



HIGH COURT OF OYO STATE (CIVIL PROCEDURE) RULES, 2022



OYO STATE JUDICIARY

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HIGH COURT OF

OYO STATE

(CIVIL PROCEDURE)

RULES, 2022

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OYO STATE JUDICIARY



By

Oyo State Government Printing Press
Oyo State Government Secretariat
Agodi, Ibadan
Phone number: +234(0)8088636630

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**HIGH COURT OF OYO STATE
(CIVIL PROCEDURE) RULES, 2022**

In exercise of the powers conferred on me by Section 274 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and all other powers enabling me in that behalf, I, **MUNTA LADIPO ABIMBOLA**, the Chief Judge of Oyo State, hereby make the following Rules:

Revocation

The Oyo State High Court (Civil Procedure) Rules 2010 is hereby revoked.

Commencement

23rd day of December, 2022.

ORDER 1

CITATION, APPLICATION AND INTERPRETATION

1. These Rules shall be cited as the High Court of Oyo State (Civil Procedure) Rules, 2022. *Citation*
2. These Rules shall apply to all civil proceedings in the High Court of Oyo State including all part heard causes and matters in respect of steps to be further taken in such causes and matters. *Application*
3. Application of these Rules shall be directed towards the achievement of just, efficient and speedy dispensation of justice. *Objective*
4. The High Court of Oyo State (Civil Procedure) Rules, 2010 shall cease to apply to all civil proceedings in the High Court of Oyo State including all part heard causes and matters from the commencement of these Rules. *Cessation of 2010 Rules*
5. Where no adequate provision is made in these Rules concerning any matter, the Court shall adopt such procedure as will in its view do substantial justice between the parties concerned. *Where no rule exists*
6. These Rules shall be interpreted in accordance with the Interpretation Law, Cap. 65, Laws of Oyo State of Nigeria, 2000 or any amendment of re-enactment thereof. *Interpretation*

7. Where in these Rules, depositions, affidavits and documents are required to be made, they shall be made in English language, provided that where the deponent does not understand English language; such depositions, affidavits and documents shall contain illiterate *jurat*.
8. In the construction of these Rules, unless there is anything in the subject or context contrary thereto, the several words hereinafter mentioned or referred to shall have or include the following meanings:

"ADR" means "Alternative Dispute Resolution at the Oyo State Multi-Door Court House";

"ARN" means "Authentication Registration Number";

"Claimant" includes a Claimant in a Counterclaim;

"Court" means the High Court of Oyo State;

"Court Process" or "Process" includes Writ of Summons, Originating Summons, Originating Process, Notices, Petitions, Pleadings, Orders, Motions, Summons, Warrants and all documents or Written communication for which service is required;

"Decision" means any determination of the Court and includes Judgment, Ruling, Decree, Order, Directive, Conviction, Sentence or Recommendation;

"Defendant" includes a Defendant to a Counterclaim;

"E-Filing" means filing of a cause or matter electronically in accordance with these Rules;

"E-Filer" means a party or his counsel who chooses to file a Court process or document electronically;

"E F R" means Electronic Filing Registrar in charge of the E-Filing Centre of the High Court of Oyo State;

"E-Service" means service of duly filed Court processes electronically, in accordance with these Rules;

"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;

"Hard Copy" means the physical copy of the Court process to be filed or already filed which can be scanned and reduced to "soft copy";

"Law" means the High Court Law, Cap. 55, Laws of Oyo State, 2000 or any amendment or re-enactment thereof;

"Legal Practitioner" means a legal practitioner or counsel within the meaning of the Legal Practitioners' Act;

"Lower Court" means the Court, whose judgment is appealed against, and includes a Magistrate's Court but does not include an arbitrator, a referee or an auditor;

"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;

"OYSMDC" means the Oyo State Multi-Door Courthouse;

"Persons Under Legal Disability" means persons who lack capacity to institute or defend any proceedings by reason of age, insanity, unsoundness of mind or otherwise;

"Probate Action" means an action for the grant of probate of 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, and all other incidental matters;

"Process Server" includes the Sheriff, Deputy Sheriff, Bailiff and Private process servers appointed and registered as such by the Chief Judge;

"Referee" means any person who has been appointed by the Court to determine any matter or question or issue or fact in a suit;

"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 Oyo State in the appropriate Judicial Division;

"Soft Copy" includes a compact disc or a flash drive or any other device recognized as such;

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

ORDER 2**PLACE OF INSTITUTING AND TRIAL OF SUITS**

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

(1) All suits relating to land or any mortgage or charge on or any interest in land, or any inquiry or damage to land and actions relating to personal property distrained or seized for any cause, shall be commenced and determined in the Judicial Division in which the land is situated, the distraint or seizure took place. (2) All actions for recovery of penalties, forfeitures, and all actions against public officers shall be commenced and tried in the Judicial Division in which the cause of action arose. (3) All suits for the specific performance, or upon the breach of any contract, may be commenced and determined in the Judicial Division in which such contract ought to have been performed or in which the Defendant resides or carries on business. (4) All other suits may be commenced and determined in the Judicial Division in which the Defendant resides or carries on business.	<i>Place of Trial</i> <i>Suits relating to land and property distrained or seized.</i> <i>Suits for recovery of penalties, forfeitures and against public officers.</i> <i>Suits upon contract</i> <i>Other Suits</i>
--	---
2. Without prejudice to the provisions of Sub Rule (4) of Rule 1, where there are several Defendants who reside or carry on business in different Judicial Divisions, the suit may be commenced in any one of those Judicial Divisions subject to any order or direction a Judge may make or give as to the most convenient arrangement for trial of the suit.

	<i>Place of Trial for Several Defendants</i>
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3. If any suit is commenced in the wrong Judicial Division, it may be tried in that Division unless the Chief Judge otherwise directs.

	<i>Suits commenced in wrong Judicial Division</i>
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ORDER 3

PRE-ACTION PROTOCOL

Pre-Action Protocols explain the conduct and sets out the steps required of parties prior to the commencement of proceedings to which this Civil Procedure Rules apply.

Purpose of Pre-Action Protocols

The Pre-Action Protocol shall apply to actions listed below:

Application

- (a) Actions bordering on Breach of Contract
- (b) Bankers/Customers Disputes
- (c) Mortgages
- (d) Recovery of Debts
- (e) Defamation
- (f) Professional Negligence
- (g) Negligence Generally
- (h) Landlord and Tenant Matters
- (i) Land Matters

Prior to the commencement of proceedings, the Court will expect parties to have engaged in pre-trial correspondence sufficient to:

Steps expected of parties

- (a) understand each other's position;
- (b) make decisions about how to proceed;
- (c) try to settle the issues
- (d) consider a form of Alternative Dispute Resolution (ADR) to assist with settlement;
- (e) support the efficient management of those proceedings;
- (f) reduce the costs of and delay in resolving the dispute.

Any person who wishes to make a claim ("Claimant") against another must comply with the following before commencing proceedings in Court:

*Pre-Action Protocol Requirements
Memorandum of claim*

- a) Prepare a memorandum of claim setting out concise details of the claim(s), including the basis upon which the claim(s) is made, a summary of the facts, reliefs and remedies sought, and if monetary, how the amount is calculated, and shall be accompanied by exhibits in support of the claim(s) as well as a

proposal for the settlement of the dispute through the use of Alternative Dispute Resolution ("ADR") mechanisms including but not limited to Negotiation, Mediation, Conciliation or Arbitration; and

- (b) Deliver the memorandum of claim and accompanying documents to the party against whom the claim(s) is made.

5. The party against whom a claim is made ("Respondent") shall within seven (7) days of service of the memorandum of claim and its accompanying documents, serve the party making the claim his response to the memorandum of claim as well as his response to the Claimant's proposal for settlement. *Respondent's Response*
6. Where the Respondent fails to file his Response to the Memorandum of Claim within seven (7) days as stipulated above, the Claimant shall send a reminder to the Respondent giving the Respondent an additional seven (7) days to respond, failing which, the Claimant should file an affidavit of the Respondent's failure to participate in settlement talks. *Duty upon failure to file response*
7. Upon receipt of the Respondent's response to his memorandum of claim, the Claimant, being able to take an objective view of dispute and being aware of the Respondent's interests, should attempt to have the dispute settled out of Court. *Attempt at Settlement*
8. Parties are encouraged to exchange further correspondence to delineate the issues in the said dispute and make genuine attempt to resolve the dispute including through convening meetings between the parties. *Further Correspondence*
9. Where parties remain unable to settle their dispute or have agreed to proceed to litigation after genuine attempts at a resolution, the claiming party is expected to compile and file alongside its originating processes, a Pre-Action protocol bundle containing: *The bundle*
 - (a) A statement of compliance with Pre-Action protocol (as in Pre-Action protocol Form 01);
 - (b) the memorandum of claim;
 - (c) the response to the memorandum of claim;
 - (d) the Claiming party's response to the response to the memorandum of claim;

- (e) any further correspondence or evidence of attempts at settlement;
 - (f) counsel's statement on oath stating reasons for his/her insistence on pursuing a Court action rather than settlement out of Court.
 - (g) list of issues for determination
10. The Pre-Action Protocol Bundle and the Originating Processes and their accompanying documents shall be bound separately. *Binding of processes*
 11. Where the responding party fails, refuse or neglects to participate in the whole or any part of the Pre-Action protocol process, the claiming party shall file an affidavit of the Defendant's non-compliance identifying the Defendant's non-compliance and a proposed list of issues for determination. *Steps to be taken after failure of response*
 12. Where the Claiming party files the action through counsel, counsel shall, in accordance with their duty under Rule 15 of the Rules of Professional Conduct or any subsequent equivalent revision, advise the party as to its compliance with the protocol requirements in line with the objectives stated in Rule 3 of this Order and shall depose to the summary statement on oath for reasons as to litigation including a statement that the claiming party has been so advised. *Duty of Counsel*
 13. Where in the interest of justice or to prevent irreparable damage or serious mischief or in cases of extreme urgency and there is a need for interim preservatory or pre-emptive remedies to be ordered by the Court, the affected party shall file either the memorandum of claim with its accompanying documents and the memorandum for settlement, in the case of a Claimant or the response to the memorandum of claim with its accompanying documents, in the case of a Respondent, together with an *Ex Parte* Application for the pre-emptive remedy sought supported by an affidavit and a written address in the Registry. *Pre-Emptive Remedies*
 14. After the remedy sought is either granted or refused by the Court, the Judge shall order the parties to continue with full compliance of the Protocol. *Order to complete protocol*
 15. Where an order of injunction is granted *Ex Parte* and parties are unable to settle before the order abates, the Judge may extend its life span until compliance with the Protocol is complete. *Extension of Life Span of order*

16. When a party has not complied with the provisions of this protocol; or not acted within a time limit set out in a relevant protocol; or unreasonably refused to use a form of ADR, or failed to respond at all to an invitation to do so; or has failed to comply with the order or directive of a Judge or the Chief Judge, the following sanctions may apply:

*Consequence
of Non-
Compliance*

- (a) Originating processes with supporting documents may not be accepted for filing at the Registry.
- (b) Where a Respondent fails to file a Response as required by this Protocol, unreasonably refuses to or fails to respond at all to an invitation to ADR, the Claimant may proceed to litigation by filing the required Originating Process with its supporting documents as well as the Pre-Action Protocol Bundle and obtain Judgment against the Respondent.
- (c) Failure to comply with the order of the Judge will amount to contempt of Court.
- (d) Where the parties fail to comply with the time stipulations in this Pre-Action protocol or any Claim-Specific Pre-Action Protocol, it shall not affect the validity of the documents so filed but a daily default fee of ₦500 (Five Hundred Naira Only) shall accrue as costs in favour of the counter-party, the sum of which shall be deducted or added to money reliefs awarded in the final Judgment.

