (or his costs of this summons to be

taxed).

And it is ordered that the defendant do give the claimant possession on or before the

..... day of, 20of the land hereinafter described and comprised

in the said mortgage (or charge) that is to say (description of the property).

And it is ordered that upon the defendant paying to the claimant the monies hereby ordered to be recovered and all other monies (if any) secured to the claimant by the said mortgage (or charge) the claimant (subject and without prejudice to the due exercise of any power of sale for the time being vested in 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 44
[Order 52, Rule 35 (3).]

Surety's Guarantee

In the High Court of Kwara State

Probate Registry

Suit No.

In the Estate of deceased.

Whereas ofdied 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
.....)

hereby jointly and severally) guarantee that I/We will, when lawfully required to do so,

make _____ good any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of the breach by the administrator(s) of his/her/their duty—

- (a) to collect and get in the estate of the deceased and administer it according to law;
- (b) when required to do so by the court to exhibit on oath in the court a full inventory of the estate and when so required, to render an account of the estate; or

FORM 44—*continued*

- 1. When so required by the court to deliver up the grant to the court
- 2. The giving of time to the administrators 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 authorised by law to administer an oath).

(The common seal of was hereunto affixed in the presence

of).

.....

.....

(*Signed*)

FORM 45

[Order 52, Rule 69 (3).]

Surety's Guarantee on Application for Resealing

In the High Court of Kwara State

Probate Registry

Suit No.

In the Estate of deceased.

Whereas of died on the

.....

..... day of , 20 and letters of
administration of

his estate were on the day of , 20

.....

granted by the to (and
.....)

and are about to be sealed in the state and under the Succession Law—

Now therefore—

1. I/We of

.....

(and of
.....)

(and of
)

hereby (jointly and severally) guarantee that I/We will, when lawfully required to do so,
make good any loss which any person interested in the administration of the estate of the
deceased in the state may suffer in consequence of the breach by the 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.

FORM 45—*continued*

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 authorised by law to administer an oath).

(The common seal of was hereunto affixed in the presence

of).

.....
.....

(Signed)

FORM 46

[Order 52, Rule 71 (3) and (4).]

Caveat

In the High Court of Kwara State

Probate Registry

Suit No.

Let no grant be sealed in the Estate of late of

.....

..... who died on the day of

.....

20 without notice to

Dated this day of , 20

.....

(Signed) Legal Practitioner for the said caveator

whose

address for service is

FORM 47

[Order 52, Rule 71 (8).]

Warning to Caveator

In the High Court of Kwara State

The Probate Registry

Suit No.:

To:

..... of
..... a party who
has
entered a caveat in the estate of deceased.

FORM 47—continued

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

..... 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 hearing is issued; or

2. if you have no contrary interest but wish to show cause against the sealing of a grant to such party to issue and serve a summons for direction by the registrar of the said registry. And take notice that in default of your so doing the court may proceed to issue a grant of probate or administration in the said estate 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 48

[Order 52, Rule 71 (9).]

Appearance to Warning or Citation

In the High Court of Kwara State

The Probate Registry

Caveat No.: dated this 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

FORM 48—continued

whose address for service is:

.....

.....

.....

Legal Practitioner
(or 'in person')

FORM 49
[Order 52, Rule 82.]

Notice of Election to Redeem Life Interest

In the High Court of Kwara State

Probate Registry

Suit No.:

In the Estate of deceased.

Whereas of died on the

.....

day of , 20 wholly/partially intestate leaving
his/her

lawful wife/husband and lawful issue of the said

.....

And whereas Probate/Letters of Administration of the Estate of the said

.....

were granted to me, the said

(and to

..... of) at the Probate Registry on
the

..... day of , 20

And whereas (the said has ceased to be a personal
representative

because) and I am now the sole personal

representative.

Now, I, the said hereby give notice that I elect to
redeem
the life interest to which I am entitled in the estate of the
late
..... by retaining N its capital
value,
and N the cost of the transaction.

Dated this day of, 20
.....

(*Signed*)

(To the Probate Registrar).

FORM 50
[Order 53, Rule 2.]

Originating Summons for Possession

In the High Court of Kwara State

In the Judicial Division

Suit No.

FORM 50—*continued*

BETWEEN:

A.B.

Claimant

and

C.D., E.F. and G.H.

Defendants

(if any) whose name is known to the claimant.

To (CD. and) every (other) person in occupation of

.....