PROVIDED THAT a counter-party, may in the interest of settlement, waive the applicability of these default fees.

- (e) Where a party unreasonably or disproportionately fails or refuses to comply with the settlement procedure under this Pre-Action Protocol or the directive of the Court referring parties to a form of ADR or to the Oyo State Multidoor Courthouse but insists on proceeding to trial, the Court shall impose costs of a minimum ₦100,000 (One Hundred Thousand Naira Only) which shall be deducted or added to money reliefs awarded in the final Judgment or alternatively shall apply the provisions of Order 59 Rule 2 of the High Court Civil Procedure Rules.

17. Where the Court is satisfied that the parties have complied with the Pre-Action Protocol requirements under this Rules and that parties have delineated the issues involved, the Court may make such orders for the expeditious disposal of the case including dispensing

*Compliance
with Pre-
Action
Protocol*

with the need for Case Management Conference and proceeding immediately to hear the dispute.

18. The Chief Judge shall by Practice Directions issue Claim-Specific Protocols, which will apply collaboratively with this Order and take precedence in the event of conflict, particularly, as to the form or content of Pre-Action correspondence(s), stipulated timeframes and other prescribed Pre-Action steps. *Claim-Specific Protocols*

ORDER 4

FORM AND COMMENCEMENT OF ACTION

1. Subject to the provisions of these rules or any applicable law requiring any proceedings to be begun otherwise than by Writ, a Writ of Summons shall be the form of commencing all proceedings where;
Proceedings which must be begun by Writ
 - (a) a Claimant claims:
 - (i) any relief or remedy for any civil wrong; or
 - (ii) damages for breach of duty, whether contractual, statutory or otherwise; or
 - (iii) damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or property.
 - (b) the claim is based on or includes an allegation of fraud; or
 - (c) an interested person claims a declaration.
2. All civil proceedings commenced by Writ of Summons shall be accompanied by;
Mode of beginning civil proceedings
 - (a) statement of claim;
 - (b) list of witnesses to be called at the trial;
 - (c) written statements on oath of the witnesses; and
 - (d) list and copies of every document to be relied on at the trial.
3. Where a Claimant fails to comply with Rule 2 above, his Originating Process shall not be accepted for filing by the Registry.
Effect of failure to comply with Rule 2
4. Except in the cases in which any different Forms are provided in these Rules, the Writ of Summons shall be as in **Form 1**, with such modifications or variations as circumstances may require.
Form of Writ: Civil Form 1
5. A Writ of Summons to be served out of Nigeria shall be as in **Form 2** with such modifications or variations as circumstances may require.
Forms of Writ for service out of Nigeria: Civil Form 2
6. Any person claiming to be interested or claiming any legal or equitable right 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.
Proceedings to be commenced by Originating Summons

7. 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. *Where right depends on construction of enactment*
8. 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 order(s) as he deems fit. *Discretion of the Judge*
9. An Originating Summons shall be as in Form 3, 4 or 5 to these Rules, 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 filed, shall be deemed to be issued. *Forms of Originating Summons, Form 3, 4 or 5*
10. An Originating Summons shall be accompanied by:
 - (a) an affidavit setting out the facts relied upon;
 - (b) all the exhibits to be relied upon;
 - (c) a Written Address in support of the application*Processes to accompany originating summons*
11. Where an applicant fails to comply with Rules 10 (a - c) above, his Originating Summons shall not be accepted for filing at the Registry. *Penalty for non-compliance*
12. The person filing the Originating Summons shall leave at the Registry sufficient number of copies thereof together with the documents in Rule 10 above for service on the Respondent(s). *Copies to be filed*
13. Subject to the provisions of the Sheriffs and Civil Processes Act, a Writ of Summons or other Originating Process issued by the Court for service in Nigeria outside Oyo State shall be endorsed by the Registrar of the Court with the following notice:

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

Service outside Oyo State
14. (1) The Registrar shall indicate the date and time of presentation on every Originating Process presented to him for filing and arrange for service of the process. *Filing of Originating Process to be determined by date*

(2) An Originating Process shall not be altered after it is sealed except upon application to a Judge
15. All Originating Processes filed in the Registry or Electronically shall be screened to determine suitability for ADR by the Chief Judge and may be referred to the Oyo State Multi-Door Courthouse or any appropriate ADR Institution or Practitioner as he may deem appropriate in the circumstance. *Screening for ADR*

ORDER 5

INDORSEMENT OF CLAIM AND OF ADDRESS

1. Every Originating Process shall contain the claim, the relief or remedy sought and the full names, address telephone number(s) or email (if any) of the Claimant. *Indorsement*
2. 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. *Indorsement to show Representative Capacity*
3. 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. *Probate Actions*
4. (1) Where the claim is for debt or liquidated demand only, the Originating Process shall state the amount claimed for debt or in respect of such demand with costs and shall further state that the Defendant may pay the amount with costs to the Claimant's Legal Practitioner within the time allowed for appearance and upon such payment, the proceedings shall terminate. *Indorsement where the claim is liquidated*
 (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. In all cases where a Claimant in the first instance desires to have an account taken, the Originating Process shall so state. *Ordinary account*
6. (1) A Claimant suing in person shall state on the Originating Process his residential or business address, his address for service within jurisdiction and shall include his telephone number(s) and E-mail address. If he lives and carries on business outside jurisdiction, he shall state an address where he would be served within jurisdiction as his address for service. *Indorsement address by Claimant or Legal Practitioner*
 (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 and shall include his telephone number(s) and E-mail address. If the Legal Practitioner is based outside jurisdiction, he shall state in addition a chambers' address within jurisdiction as his address for service and shall include his telephone number(s) and E-mail address.
7. Where an Originating Process is to be served on a Defendant outside jurisdiction, the process shall state the address as required in Rule 6. *Indorsement of address*
8. If the Originating Process does not state an address for service, the process may be set aside by a Judge on the application of the Defendant. *Originating Process with an address, with fictitious address*

ORDER 6

EFFECT OF NON-COMPLIANCE

1. (1) Where in beginning or purporting to begin any action, there has by reason of anything done or left undone, been a failure to comply with the requirements of Order 4 Rule 2 or Order 4 Rule 10 of these Rules, the failure shall nullify the action. *Non-compliance with Rules*
(2) Where at any stage in the course of or in connection with any proceedings there has by reason of anything done or left undone been a failure to comply with the requirements as to time, place, manner, or form, the failure shall be treated as an irregularity and may not nullify such step taken in the proceedings. The Judge may give any direction as he thinks fit to regularize such steps.
(3) The Judge shall not wholly set aside any proceedings or the Writ or other Originating Process by which they were begun on the ground that the proceedings were required by any of these rules to be begun by an Originating Process other than the one employed.
2. (1) An Application to set aside for irregularity any step taken in the course of any proceedings, may be allowed where it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity. *Application to set aside for irregularity*
(2) An Application made under this Rule to set aside for irregularity may be brought by Motion on Notice and the grounds of objection shall be stated in the Motion on Notice.

ORDER 7

FILING AND ISSUE OF ORIGINATING PROCESS

1. Originating Process shall be prepared by a Claimant or his Legal Practitioner and shall be clearly printed on Opaque A4 paper of good quality. *Preparing Originating Process*
2. (1) The Registrar shall seal every Originating Process whereupon it shall be deemed to be issued. *Sealing of Originating Process*
 - (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, one copy for endorsement of service on each Defendant and a copy for the Registry Correspondence File for the use of the Court when necessary.
 - (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. (1) 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. *Steps to be taken after sealing*
 - (2) 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. The Registrar shall promptly arrange for personal service on each Defendant of a copy of the Originating Process and accompanying documents duly certified as provided by Rule 2 (3) of this Order. *Copies to be served*
5. 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. *Originating Process with Affidavit for Probate Action*
6. The lifespan of every Originating Process shall be 6 months. *Lifespan of Originating Process*
7. (1) If a Judge is satisfied that it has proved impossible to serve an Originating Process on any Defendant, its life span and a Claimant applies before its expiration for renewal of the process, the Judge may renew the original or concurrent process for 3 months from the date of such renewal. *Renewal of Originating Process*
 - (2) A renewed Originating Process shall be in **Form 6** with such modifications or variations as circumstances may require.

8. (1) A Judge 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 twelve (12) months. *Indorsement of renewal*
(2) The Registrar shall state the fact, date, and duration of renewal on every renewed Originating Process.
9. Where an Originating Process or any other Process is lost after issue, a Judge, upon being satisfied of the loss, may call for the Registry Correspondence File and may order that the copy of the relevant Process in the Registry Correspondence File be filed and sealed in place of the lost process. *Loss of Originating Process and any other Process*
10. A Claimant may at the issuance of an Originating Process or at any time during its lifespan, cause to be issued one or more concurrent Originating Process(es) each to bear the same date as the initial Process marked 'CONCURRENT' and have stated on it the date of issue. *Concurrent Originating Process*
11. An Originating Process for service within jurisdiction may be issued and marked as a concurrent Originating Process with one for service out of jurisdiction and an Originating Process for service out of the jurisdiction may be issued and marked as a concurrent Originating Process with one for service within jurisdiction. *Concurrent Originating Process for service within and out of jurisdiction*

ORDER 8

ELECTRONIC FILING OF PROCESS AND DOCUMENT

1. These Rules shall govern electronic filing ("E-filing") of all processes or documents connected with or relating to any matter before the Court. *Scope of Rules*
2. A party or his counsel may E-file any process or document that may be filed with the Court in paper form. *Documents that may be E-filed*
3. A party or party's counsel desiring to E-file a process shall first register as an E-filer with the EFR in order to E-file with the Court. *E-filing to EFR through Court portal*
4. The E-filing system shall run parallel with the existing filing procedure in the Rules of the Court. *Parallel operation with the present service*
5. Parties shall determine the appropriate method of filing to adopt at any stage of the proceedings. *Parties to determine method of filing*
6. (1) Any process or document to be E-filed must be formatted as follows: *Format of E- filed document*
 - (a) Typed or printed on 8.27 x 11.29 A4 white opaque paper;
 - (b) Formatted in text-searchable portable document format (PDF) with the content appropriately rotated.
- (2) Any process or document that is not compatible with the prescribed format stated in sub-rules (a) and (b) of this Rule will be automatically rejected by the portal. The E-filer must confirm that each document is compatible with this format before it is E-filed. *Non-conformity with prescribed format*
- (3) Exhibits and appendices may be saved directly where such documents are in soft copy or scanned where they are printed on hard paper copy material and saved into one specifically named computer file with the authentication number of the E-filer and suit number and other relevant details of the matter. *Attachment of exhibits and appendices*
7. (1) A party or counsel E-filing a process shall do so to the EFR through the portal of the Court, provided: *E-filing through Court portal to EFR*
 - (a) that no alternative electronic filing or transmission system may be offered by Courts or Registrars;
 - (b) that parties or their counsel shall not file documents through any alternative document filing transmission system including tele-copier or fax.
- (2) (a) The EFR shall issue the registered E-filer with an Authentication Registration Number. *EFR to issue Authentication Registration Number (ARN)*

(b) The ARN shall be used by the E-filer in subsequent E-filing of any process or E-communication or correspondence with the Court on the matter before Court.

Use of ARN

(c) An E-filer must also provide designated E-mail address(es) to the EFR.

Provision of E-mail Address.

(3) No process or document E-filed without the ARN will be accepted by the portal of the Court or transmitted to the EFR or to the Registry of the Court for further processing.

Rejection of process or document without ARN

(4) Any process or document E-filed with the ARN may be sent to the portal of the Court and the EFR will forward the document to the Registry of the Court.

Sending of documents or processes with ARN

(5) Where a process is properly E-filed and accepted by the portal, the portal of the Court will:

Automatic receipt of E-filed process or document

(a) generate an E-mail acknowledging receipt of the E-filing;

(b) send the automatically generated E-mail to the designated E-mail address of the E-filer.

(6) Thereafter the E-filer will also receive a confirmation of the Registrar's acceptance of the filing, and a file-stamped copy of the document.

Confirmation of Registrar's acceptance of E-filed process

An E-filer may E-file more than one process or document in the same matter by a single transmission to the portal of the Court to the EFR. Each E-filed document will be individually treated and may be accepted or rejected by the Registrar.

E-filing of multiple documents

(1) Parties and Counsel's electronic signature constitutes the signature on the document in compliance with the signature requirements in these Rules, and authorizes payment of all filing and service fees associated with the E-filing.

Electronic signature

(2) If a document must be notarized, sworn to, or made under oath, the E-filer may electronically notarize the document or must scan the page with the notarized signature(s) or oaths and must include the page with the scanned notarized signature(s) or oaths with the document.

Notarized documents

(3) If a document requires the signature of an opposing party(ies), the E-filer must scan the page with the signature(s) of the opposing party(ies) and must include the page with the scanned signature(s) with the document.

Signatures of opposing party(ies)

(4) When an E-filer E-files a scanned image of a notarized signature or oath, pursuant to sub-rule (3) of this rule, the E-filer must retain the hard copy of the documents from which the scanned image was made until the case in which the document was

Retention of hard copies of documents carrying signatures

filed is resolved. If the hard copy of the documents is in another party's possession, that party must retain the hard copy of the document until the case in which the document was filed is concluded.

10. An E-filer must include designated E-mail address(es) for E-service on all E-filings. An E-filer must notify the Registrar and the EFR of any change of the E-mail address within one business day of the change. The Registrar of the Court may send notices or other communications about a case to the designated E-mail address of the party to be served or the party's duly authorized agent or counsel on record in lieu of physical service of the paper documents. *Designated E-mail address(es)*
 11. An E-filed document may contain hyperlinks to another part of the same document or process on the same matter or party in the same matter, an attachment or exhibit contained within the same computer file. *Hyperlinking of document or process*
 12. An E-filed process or document must not contain a virus or malware. E-filed processes or documents suspected to contain a virus or malware will be automatically rejected by the E-filing portal of the Court. The E-filing of a document constitutes a certification by the E-filer that the document has been checked for viruses and malware. *Process or document must be malware or virus free*
 13. Where a process or document has been sent and acknowledged by the EFR, the E-filing is deemed good and proper, and to have been delivered to the Registrar. *Good and Proper E filing*
 14. An E-filed process or document may be deemed to have been timeously filed if it is E-filed at any time on or before 6pm (excluding Sundays and Public holidays) on the date on which the document is automatically stamped, received and expected to comply with an order or the relevant Rules of the Court. *Timelines of E filing of process or document*
- Provided that a transmission report by the E-filer to the EFR shall be *prima facie* evidence of the date and time of transmission.
15. (1) Where an E-filed process or document is considered untimely arising from a technical failure or a system outage on the part of the E-filing portal of the Court, any process or document E-filed during the period of outage or failure may be deemed filed and the E-filer may seek appropriate relief from the Court. *Untimely E-filing due to technical failure or system outage*
 - (2) Where the system outage or technical failure prevents the E-filer from complying with an order, ruling, directive or any Rule of the Court, the E-filer may by oral application during the Court proceedings seek for appropriate relief from the Court. *Party or Counsel to seek relief for non-compliance arising from technical or system failure*
 - (3) Any technical failure or system outage that impedes a party from complying with E-filing procedures or an order, ruling or relevant Rules of the Court cannot be a basis for disposing of any case. *Matter not to be disposed of for failure of E-filing arising from technical or system failure*

16. (1) Except as otherwise provided on the E-filing platform, the Registrar of the Court must not later than the first business day after receiving a document transmitted to him by the EFR, indicate to the E-filer whether the E-filer's process or document will be accepted for filing. *Time limit for acceptance or rejection of E-filing*
 - (2) Where the process or document complies with the order or relevant Rule(s) of the Court or it is not misdirected, the Registrar must accept the document for filing. *Acceptance of document where process is in conformity with rules, etc. of the Court*
 - (3) If the Registrar fails to accept or reject a document within the time allowed, the document is deemed to have been properly filed and accepted. *Failure to accept or reject document within time allowed*
-
17. (1) Where a process or document is accepted for filing, the Registrar will note the date and time of filing which, with the exception of sub-rule 2 of this Rule, must be the date and time that the E-filer transmitted the document to the EFR. *Date and Time of transmission of document*
 - (2) Where the date and time a process is filed has been appropriately noted in accordance with the provisions of sub-rule (1) of this rule, the Registrar will send to the EFR an electronic confirmation which will include an electronically "file-marked" copy of the front page of the document showing the date and time, the Registrar considers the process or document to have been filed. *Transmission of confirmation of filing of process or document*
 - (3) The EFR may, on that same day, electronically transmit to the E-filer the "electronic confirmation" that the document has been accepted or rejected for filing by the Registrar. *Transmission of electronic confirmation of acceptance or rejection*
 - (4) Where a process or document is not accepted for filing, the Registrar may by electronic transmission inform the EFR of his action, with the reason for such rejection, on the same day the decision on rejection of E-filing is taken. *Communication of rejection of E-filing to Registrar*
 - (5) The Registrar must, on that same day of rejecting the E-filed process or document, electronically transmit to the E-filer by a short service message (SMS) to the phone of the E-filer an "alert" informing him that the process or document was not accepted with the reason(s) for the rejection. *Communication of rejection of E-filing to E-filer by Registrar*
 - (6) Where a process or document has been duly filed and accepted, the Registrar shall transmit to the E-filer the filing fees for payment in accordance with the E-payment instruction on the E-filing portal. *Payment of filing fees*
-
- (1) When a process or document has been accepted by the Registrar as duly E-filed, *Transmission of E-filed document to the Chief Judge for Assignment*

the Registrar shall transmit same to the box of the Chief Judge for Assignment of the matter in accordance with these Rules.

- (2) Except as otherwise directed by the Chief Judge, any process or document filed electronically may not be transmitted to any Judge until it has been properly Assigned by the Chief Judge.

E-filed process or document not to be transmitted to a Judge until Assigned by the Chief Judge

19. Where the Chief Judge has delegated the Assignment of matters in accordance with these Rules to a Judge, any matter E-filed in accordance with the provisions of these Rules, shall be transmitted to the Judge so delegated for Assignment, except as otherwise directed by the Chief Judge.

Transmission of E-filed process to Judge of the Court for Assignment

20. Where a matter has been duly E-filed, and Assigned by the Chief Judge, the Registrar shall transmit to the E-filer the date and time of commencement of proceedings on the matter.

Notification of date and time of Proceedings in Assigned matter to E-filer

21. Where a matter is already before the Court and by an order of the Judge presiding over the matter, any document or application is supposed to be produced by any of the parties in the matter, any document E-filed in compliance with the order of the Judge on such matter shall be electronically transmitted to the Judge of the Court who gave the order.

E-Filing in compliance with Order of the Court

22. The Registrar may scan any paper document and designate the scanned version as the official Court record.

Official Record

23. The Registrar must provide to the Chief Judge or a Judge of the Court electronic access to E-filed documents within twenty-four (24) hours of the Registrar's acceptance of the documents, and the Chief Judge or a Judge of the Court or a designated staff of the Chief Judge or the Judge's Chambers may access such documents electronically or print such documents as necessary.