Let all persons concerned attend before at the High
Court of

the Judicial Division, Kwara State on theday
of

....., 20 at 9 o'clock in the forenoon for the hearing of
an

application by A. B. for an order that he do recover possession of

.....

on the ground that he is entitled to possession and that the person(s) in occupation is (are)
in occupation without his licence or consent.

Dated this day of ,20

.....

This summons was taken out by of

.....

..... Legal practitioner for the said claimant whose address is

.....

..... (or this summons was taken out by of

.....

..... for of

Legal Practitioner for the said claimant whose address is

.....)

..... (or when the claimant acts in person).

This summons was taken out by the said claimant who resides at

.....

and is (state occupation) and (if the claimant does not reside within the jurisdiction) whose
address for service is

Note-

Any person occupying the premises who is not named as a defendant by this summons may
apply to the court personally or by legal practitioner to be joined as Defendant. If a person
occupying the premises does not attend personally or by legal practitioner at the time and

place above mentioned, such order will be made as the court may think just and expedient.

FORM 51
[Order 53 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 claimant A.B. do recover possession of the land described in the
originating

summons as (and the defendant
.....

..... do give possession of the said land on) (and that the
defendant

..... do pay the claimant N costs (or costs to be
taxed).

FORM 51—*continued*

(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 52

Registrar's Process Book

High Court of the Judicial
Division

No. of Suit	Claimant	Defendant	Nature of Writ	Issued	Issued against	Date	Time Hours Minutes	a.m. p.m.	Registrar's Signature
----------------	----------	-----------	-------------------	--------	-------------------	------	--------------------------	--------------	--------------------------

FORM 53
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 N

.....

leaving a balance due from (or to) them of N 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 theday 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.

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 54

[Order 44.]

Writ of Attachment and Sale Against Immovable Property

To C.D., of

.....

AND WHEREAS no movable property of the defendant (or claimant) can with reasonable diligence be found sufficient to satisfy the judgment (or order).

AND WHEREAS upon the application of the claimant (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 claimant) for the sum of N

.....

FORM 54—*continued*

..... (being part of the sum of N (judgment debt, or part

thereof ordered to be levied, or claimant's cost, or as the case may be) remaining unpaid.

These are therefore to require and order you forthwith to make and levy the said sum of N

.....

..... together with the costs of this writ and the cost of executing it, by entering upon and attaching the immovable property of the defendant (or claimant) 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 55
[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, initialled 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 initialled 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 initialled 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.

FORM 55—*continued*

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 56

[Order 56, Rule 8 (1).]

Fees Payable at the High Court

1. For the recovery of a specified sum:	N : k
(a) not exceeding N100,000	1,000.00
(b) exceeding N100,000 but not above N500,000	2,000.00
(c) exceeding N500,000 but not above N1,000,000	5,000.00
(d) exceeding N1,000,000 per N100,000 or part thereof	250.00
(e) Maximum fee	20,000.00
(f) Claim in foreign currency shall be converted into the local currency and assessed as above.	

(On amendment of claim: where the sum claimed is increased, assessment shall be on the difference between the initial sum claimed and the amended sum)

2. For the recovery of an unspecified sum the fee payable is the same as the maximum payable per relief. For set off or counter-claim: the same as payable under Item 1.

3. For an account to be taken and payment of the sum found due—

(a) Initial fee	1,000.00
(b) Second fee (payable before setting down for judgment) per N100 or part thereof found due in excess of N200	1,000.00
(c) Maximum fee	3,500.00
4. Originating summons—	
(a) Originating summons	1,000.00
(b) Oaths	50.00
(c) Filing	100.00
(d) Double sealing	200.00
(e) Each exhibit	20.00
(f) Service as per distance but not less than	50.00
5. Motion on Notice	
(a) Motion on Notice	200.00
(b) Oaths	50.00
(c) Filing	50.00
(d) Sealing	100.00

FORM 56—*continued*

	N	k
(e) Each exhibit	20.00	
(f) Service as per distance but not less than		50.00
6. Motion Ex parte		
(a) Motion Ex parte	200.00	
(b) Oaths	50.00	
(c) Filing	50.00	
(d) Sealing	100.00	
(e) Each exhibit	20.00	
(f) Service as per distance but not less than N50.00		
7. For any other relief or assistance not specially provided for		100.00
8. For possession of property, as between landlord and tenant		
(a) Where the rent value does not exceed N100,000		1,000.00
(b) Where the rent value exceeds N100,000 per N10,000 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.		1,000.00
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 or part thereof 2,000.00