Access of the Chief Judge or Judge of the Court to E-filed process or documents

ORDER 9

ESTABLISHMENT OF COMMUNICATION AND E-FILING REGISTRY

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| 1. | The Chief Judge may issue a directive to establish a Communication and Service Centre in order to achieve the objectives of these Rules, which may include designated electronic filing sites for online filing of process(es) and documents. | <i>Powers of the Chief Judge</i> |
| 2. | There shall be an E-filing Centre for electronic filing and payment of filing fees for processes and documents relating to or connected with a matter before the Court. | <i>E-filing Centre</i> |
| 3. | There shall be officers of the Court designated as Electronic Filing Registrars (EFRs) at the E-Filing Centre. They shall be responsible to the Deputy Chief Registrar (Litigation). | <i>Electronic Filing Registrar (EFR)</i> |
| 4. | The EFR shall be responsible for the management of processes and documents transmitted to the electronic filing portal of the Court. | <i>Responsibilities of EFR</i> |

ORDER 10

SERVICE OF PROCESS FILED MANUALLY

1. (1) Service of Originating Process shall be made by a Sheriff, Deputy Sheriff, Bailiff, Registered Process Server or other officer of the Court. *Persons to be Served*
(2) Where a party is represented by a Legal Practitioner, service of Court process of which personal service is not required, may be made on such Legal Practitioner or on a person under his control.
2. The Process Server shall effect service of an Originating Process on a party by delivering a copy of the process duly certified as prescribed by Order 7 Rule 4 personally to the party to be served. *Service of Originating Process: How Effectuated*
3. No personal service of an Originating Process shall be required where the Defendant has authorized his Legal Practitioner in Writing to accept service and such Legal Practitioner enters appearance: Provided that such Written authority shall be attached to the Memorandum of Appearance filed by such Legal Practitioner. *When Originating Process need be served personally*
4. All processes 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 of a party. *Mode of service when not personal*
5. (1) Where personal service of an Originating Process is required by these Rules or in any every other case and a Judge is satisfied that prompt personal service cannot be effected, the Judge may upon application by the Claimant make such order for substituted service as may seem just including service by electronic means, post or pasting at the Defendant's last known address or such other terms as the Court deems just. *Substituted service*
(2) Every application to the Judge 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. 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. *Service on Persons under legal disability*
7. Where an inmate or detainee is a Defendant, service on the Head or other Officer in charge of the station, detention facility or Correctional Centre where the Defendant is detained, or on an Officer of the Agency incharge of the Station, detention facility or Correctional Centre shall be deemed good and sufficient personal service on the Defendant. *Service on Inmate or Detainee*
8. (1) Where persons are sued as partners in the name of their firm, the Originating Process shall be served upon any one or more of the partners or any person having control or management of the partnership business at the principal place of business within the jurisdiction. *Service on a Firm or Partners*

- (2) Service effected in accordance with Sub Rule (1) shall be deemed good service upon the firm whether any of the members are out of the jurisdiction or not, and no leave to issue an Originating Process against them shall be necessary.

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

9. Subject to any statutory provision regulating service on a registered company, Corporation or body corporate, every Originating Process or other process requiring personal service may be served on the organization by delivering to a director, secretary, trustee or other senior principal or responsible officer of the organization, or by leaving it at the registered, principal or advertised office or place of business of the organization within the jurisdiction. *Service on Corporation or Company*
 10. (1) When the suit is against a foreign Corporation or company within the meaning of Section 78 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. *Service on Foreign Corporation or Company*

(2) Where a foreign company has complied with the provision of the Companies and Allied Matters Act, personal service shall be effected on one of the persons authorized to accept service on behalf of the said company.
 1. If the person is a trade union or employers' organization, by serving a copy of the document on a responsible person, or officer or employee of the union or employers' organization who at the time of such service is apparently in charge of the main office of the trade union or association or employers' organization or the union's or employers' organization's office within the Judicial Division in which the dispute first arose, at that office of the union or employers' organization or, if there is no person willing to accept service, by affixing a copy of the document or process to the main door of that office. *Service on Trade Unions or Employers' Organizations*
 2. If the person or party is a Local Government Authority, by serving a copy of the document or process on the Local Government Chairman, Secretary or Supervising Councilor or Director of personnel of the Local Government Council or the Treasurer or any other responsible person, officer, or employee of the Local Government acting on behalf of that person. *Service on Local Government Authority*
- If the person or party is a statutory body or an institution, by serving a copy on the Director General, General Manager, Director or Head of the Institution, full time member of the institution or Commission, Secretary or similar Officer or member of the Board or Committee of that Body, or any responsible person, Officer, or employee of the statutory institution acting on behalf of that Body. *Service on Statutory Body or an Institution*

14. If the person or party is a Ministry, Department, Agency, Parastatal or any other Institution of the Federal or State Government or the Federal Capital Territory, Abuja, by serving a copy of the document or process on a responsible person, Officer or employee such as Attorney General or Permanent Secretary or Director, or their equivalent in any Ministry, Department, Agency or Branch of the Federal or State Government or the Federal Capital Territory, Abuja;
 - (i) by leaving copies of the process at the head office or any branch office of the Claimant or Defendant or the Counsel of the Claimant/ Applicant or Defendant in any part of Nigeria; or
 - (ii) by any other means permitted by the Rules of this Court or as may be directed by the Court.
15. (1) An Originating Process in an action relating to or arising out of a contract entered into within the jurisdiction, through an agent residing or carrying on business within the jurisdiction on behalf of a principal residing or carrying on business outside jurisdiction may before the determination of such agent's authority or of his business relations with the principal, be served on such agent.
(2) A copy of the Originating Process shall also be sent promptly by the Claimant by courier to the Defendant at his address out of jurisdiction.
16. Where the Officer of the Court or a person charged with the service of any process or document on any person (in this Rule referred to as recipient) is prevented by the violence or threats of the recipient or made to be impossible by the person on whom any process or document is to be served in concert with the recipient or under the recipient's control, it shall be sufficient to inform the person to be served of the nature of the process or document as physically near that person as practicable.
17. Where a person to be served, whether alone or in concert with others, resists service or insults or assaults or attempts to threaten or threatens violence to the Process Server or otherwise prevents the Process Server from serving the process, the Process Server may throw or leave the process within the reach of the person to be served.
18. (1) After serving any process, the Process Server shall promptly depose to and file an affidavit setting out the fact, date, time, place and mode of service, describing the process served and shall exhibit the acknowledgment of service, if any.
(2) After service, the affidavit shall be *prima facie* proof of service.
19. (1) The party requiring service of any process shall pay all costs and expenses of and incidental to service in advance.
(2) The cost for service shall be as as contained in these Rules and as may be directed by the Chief Judge in Practice Directions from time to time.

Service on
Ministry,
Department,
Agency,
Parastatal or
any other
Institution of
the Federal
State
Government
the Federal
Capital
Territory,
Abuja

Service on
Local Agent
Principal
is out of
jurisdiction

Inform
uncooperative
recipient
nature of
document
sufficient
service

Service
uncooperative
person
throw
process
reach

Proof
generated

Expenses
served

20. (1) Service of Originating and other processes, Pleadings, Notices, Summons, Orders and any document whatsoever shall be effected **between the hours of 6 (six) in the morning and 6 (six) in the evening**. *Time of service on certain days*
- (2) Save in exceptional circumstances and as may be authorized by a Judge, service shall not be effected on a Sunday or on a Public holiday.
21. (1) A Register shall be kept at the Registry in such form as the Chief Judge may direct for recording service of Court processes by any Process Server. *Recording of service*
- (2) The Registrar shall record in the Register 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.
- (3) Where any process was not served, the cause of failure shall be recorded in the Register and every entry in such Register or certified copy thereof shall be *prima facie* evidence of the matters stated in that Register.
22. Any hearing notice or notice of adjourned date issued by the Court for service on any party may be served: *Service of Hearing Notice*
- (a) by telephone calls, SMS or WhatsApp messages to the telephone or mobile number(s) provided by the parties or their Counsel; or
- (b) by any other means permitted by the Rules of the Court or as may be directed by the Court.
23. (1) The Chief Judge may designate an Officer of the Court as a Process Server. *Designation as Process Server*
- (2) A Process Server shall effect the service of any process or document filed in the Court on any of the parties before the Court or their witnesses.
- (3) A Process Server shall effect the service of any process, document, Ruling, Judgment, Order, Subpoena or Invitation relating to any matter before the Court.
24. When service is effected under any of the rules of this Order and there is proof of service, it shall be deemed good and sufficient service for all purposes. *Service under Rules of Court and proof of delivery*
25. Any process served by an officer of the Court or an Official or Registered Process Server shall be deemed to be good service unless the contrary is proved to the satisfaction of the Court. *When service of process is deemed good*
26. Where a Counsel or the servant, agent, staff or partner of the Counsel (in this Order referred to as the representative of Counsel) undertakes to effect service of process on the other party, or Counsel to the other party, Counsel or the representative of the Counsel shall file a proof of service of the process **within three (3) days** of effecting the service indicating *Service on and by Counsel*

the name, position of the person that acknowledged receipt, the date, time, place and mode of service of the process to the other party.

27. Where any process is to be served on Counsel in a matter, the service of such process on the Chambers or any other Counsel, secretary, clerk or officer in the Counsel's Chambers shall be deemed good and proper service.

Service on Counsel's Chambers

28. Notwithstanding the provisions of Rule 28 of this rule, where a Counsel in a matter agrees to accept service of process during proceedings in the Court, such service shall be deemed good and proper service provided the Court takes notice of such service.

Service on Counsel in Courts

ORDER 11

SERVICE OUT OF NIGERIA AND SERVICE OF FOREIGN PROCESS

1. A Judge may allow any Originating or other process to be served outside Nigeria where:

Cases where service of Originating Process, etc. are allowed out of Nigeria

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

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

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

(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 Oyo State, or the parties have agreed that the Court shall have jurisdiction to entertain any claim in respect of such contract,

(f) a claim is brought against the Defendant in respect of a breach committed within jurisdiction, 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 impossible; or

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

(h) an injunction is sought in respect of anything to be done, or any nuisance within jurisdiction is sought to be prevented or removed within jurisdiction, whether or not damages are claimed, or any person out of the jurisdiction is a necessary or proper party to any action properly brought against some other person duly served within jurisdiction; or

(i) the claim is by a mortgagee or mortgagor in relation to mortgage of property situate within jurisdiction and seeking any of the following reliefs:

- (i) sale, foreclosure, delivery of possession by the mortgagor,
 - (ii) redemption, re-conveyance, delivery of possession by the mortgagee; but does not seek (except as permitted under paragraph (c) of this Rule), any judgment or Order for payment of any monies due under the mortgage; or
 - (j) the proceedings relate to a person under legal disability; or
 - (k) the proceedings relate to probate matters; or
 - (l) any proceedings under any law or rule of Court has been instituted by an Originating Process.
2. Where parties have by their contract prescribed the mode or place of service, or the person that may serve or the person who may be served any process in any claim arising out of the contract, service as prescribed in the contract shall be deemed good and sufficient service. Agreement as to service
3. (1) Where leave is granted to serve an Originating Process in any foreign country with which no convention in that behalf has been made, the following procedure may be adopted: Service abroad by Letter of Request
- (a) a party wishing to serve a process under this Rule shall file a *Praecipe* in **Form 7** with such modification or variations as circumstances may require;
 - (b) the process to be served shall be sealed with the seal of the Court for service out of Nigeria, and shall be transmitted to the Solicitor General of the Federation by the Chief Registrar, together with a copy translated into the language of that country if not English, and with a request for its further transmission to the appropriate authority in that country. The request shall be in **Form 7** with *such* modifications or variations as circumstances may require;
 - (c) 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;
 - (d) 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;
 - (e) where a certificate, declaration, Affidavit or other notification transmitted under paragraph (d) of this Rule states that efforts to serve a process have failed, a Judge may, on an *Ex parte* application, order substituted service, which shall be effected by transmitting the sealed order, process and its copy to the Solicitor General of the Federation together with a request in **Form 9** with such modifications or variations as circumstances may require.
- (2) Notwithstanding the provisions of Sub Rule (1), a Claimant may with leave of a Judge

serve any Originating Process by courier.

- (3) Despite the provisions of this Rule where lands, funds, choses in action, rights or property within the jurisdiction are sought to be dealt with, 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. (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:

Where leave is granted or not required

- (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:
 - (i) directly through diplomatic channels; or
 - (ii) through the foreign judicial authority.
- (b) the request shall be certified by or on behalf of the person making the request and accompanied by:
 - (i) the original document and a translation thereof in the language of the country in which service is to be effected;
 - (ii) A copy of the document with the translation for every person to be served and further copies as the Convention may require;
- (c) Subject to specific provision of the Convention, where service is required to be made on a Nigerian subject directly through diplomatic channels, translation and copies of the document need not accompany the request;
- (d) the documents to be served shall be sealed with the seal of the Court for use out of the jurisdiction and shall be forwarded by the Chief Registrar to the Permanent Secretary, Federal Ministry of Foreign Affairs for onward transmission to the foreign country;
- (e) 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;

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

5. Where in any civil or commercial matter pending before a Court or Tribunal of a foreign country, a Letter of Request from such Court or Tribunal for service on any person or citation in such matter is transmitted to the Court by the Oyo State Attorney-General indicating or suggesting that effect be given to the same, the following procedure shall be adopted:
- Service of Foreign Processes*
- (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 a Judge otherwise directs;
 - (c) such service shall be effected by delivering to and leaving with the person to be served one copy of the process or citation to be served, and one copy of the translation thereof in accordance with the rules and practice of the Court regulating service;
 - (d) after service has been effected by the Process Server, he shall file an Affidavit of Service in which he shall furnish particulars of charges for the cost of effecting the service. The affidavit shall be transmitted to the Chief Registrar with one copy of the process;
 - (e) the Chief Registrar shall examine the Process Server's particulars of charges and certify the amount payable in respect of the service;
 - (f) the Chief Judge shall forward to the Attorney-General, the Request for service, the approved amount for service, evidence of service and a certificate appended to it.
6. The provisions of Rule 4 of this Order shall not apply to or render invalid, defective or insufficient any otherwise valid or sufficient mode of service in any foreign country with which a Convention has been made, provided that no mode of service expressly excluded by the Convention shall be allowed.
- Inapplicability of Rule 4*
7. Where request for service of any process or document on a person within jurisdiction is received by the Chief Judge in respect of a civil suit pending before a Court or Tribunal from the appropriate authority in a foreign country with which a Convention in that regard has been made, the following procedure shall subject to any provisions in the Convention, be adopted:
- Service on behalf of foreign tribunals*
- (a) the Process Server shall deliver the original or a copy, along with a copy of its translation to the party to be served;
 - (b) the Process Server shall submit the particulars of the costs and expenses of service to the Chief Registrar who shall certify the amount payable in respect of the service;
 - (c) the Chief Registrar shall transmit a certificate establishing the fact and date of service or indicating reasons for failure to serve, to the appropriate foreign authority

and also notify the authority as to the amount certified under paragraph (b) of this Rule.

8. Upon application, a Judge may order substituted or other service of the Foreign process.

**Substituted
service of
Foreign Process**

ORDER 12

SERVICE OF PROCESS BY ELECTRONIC DEVICE

1. Any process filed in the Court other than Originating Processes may also be served or effected on the parties through any of the following devices:

Service by means of electronic devices

- (a) Fax machine, where available;
- (b) As attachment to an electronic message via the E-mail address provided by the party or the party's counsel as the case may be;
- (c) Short Message Service (SMS) to telephone number(s) provided by the party or the party's counsel as the case may be;

Provided that the use of Short Message Service (SMS) shall be limited to communicating dates of hearing or any change in respect thereof and not to be extended to service of other Court processes, proof of which must be filed in the Court's record.

- (d) Any other electronic communication and messaging platform approved by the Court.

2. Once a process is served by any of the above devices, its electronically downloaded and printed copy as a proof of service may be allowed to be tendered by a party who either transmitted the process or document or by the party or counsel that received same.

Electronic proof of service of process

3. An electronically transmitted process or document may be tendered as the original of the same process or document and the content therein may be received in evidence in proving the facts therein contained.

Electronically transmitted or received process acceptable as original documents

4. Proof of service of any Court process other than an Originating Process, served on any of the parties using the devices mentioned in Rule 1 of this Order shall be deemed good and proper service on any of the parties or counsel in the matter.

Electronic transmission of process deemed good and proper service.

Where a Hearing Notice or any other Court process has been sent and delivered by means of any electronic device stated in Rule 1 of this Order to the contact address(es) or information provided by a party or counsel, it shall be deemed sufficient, good, and proper service on the party or counsel that provided the E-mail address(es) or electronic mailing device.

Electronic transmission of hearing notice deemed good and proper service.

ORDER 13**ELECTRONIC SERVICE OF E-FILED DOCUMENT(S)**

1. Every process or document that is E-filed may also be electronically served at the same time by the Registrar through the Electronic Filing Officer to the designated E-mail address(es) of the party or parties mentioned in the matter to be served, or to the E-mail address of the Counsel to the parties in the matter. *Electronic Service of E-filed document(s)*

2. (1) Where a document or process has been duly E-filed, it is deemed appropriate for electronic service *When E-filed document is good for service.*
 (2) Where a party or Counsel electronically serves a document through the Electronic Filing Officer, the party or Counsel shall make a written certification of such service which will accompany the document setting out the date and time of service and the designated Email address of the party served. *Certification of E-Service of document*
 (3) Where the Electronic Filing Officer has electronically served a document or process, the Electronic Filing Officer shall send proof of service to the E-filer. *Proof of E-Service*
 (4) When E-Service is carried out after 5:00 p.m. (recipient's time) the date of service is deemed to be the next day that is not a Sunday or Public holiday. *Computation of time of E-Service*
 Provided that nothing in this Rule shall preclude any party from offering proof that the notice or instrument was not received, and upon so finding, the Court may extend the time for taking the action required of such party or grant such other relief as it deems just.

3. (1) An E-filer must include the designated Email address(es) of the E-filer on any electronically filed document. *Inclusion of designated E-mail addresses(es)*
 (2) If an E-filer must serve a copy of a document on a party or Counsel to the party who does not have a designated email address, such service must be in accordance with relevant Rules of the Court. *Service of a party with no designated Email addresses*

ORDER 14

REGISTERED PROCESS SERVER

1. (1) The Chief Judge may also appoint and register any Courier Company or any other person approved by the Chief Judge to serve Court process(es) and such person or company approved by the Chief Judge to serve Court process(es) shall be called Registered Process Server. *Appointment of Registered Process Server*

(2) A Registered Process Server shall perform all the duties of the Officer of the Court designated as an Official Process Server subject to the provisions of any Act or Law regulating service of Court processes.

2. A person to be appointed as Registered Process Server shall:

Qualification of Registered Process Server

- (a) either have served in a Court Registry or be familiar with the operations of a Court registry in the handling of Court processes for a period of not less than three (3) years;
- (b) no longer be in the public service; and
- (c) possesses sufficient education to aid understanding of the importance of service of Court processes and the implications and consequences of the failure or improper handling will have on such processes or service on a party in accordance with the Rules of the Court.

Provided that;

(i) where the Registered Process Server is a business name or corporate body it shall exhibit to the satisfaction of the Chief Judge that it has in its employment staff that have reasonable and sufficient education and experience to understand the implications and consequences of service or non-service of Court processes or documents on a party in a matter before the Court.

(ii) the company or corporate body has had cognate and proven experience in courier services for a period of not less than five (5) years.

3. A Registered Process Server may be directed by the Court or any authorized officer of the Court to effect service of any process or document on any person, Company, Ministry, Department, Agency, Body Corporate, Institution, Commission, Trade Union, Employees' or Employers' Organization or any other party, named to be served on the face of the process or document. *Registered Process Server to effect service of process or document*

4. A Registered Process Server shall effect service of any Court process(es) or document(s) on any of the parties, witnesses, or any interested party in accordance with the Rules of the Court. *Registered Process Server to effect service according to the Rules of Court*

5. A Registered Process Server shall keep a book in which the particulars and records of process(es) or document(s) handed to the Registered Process Server for service shall be *Registered Process Server's Book of Record of Processes and documents*

entered.

6. The Registrar in charge of litigation or any other officer authorized to keep records of service of process(es) or document(s) shall keep and enter the records of every process or document handed over to the Registered Process Server to be served on every person, party, or any of the parties in the action required or named to be served, and any Ministry, Department, Agency, Body Corporate or Business Name, Institution, Commission, Trade Union, Employees' Association or Employers' Organization, as provided in rule 5 of this Order. *Registrar of Court to keep Records of Processes given to the Registered Process Server*
7. A Registered Process Server shall have all the powers of an Officer of the Court designated as Official Process Server authorized by the Rules of this Court or any Act or Law to effect service of any Court process or document. *Powers of the Registered Process Server*
8.
 - (1) A Registered Process Server shall effect the service of any process or document handed over to the Registered Process Server for service in the same manner in which an Officer of the Court may effect service under the Rules of the Court. *Registered Process Server to serve as Officer of Court*
 - (2) A Registered Process Server shall enjoy similar protection as is available to an officer of the Court authorized to serve or effect service of process(es) or document(s) on any party or person on the face of the process(es) or document(s). *Protection of Registered Process Server*
9. Upon service of a process by a Registered Process Server, the Registered Process Server shall depose to an Affidavit of Service at the Registry of the Court stating the name(s) of the parties served, the contact information (addresses) at which the process(es) were served, the time of service, mode of service, as well as Acknowledgment of Service, where applicable, signed by the parties served or any other person that received the process on behalf of a party in accordance with the provisions of rule 6 of this Order. *Affidavit of Service by a Registered Process Server*
10. An affidavit deposed to by a Registered Process Server as prescribed in rule 9 of this Order shall be prima facie proof of service and shall be sufficient for that purpose until the contrary is proved to the satisfaction of the Court by the party on whom the process is said to have been served. *Proof of service by a Registered Process Server*
11. Where service of documents has been effected by: *Other means of Proof of Service*
 - (a) registered post,
 - (b) the registrar,
 - (c) hand-delivery or courier delivery,

the advice slip or some other acceptable proof of delivery provided by the postal agency; the Registrar's out-going mail register or extract therefrom certified by the Registrar and a certificate of service or affidavit by the person effecting service, or delivery slip, or a copy of the document served duly signed by the recipient shall, respectively constitute sufficient proof of service.

- 12. The affidavit of service deposed to by the Registered Process Server shall be kept in the case file while a copy of same shall be kept with the Registered Process Server as evidence of service of a process or document.**

Affidavit of service to be kept in case file.