(b) Exceeding N500,000, per N500,000 or part thereof up to N5,000,000 1,500.00

Maximum fee 20,000.00

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 N500,00 1,000.00

(b) Where it exceeds N500,000: per N1000,000 or part 200.00

(c) Where no gross value can be specified 7,000.00

Maximum fee 10,000.00

MATRIMONIAL CAUSES

12. For any petition other than alimony 1,000.00

13. For the first citation 200.00

14. For any subsequent citation 200.00

15. For a petition for alimony 200.00

16. For the Registrar's certificate 500.00

17. For any application for decree absolute 500.00

18. For reducing a petition and affidavit to writing 200.00

19. For setting down the case for hearing 500.00

PROBATE AND ADMINISTRATION

20. On drawing up an administration decree 100.00

21. On drawing up order on further consideration where the property administered exceeds N500.00 200.00

FORM 56—continued

22. On filing application for probate or administration 200.00

23. On filing oath of executor or administration 50.00

24. On taking justification or sureties for each surety 50.00

25. On filing administration bond 100.00

26. On entering a caveat 500.00

27. On every warning to caveat 50.00

28. On probate or letters of or order for administration: Where the value of the property affected by the grant of order—

(a) does not exceed N500,000 500.00

(b)	exceeds N500,000 but not N1,000,000	700.00
(c)	exceeds N1,000,000 for each additional N500,000 or part thereof	200.00
29.	For re-sealing a grant as to bring into force in Kwara State a fee reckoned under item 26 on the value of the property in Nigeria affected by the re-sealing	1,000.00
30.	On inventory taken by a court official	1,000.00
31.	On application to search index to grants or wills or to inspect a grant or will	200.00
32.	On deposit of Will for safe custody	1,000.00
33.	On application for a writ of Habeas corpus	200.00
34.	On filing any other application—	
(a)	if on notice	200.00
(b)	if ex parte	200.00
(c)	if accompanied by other papers same as payable under item 4, 5, & 6.	
35.	On filing an affidavit	100.00
36.	On filing a security bond	200.00
37.	On filing any other paper	100.00
38.	On justification of sureties: for each surety	200.00
39.	For the issue of warrant to detain an absconding defendant	500.00
40.	For issue of a Writ of Habeas Corpus	200.00
41.	For the drawing up of any order or judgment	200.00
42.	For an inquiry by a court official where so ordered for each sitting	200.00
43.	For an account taken by a court official where so ordered: per N50,000 or part thereof found to have been received	50.00
44.	For taking down a person's statement where so ordered as the court may direct but not exceeding	100.00
45.	For searching the archives: for each period of six months or part thereof	200.00
46.	For drawing up a bill of costs where so directed;	50.00
47.	For taking costs where so ordered; N100.00 or part thereof	10.00
48.	For preparing a copy where authorised:	50.00
49.	For every subpoena	100.00
50.	On commission to take evidence	1,000.00
51.	On warrant for prisoner to give evidence	200.00
52.	For attesting the execution or signature of an instrument (other than instrument	

regarding payment of pension by Government) not otherwise provided for
100.00

53. For sealing any document not in proceedings 100.00

FORM 56—continued

54. For certifying a copy as a true copy 100.00

55. For certifying a record of proceedings 100.00

56. For payment into court (except when ordered by the court or proceeds of execution) 200.00

57. On appointment of Commissioner to administer oaths and take declaration (not being a Government official) 5,000.00

58. For sealing a letter of request 1,000.00

59. On transfer of foreign judgment 1,000.00

60. For certificate of service of foreign process (where not disallowed by convention) 200.00

TRANSFER OF CASES

61. On application to transfer a case from one court to another 1,000.00

APPEALS

62. On filing notice of appeal 200.00

ALLOWANCES TO WITNESSES

63. Allowances to witnesses: as per distance. (Allowance of witness shall be borne by the party on whose behalf the witness gives evidence).

NOTARIES FEES OF OFFICE

Notary

1.	Noting protest on bill or note	200.00
2.	Extending protest on bills of exchange or	200.00
3.	Promissory notes	200.00
4.	Attestation to any document	250.00

TRANSLATIONS

5.	For every folio of 72 words	50.00
6.	Attestation to translation	200.00

FEES FOR REGISTRATION OF JUDGMENTS

7.	Registration of certificate of a judgment of High Court	500.00
8.	Registration of certificate of a judgment of any other court	500.00

REGISTRATION OF A CAVEAT

9. For filing a caveat
500.00