- 13. A Registered Process Server shall be paid such fees for the services rendered in accordance with the terms of agreement entered into by the party or Counsel desiring service and the Registered Process Server.**

Payment of Registered Process Server on terms of agreement

ORDER 15 **APPEARANCE**

1. (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 11 with such modifications or variations as circumstances may require.
(2) On receipt of the Memorandum of Appearance, the Registrar shall make entry and stamp the copy with the seal showing the date he received it and return the sealed copy to the person making the appearance.
(3) On receipt of the requisite documents, the Registrar shall in all cases enter the appearance in the Cause Book and stamp the copies of the Memorandum of Appearance with the official stamp showing the date on which he received those documents, and deliver one sealed copy to the Claimant or, as the case may be, his legal practitioner.
(4) The Defendant entering appearance shall not later than seven (7) days thereafter serve a sealed copy of the Memorandum of Appearance on a Claimant's Legal Practitioner or the Claimant if he sues in person.

*Mode of
entry of
appearance:
Form 11*

2. (1) A Defendant appearing in person shall state in the Memorandum of Appearance an address for service which shall be within Oyo State and his telephone number(s) and email, if any.
(2) Where a Defendant appears by a Legal Practitioner, the Legal Practitioner shall state in the Memorandum of Appearance, his full names, full Chambers address for service which shall be within Oyo State, telephone number(s) and E-mail address.
(3) Where any such Legal Practitioner is an agent of another Legal Practitioner, he shall state his full names, full address of Chambers for service which shall be within Oyo State, telephone number(s) and E-mail address, and the full names, full address of Chambers, telephone number(s), E-mail address of the principal Legal Practitioner.

*Defendant
appearing in
person or
represented by
Legal
Practitioner*

Where any Memorandum of Appearance does not contain an address for service or where the address for service is illusory, fictitious or misleading, the appearance may be set aside by a Judge upon the application of a Claimant on notice to the Defendant.

*Fictitious
address*

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.

*Defendants
appearing
through same
Legal
Practitioner*

If a Defendant files an appearance after the time prescribed in the Originating Process, he shall pay to the Court a fee of N1000.00 (One Thousand Naira) only for each day of default.

Late appearance

6. Every application for enlargement of time shall be accompanied by proof of compliance with the Rule which is the receipt of payment for days of default. Where a party defaults in filing a Court process other than Memorandum of Appearance within the time prescribed under the provision of these rules, such party shall pay the sum of ₦500.00 (Five Hundred Naira) for each day of default. *Costs*
7. 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. *Intervener in probate matters*
8. Any person not named as a Defendant in an Originating Process for recovery of land may with leave of a Judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or through his tenant. *Recovery of land*
9. 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. *Landlord appearing*
10. A person under legal disability shall enter an appearance by his guardian. *Person under legal disability appearing*
11. In this Order the word "Tenant" includes a sub-tenant or any person occupying any premises whether on payment of rent or otherwise. *Definition of the word "Tenant"*

ORDER 16**DEFAULT OF APPEARANCE**

1. Where any Defendant fails to appear upon proof of service of the Originating Process, a Claimant may proceed under the appropriate provisions of these rules. *Default of appearance generally*
2. (1) Where no appearance has been entered for a person under legal disability after service of Originating Process, a Claimant may apply to a Judge for an order that a guardian be appointed for such Defendant. *Default of appearance by person under legal disability*
 (2) Notice of the application shall be served on the person intended to be appointed as a guardian, who when appointed, may appear and defend.
3. (1) 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 a Judge for Judgment for the claim on the Originating Process or such lesser sum and interest as a Judge may order. *Liquidated demand*
 (2) Where the claim in the Originating Process is for a liquidated demand against several Defendants and one or more of the Defendants fails to enter appearance, a Claimant may apply to a Judge for Judgment against the Defendants who failed to appear and may execute the Judgment without prejudice to his right to proceed with the action against those who have appeared. *Liquidated demand: several Defendants*
4. (1) 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 a Judge for Judgment. *Judgment in default of appearance*
 (2) Judgment may be granted upon the application of the Claimant under the provision of Sub Rule (1) of this Rule, subject to the filling of such particulars as a Judge may direct and ascertaining the value of the goods and the damages or the damages only as the case may be.
 (3) Where the claim in the Originating Process under this Rule is against several Defendants and one or more of the Defendants failed to enter appearance, a Claimant may apply for Judgment against the Defendant(s) who failed to appear.
 (4) Judgment may be granted upon the application of the Claimant under the provisions of sub-rule (3) of this Rule, subject to the filling of such particulars as a Judge may direct, and ascertaining the value of goods and the damages or the damages only as the case may be.
 (1) 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 a Judge for Judgment. *Detention of goods, damage and liquidated demand*

- (2) Judgment may be granted upon the application of the Claimant under sub-Rule (1) of this Rule, subject to the filing of such particulars as the Judge may direct, and ascertaining the value of the goods and the damages, or the damages only as the case may be.
6. If no appearance is entered within the time prescribed in the Originating Process in a claim for recovery of land, a Claimant may apply to a Judge for Judgment stating that the person whose title is asserted in the Originating Process is entitled to possession of the land. *Recovery of land*
- Or, if appearance is entered but the Defence is limited to part only, the Claimant shall apply to a Judge 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.
7. 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, the Claimant may apply for Judgment as in rule 6 of this Order for the land, and may proceed to prove the other claims. *Mesne profits*
8. (1) In any case to which rules 3-6 of this Order 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 a Judge for Judgment for costs. *Judgment costs: upon payment, satisfaction etc.*
- (2) Such application referred to under sub Rule (1) of this Rule shall be filed and served in the manner in which service of the Originating Process was effected or in such manner as a Judge may direct.
9. (1) Where Judgment is entered pursuant to any of the preceding rules of this Order, a Judge may set aside or vary such Judgment on such terms upon an application by the Defendant. *Setting aside Judgment*
- (2) The application shall be made within a reasonable time, showing a good Defence to the claim and a just cause for the default.
10. 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. *Default of appearance: actions not otherwise specifically provided for*
11. Notice of any application under this Order shall be served on the other party. *Compulsory service*

ORDER 17**SUMMARY JUDGMENT**

1. Where a Claimant believes that there is no Defence to his claim, he shall file with his Originating Process his:
 - (a) the statement of claim;
 - (b) the depositions of his witnesses;
 - (c) list and copies of exhibits; and
 - (d) 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.

Where Claimant believes there is no Defence
2. A Claimant shall deliver to the Registrar as many copies of all the processes and documents referred to in rule 1 of this Order as there are Defendants.

Delivery of extra copies
3. Service of all the processes and documents referred to in rule 1 of this Order shall be effected in the manner provided under Order 10 and Order 13.

Service
4. Where a party served with the processes and documents referred to in rule 1 of this Order intends to defend the suit he shall, not later than the time prescribed for Defence, file his:
 - (a) statement of Defence.
 - (b) depositions of his witnesses.
 - (c) A list and copies of all documents to be used in his Defence; and
 - (d) A Counter Affidavit and a Written Address in reply to the application for summary Judgment.

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

Where Defendant has good Defence, or has no good Defence or has good Defence to part of the claim

(2) Where it appears to a Judge that the Defendant has no good Defence the Judge may thereupon enter Judgment for the Claimant.

(3) Where it appears to a Judge that the Defendant has a good Defence to part of the claim but no Defence to other parts of the claim, the Judge may 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 and it appears to a Judge that any of the Defendants has a good Defence and ought to be permitted to defend the claim and other Defendants have no good Defence and ought not to be permitted to defend, the former may be

Where there are several Defendants

permitted to defend and the Judge shall enter Judgment against the latter.

- Where provision is made for Written Address under these rules, each party shall be at liberty to advance before a Judge oral submission to expatiate his Written Address for not more 10 minutes except the Judge otherwise permits.

Oral submission on Written Address

ORDER 18

APPLICATION FOR ACCOUNT

1. Where in an Originating Process a Claimant seeks an account under Order 5 Rule 5 or where the claim involves taking an account, if the Defendant either fails to appear, or after appearance fails to satisfy a Judge that there is a preliminary question to be tried, the Judge shall, on application make an order for the proper accounts, with all necessary inquiries and directions. *Order for account*
2. The application for account may be made at any time after the time prescribed for Defence and shall be supported by an affidavit filed on a Claimant's behalf, stating concisely the grounds of his claim to an account. *Application how made*
3. Where an order is made for account under this Order, the account may be taken by a Judge or a Referee appointed by the Judge. *Account may be taken by a Judge or Referee*

ORDER 19
PARTIES GENERALLY

I. General

1. (1) Any person claiming right whether jointly or severally may be joined as Claimants in one action. *Person claiming jointly or severally*
(2) Judgment may be entered without any amendment for any of the Claimants found to be entitled to the relief sought or any part of such relief.
2. Where an action has been commenced in the name of the wrong person as Claimant or where it is doubtful whether it has been commenced in the name of the right Claimant, a Judge may order the substitution or addition of any other person as Claimant on such terms as may be just. *Action in the name of wrong Claimant*
3. Where in commencing an action, any person has been wrongly or improperly included as a Claimant and a Defendant has set up a counterclaim or set-off, such Defendant may establish his Set-off or Counterclaim as against the parties other than a Claimant so included, notwithstanding the inclusion of such Claimant or any step taken in the proceeding. *Misjoinder as Counter-Claimant*
4. (1) 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. *Any persons may be joined as Defendant*
(2) 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. Where an action has been instituted against a wrong Defendant or where the name of a Defendant has been incorrectly stated, a Judge may upon application order a substitution or addition of any person as Defendant or correction of any such name on any term as may be just. *Action in the name of wrong Defendant*
6. (1) A Defendant may not be interested in every cause of action or the relief prayed for included in a proceeding against him. *Defendant not be interested in the reliefs sought*
(2) Upon considering the Defence filed and an application by that Defendant, the Judge may make such order as may appear just to prevent Defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.
7. 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. *Joinder of persons severally or jointly and severally liable*

8. (1) Where a Claimant is in doubt as to the person against whom he is entitled to claim, redress, he may join two or more Defendants, in such manner as may be prescribed by these rules or an order of the Court. *Claimant in doubt as to person from whom redress is to be sought*
(2) The extent to which any of the Defendants is liable shall be determined by the Judge.
9. Persons under legal disability may sue or defend by their guardians appointed for that purpose. *Persons under legal disability*
10. Any person who is to be named in an action as guardian of a person under legal disability or other party or as relator shall file a written authority for that purpose in the registry. *Guardian.*
11. (1) Any Trustees, Executors and Administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any beneficiary interested in the trust or estate, and shall be considered as representing such person. *Trustees, Executors etc. may be sued as representing the estate*
(2) The Judge may, at any stage of the proceedings, order any beneficiary to be made parties in addition to or in lieu of the trustees, Executors and Administrators.
(3) This rule shall apply to trustees, Executors and Administrators in proceedings to enforce a security by foreclosure or otherwise.
12. (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may sue or be sued on behalf of or for the benefit of all persons so interested. *Numerous persons*
(2) Where there are numerous persons having the same interest in one suit and they seek to defend the action, a Judge may allow one or more of such persons to defend the action on behalf of or for the benefit of all persons so interested.
13. (1) The Judge may, if satisfied that 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:
(i) the person, the class or some members of the class interested cannot be ascertained or cannot readily be ascertained; or
(ii) the person, the class or some members of the class interested if ascertained cannot be found; or
Representation of persons or classes of persons in certain proceedings

(iii) the person or the class and the members of the class can be ascertained and found but it is expedient that one or more persons be appointed to represent that person or class or some members of the class;

make an order appointing one or more persons to represent such person, class or some member of the class.

- (2) The decision of the Judge in the proceedings shall be binding on the person or class of persons so represented.
- (3) Notice of appointment made by a Judge under this Rule and all processes filed in Court shall be served on a person(s) so appointed.
- (4) If in any proceedings mentioned in sub-rule 1 of this Rule, several persons having the same interest in relation to the matter to be determined attend the hearing by separate Legal Practitioners, then, unless the Judge considers that the circumstances justify separate representation, not more than one set of costs of the hearing shall be allowed to these persons, and the Judgment or Order shall be framed accordingly.
- (5) In this Rule, the word "class" includes the persons recognized by Customary Law as members of a family or as members of a land owning community.

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

*Power to
approve
comprom*

- (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 of this Order who so assents;

A Judge may if satisfied that it is expedient and in the interest of absent persons approve the compromise and order that such compromise shall be binding.

- (2) The absent persons shall not be bound where the order under sub-rule (1) (b) of this Rule has been obtained by fraud or non-disclosure of material facts.

15. (1) Where a person interested in any proceedings dies and it appears that the deceased has no personal representative, the Judge may, by Order appoint any person to represent the Estate with Notice to any person as the Judge may deem fit.

*Where
no pers
represe*

- (2) Notice of such order under sub-rule (1) pursuant to the appointment shall be given to the person so appointed either personally or generally by public advertisement

or as the Judge may direct.

(3) The order and any subsequent order made under sub-rules (1) and (2) 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 has been a party to the proceedings.

(4) 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 with the suit fails to proceed, a Judge may on the application of either the deceased's Legal Practitioner or the opposing party order any person to take the place of the said deceased and proceed with the suit.

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

Proceedings not defeated by misjoinder or non-joinder

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

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

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

(5) Every party whose name is added as Defendant shall be served with the Originating Processes or Notice in the manner prescribed in these rules or in such manner as may be prescribed by a Judge and the proceedings against such person shall be deemed to have begun on the service of such Originating Processes or Notice.

17. (1) Any application to add or strike out or substitute or vary the name of a Claimant or Defendant may be made to a Judge by Motion.

Application to add or strike out a party

(2) Where the application is to add a Claimant or a Defendant, the application shall be accompanied by the proposed Statement of Claim or Defence as the case may be,

all the documents 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 in this sub-rule.

18. (1) Where a Defendant is added or substituted, the Claimant shall amend the Originating Process accordingly. *Where Defendant added*
 (2) The amended Originating Process shall be filed and served on the new Defendant in the same manner as the original Defendant unless otherwise directed by the Judge.
19. (1) Where it appears to a Judge that any person not a party in the proceedings may bear eventual liability either in the whole or in part, the Judge may upon an *Ex parte* application allow that person to be joined as a Third Party by any of the Defendants. The application shall state the grounds for the applicant's belief that such Third Party may bear eventual liability. *Third Party may be joined by any of parties*
 (2) The order and existing processes shall be served on the Third Party within the time prescribed for delivering the Defence.
20. Where a party is joined to any proceedings as a Third Party he may after service enter appearance within 8 days or within 30 days if he resides or carries on business outside jurisdiction or within such further time as a Judge may order. *Appearance Third Party*
21. If a Third Party duly served with the order and all existing processes does not enter an appearance or 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. *Default Third Party*
22. A party joined as a Third Party in any proceedings may join any other party in the same manner as he was joined and the expression 'Third Party' shall apply to and include every person so joined. *Subsequent Third party*
23. A Defendant may make a claim against a co-Defendant in his Counter-Claim. *Claim against co-Defendant*

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

24. (1) Persons carrying on business within the jurisdiction as partners in the name of a firm or business, when the cause of action arose may sue or be sued in the name of such firm or business. *Actions against*
 (2) Upon an application by any party to such an action, the Judge may direct that a

statement of the names and addresses of the persons who were partners in the firm or business when the cause of action arose be furnished and verified on oath or as the Judge may otherwise direct.

25. (1) When an Originating Process is used by partners suing in the name of a firm, the Claimants or their Legal Practitioners shall, upon written demand by or on behalf of any Defendant, declare the names and addresses of all the persons constituting the firm on whose behalf the action is brought in writing. *Disclosure of Partner's Names.*
- (2) Where the Claimants or their Legal Practitioner fail to comply with the demand under sub-rule (1) the Judge may upon application by the Defendant and such terms as may be considered just, stay proceedings in the action.
- (3) Where the names of the partners are declared, the suit shall proceed in the same manner and respect as if the partners had been named as Claimants in the Originating Process but the proceedings may continue in the name of the firm. *Appearance of Partners*
26. (1) Persons sued as partners in the name of a Firm, shall appear individually in their own names; but 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 a partnership business not being a member of the firm, the person shall not be required to enter appearance.
27. This Order 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 Firms carry on business within the jurisdiction. *Application of Rules to Actions between Co-Partners.*
28. Any person carrying on business within the jurisdiction in a name or style other than his personal name may be sued in such name or style as if it were the name of a firm, and so far as the nature of the case will permit, all Rules relating to proceedings against Firms shall apply. *Persons Trading as Firms..*

III Change of Parties by Death or Otherwise, etc

29. No proceeding shall abate or become defective by: *Action not abated where cause of action survives*
- (a) Reason of death or bankruptcy of any of the parties, if the cause of action survives;
- (b) The assignment, creation or devolution of any Estate or title *pendent lite* whether the cause or action survives or not,
- (c) Reason of the death of either party between the finding on issues of fact and Judgment, Judgment may in such case be entered notwithstanding the death of the party

30. (1) Where by reason of;

(a) death or bankruptcy, or any other event occurring after the commencement of a proceeding, a change or transfer of interest or liability occurs; or *Order to carry Proceedings*

(b) any person interested coming into existence after the commencement of the proceedings, it becomes necessary or desirable that a person be made a party or that a person being a party should continue in another capacity, an order may be granted upon an application *ex parte* for the continuation of the proceedings between such existing parties or the existing party and any new party.

(2) An Order obtained under this Rule shall be served upon the new party and existing party or the Legal Representative unless the application is made by the new party.

(3) A new party served with the Order granted under sub-rule (2), shall:

(a) where applicable enter an appearance in the same manner as if he had been served with the Originating Process;

(b) subsequently be served with the Originating Process and all existing processes.

(4) Upon being served under sub-rule (3) of this Rule, the party shall file his Pleadings and other documents as if he had been an original party in the proceedings.

31. In case of an assignment of title *pendent lite*, creation or devolution of any Estate, the cause or matter may be continued by or against the person to title has been assigned or upon whom such Estate has devolved.

In Case of Assignment, Creation or Devolution of Estate or Title

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

Application for Discharge or Vary by Person under Disability having a Guardian.

33. (1) An Order under Rule 30 served on a person under legal disability without a guardian in any proceedings shall have no effect.

By persons under legal disability having no guardian.

(2) The person may within fourteen (14) days from the appointment of a guardian apply to a Judge to discharge or vary such Order.

IV. Legal Practitioners or Agent

34. Where by these rules any act may be done by any party in a proceeding, such act may be done by the party either in person, or by his Legal Representative or agent unless where an agent is expressly barred under these rules.

Acts may be done by Legal Practitioner or Agent

ORDER 20

JOINDER OF CAUSES OF ACTION

1. Subject to the provisions of this Order, the Claimants may join several causes of action in the same action, but if it appears that they cannot be conveniently tried or disposed of together, a Judge may order separate trial of such causes of action or make such order as may be necessary or expedient for the separate disposal of the action. *All Causes of Action may be Joined.*
2. (1) An action for recovery of land may be joined with an action for declaration of title, mesne profits or arrears of rent, damages for breach of any contract under which the land or any part of it is held, or for any wrong or injury to the premises. *Recovery of Land*

(2) An action for foreclosure or redemption may be joined with a claim for delivery of possession of the mortgaged property and a claim for payment of principal or interest secured by or any other relief in respect of the mortgage of or charge on such land.
3. Where personal claims are alleged to arise with reference to the Estate in respect of which the Claimant sues or Defendant is sued as Executor or Administrator, claims by or against the Executor or Administrator may be joined with claims by or against him personally. *Executor and Administrator*
4. Claims by different Claimants against the same Defendant may be joined and disposed together. *Claims by Joint Claimants*

ORDER 21

PLEADINGS

1. (1) A Claimant shall file a Statement of Claim together with the accompanying documents, which shall include the relief or remedy being claimed. *Filing of Pleadings*
(2) A Defendant shall file his Statement of Defence, Set-off or Counter-Claim within 30 days of receiving the Claimant's Originating Process and accompanying documents.
(3) A Counter-Claim shall have the same effect as a cross action, to enable the Court pronounce a final Judgment in the same proceedings.
(4) A Claimant shall file his reply within 14 days of receiving the Statement of Defence and Counter-Claim. *A set-off must specifically pleaded*
(5) Where a Claimant or any other person named as party to a Counter-Claimant contends that the claim ought not to be disposed by way of Counter-Claim, but in an independent proceedings, a Judge may at any stage of the proceedings order that such Counter-Claim be excluded.
2. (1) Every Pleadings shall contain a statement of the material facts on which the party pleading relies for his claim or defence, but not the evidence by which they are to be proved. *Pleadings, State Material Facts and Evidence*
(2) Pleadings shall be divided into paragraphs and numbered consecutively. Dates, sums and numbers expressed in figures.
(3) Pleadings shall be signed by a Legal Practitioner or the party, if he sues or defends in person.
3. (1) In all cases where a party relies on any misrepresentation, fraud, breach of trust, default, or undue influence and in all other cases where such particulars may be necessary, the particulars shall be stated in the Pleadings. *Particulars be given if Necessary*
(2) In an action for libel or slander, 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. The Judge may during Case Management Conference grant upon such terms as may be just an application for further and better- *Further and better Statement or Particulars*
 - (a) Statement of the nature of the claim or Defence; or
 - (b) Particulars of any matters stated in any pleading requiring particulars.

5. (1) Every allegation of fact in a pleading if not specifically denied by the other party shall be taken as admitted except against a person under legal disability. *Denial*
(2) A general denial in any Pleadings shall not operate as denial of any specific fact in the Pleadings of the opposing party.
6. Each party shall specify distinctly in his Pleadings, any condition precedent, the performance or occurrence of which is intended to be contested. *Conditions Precedent.*
7. (1) All grounds of Defence or Reply which makes an action not maintainable shall be specifically pleaded. *Facts to be Specifically Plead in Defence and Reply*
(2) A party shall not introduce issues of fact not arising out of the Pleadings or ground which may take the opposite party by surprise.
(3) A party shall specifically plead any ground which makes a transaction void or voidable such as fraud, Limitation Law, release, payment, performance or facts showing insufficiency in contract or illegality either by any enactment or under Common Law.
8. No Pleadings shall raise any new ground of claims or contain any allegation of fact inconsistent with the previous Pleadings of the party pleading the same. *Pleadings to be Consistent*
9. A party may by his Pleadings join issues with the opposing party and such joinder of issues shall operate as a denial of every material allegation of fact upon which issue is joined except any fact which the party may be willing to admit. *Joinder of Issues.*
10. Wherever the contents of documents are material, it shall be sufficient in any Pleadings to state the effect as briefly as possible, without setting out the whole or any part, unless the precise words of the document or any part are material. *Effect of Documents to be Stated*
11. Wherever it is material to allege notice of any fact, matter or thing, it shall be sufficient to state such allegation as a fact, unless the form or the precise terms of such notice or the circumstances from which such notice is to be inferred are material. *Notice*
12. (1) Wherever any contract or any relationship between any persons is to be implied from a series of letters or conversations, or otherwise from a set of circumstances, it shall be sufficient to allege such contract or relationship as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. *Implied Contract or Relationship*
(2) Where more than one contract or relationship is to be implied from such circumstances, the person pleading may state the same in the alternative.
13. A party may not allege any matter or fact which the law presumes in his favour or which the other party has burden of proving unless the same has been specifically denied. *Presumption of Law*

14. Where the cause of action is a stated or settled account, the Pleadings shall contain particulars, but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be included in the Pleadings. *Stated or Settled Account*
15. No technical objection shall be raised to any pleading on the ground of any alleged want of form. *Technical Objection*
16. Any matter in an indorsement or pleading which may be unnecessary or scandalous; or which may tend to prejudice, embarrass or delay the fair trial of the action, may be amended or struck out by the order of a Judge at the Case Management Conference upon such terms as the Judge may deem fit, including payment of the application costs by the party or legal representative. *Striking out Pleadings*
17. (1) Where malice, fraudulent intention, knowledge or other condition of the mind of any person is alleged, it shall be sufficient to state the fact of such allegation without setting out the circumstances from which the fact can be inferred. *Defamatory*
- (2) Where the Defendant in an action for libel or slander pleads that any of the words or matters complained of are fair comment on a matter of public interest or were published upon a privileged occasion, the Claimant shall, if he intends to allege that the Defendant was actuated by express malice, deliver a Reply giving particulars of the facts and matters from which such malice is to be inferred.
- (3) Where the Defendant in an action for libel or slander alleges that in so far as the words complained of consist of statement 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 facts and matters he relies on in support of the allegation that the words are true.
18. (1) The Judge may at any stage of the proceedings order to be struck out or amended any Pleadings or the indorsement of any Writ in an action, or anything in the Pleadings or indorsement, on the ground that it: *Where Pleading Discloses Reasonable Cause of Action*
- (a) discloses no reasonable cause of action or defence, as the case may be; or
 - (b) is scandalous, frivolous or vexatious; or
 - (c) may prejudice, embarrass or delay the fair trial of the action; or
 - (d) is otherwise an abuse of the process of the Court;
- and may order the action to be stayed or dismissed or Judgment to be entered accordingly, as the case may be.

- (2) No evidence shall be admissible on an application under Rule 17(1) (a) of this Order.
 - (3) This Rule shall, so far as applicable, apply to an Originating Summons and a Petition as if the Summons or Petition, as the case may be, were a Pleadings.
 - (4) No proceedings shall be open to objection on the ground that only a declaratory Judgment or Order is sought and a Judge may make a binding declaration of right whether any consequential relief is or could be claimed or not.
19. (1) Where a Pleadings subsequent to Reply is not ordered, then, at the expiration of 7 days from the service of the Defence or Reply (if a Reply has been filed) Pleadings shall be deemed closed. *Close of Pleadings*
- (2) Where a Pleading subsequent to Reply is ordered, and the party who has been ordered or given leave to file same fails to do so within the period limited for that purpose, then, at the expiration of the period so limited the Pleadings shall be deemed closed.

Provided that this rule shall apply to a Defence to Counterclaim and unless the Claimant files a Defence to Counterclaim, the statements of fact contained in such Counterclaim shall at the expiration of 14 days from the service thereof or of such time (if any) as may by order be allowed for filing of a Defence thereto be

STATEMENT OF CLAIM

*Statement of
Claim*

1. (1) Every Statement of Claim and Counter-Claim shall state specifically the relief claimed either singly or in the alternative, and it shall not be necessary to ask for general or other relief, which may be given as a Judge may think just as if it had been asked for.
- (2) Where the Claimant or Counter-Claimant seeks relief in respect of several distinct Claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. The same rule shall apply where the Defendant relies upon several distinct grounds of Defence, Set-off or Counterclaim founded upon separate and distinct facts.
2. Whenever a Statement of Claim is filed, the Claimant may alter, modify or extend his claim without any amendment of the Indorsement of the Writ:

*Claim beyond
Indorsement*

Provided that the Claimant may not completely change his cause of action indorsed on the Writ without amending the Writ.

ORDER 23

STATEMENT OF DEFENCE AND COUNTERCLAIM.

1. (1) The Statement of Defence shall be a statement in summary form, and shall be supported by:

Statement of Defence

 - (a) List of witnesses to be called at the trial,
 - (b) Depositions of witnesses, and
 - (c) List and copies of all documents to be relied upon at the trial.
- (2) A Defendant shall within **Thirty (30) days** of service of Originating Process and the accompanying documents on the Defendant, deliver to the Claimant a Statement of Defence, along with the document prescribed in Rule 1 (1) of this Order.
2. When a party in any Pleadings denies an allegation of fact in the previous Pleadings of the opposite party, the denial shall not be done evasively, but shall answer the point of substance and where applicable, each diverse circumstances upon which an allegation is brought shall be specifically denied.

Evasive denial
3. (1) In an action for debt or liquidated demand in money, a mere denial of the debt shall not be sufficient Defence.

Denials generally

 - (2) In an action for money had and received, a denial by the Defendant must specifically contend the receipt of the money or the existence of those facts which are alleged to support the Claimant's claim for receipt of money.
 - (3) In an action for goods sold and delivered, the Defence must deny the order or contract, the delivery, or the amount claimed.
 - (4) In an action upon a bill of exchange, promissory note or cheque, a Defence in denial must deny some matter of facts, e.g. the drawing, making, indorsing, accepting, presenting or notice of dishonour of the bill or note.
4. If either party wishes to deny the right of any other party to claim as Executor, or a trustee or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

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

Pleadings to damages
6. Where any Defendant seeks to rely upon any ground as supporting a right of Set-off or Counterclaim, he shall in his Defence state specifically that he does so by way of supporting a right of Set-off or Counterclaim.

Set-off and Counterclaim

7. (1) Where a Defendant by his Defence sets up any counterclaim which raises questions between himself and the Claimant along with any other persons, he shall add to the title of his Defence a further title similar to the title in a Statement of Claim, setting forth the names of all persons who, if such Counterclaim were to be enforced by cross action, would be Defendants to such cross action.
(2) The Defendant shall deliver his Defence to such persons who are existing parties to the action within the period which he is required to deliver it to the Claimant.
Title or Counterclaim
8. (1) Where any such person as in Rule 7 of this Order is not a party to the action, he shall be summoned to appear by being served with a copy of the Defence and Counterclaim, and such service shall be regulated by the same rules as those governing the service of the Originating Process.
(2) The Defence and Counterclaim so served shall be indorsed in Form 12 with such modifications or variations as circumstances may require.
Claim against persons not party: Civil Form 12
9. Any person not already a party to the action, who is served with a Defence and Counterclaim as aforesaid, must appear thereto as if he had been served with an Originating Process to appear in an action.
Appearance by added parties
10. Any person not already a party to the action, who is named in a Defence as a party to a Counter claim thereby made, shall deliver a Defence in a mode and manner prescribed under this Order and the provisions of the Order shall apply to such a person.
Defence to Counter Claim
11. If, in any case in which the Defendant sets up a Counterclaim, the action of the Claimant is stayed, discontinued or dismissed, the Counterclaim may nevertheless be proceeded with.
Discontinuance of the Claimant's claim
12. Where in an action, a Set-off or Counterclaim is established as a Defence against the Claimant's claim, the Judge may, if the balance is in favour of the Defendant, enter Judgment for the Defendant for such balance, or may otherwise grant to the Defendant such relief as he may be entitled to upon the merits of the case.
Judgment for balance
13. (1) Any ground of Defence which arises after the action has been filed, but before the Defendant has delivered his Defence, and before the time limited for doing so has expired, may be raised by the Defendant in his Defence, either alone or together with other grounds of Defence.
(2) If after a Defence has been delivered along with a Set-off or Counterclaim, any basis for answer or ground of Defence arises, the Claimant may raise same either alone or together with any other ground of Reply or Defence to the Counterclaim, in the Reply to the Defence or Defence to Counterclaim respectively.
Grounds of Defence after action brought

14. Where any ground of Defence arises:

*Further
Defence or
Reply*

- (a) After the Defendant has delivered a Defence or the time limited for delivery of a Reply has expired;
- (b) In respect of a Set-off or Counterclaim after the Claimant has filed the Reply or the time limited for delivery of a Reply has expired;
- (c) The Defendant or Claimant may, within 8 days after such ground of Defence has arisen or at any time by leave of a Judge deliver a further Defence or further Reply. as the case may be setting forth the same.

15. Whenever any Defendant in his Defence or in any further Defence pursuant to Rule 14 of this Order alleges any ground of Defence which has arisen after the commencement of the action; the Claimant may concede to such Defence in **Form 13** with such modification (as circumstances may require) and may thereupon obtain judgment up to the time of the Pleadings of such Defence, unless the Judge either before or after the delivery of such concession otherwise orders.

*Concession to
Defence:
Form 13*

16. A Respondent to an Originating Summons shall file a counter affidavit together with all the exhibits he intends to rely upon and a Written Address within 21 days after service of the Originating Summons.

*Defence to
Originating
Summons*

ORDER 24

REPLY

1. Where the Claimant desires to make a reply to a Statement of Defence, he shall file it *Filing of Reply*
within **Fourteen (14) days** from the service of the Defence.
2. A Reply may be accompanied by: *Documents to accompany a Reply*
 - (a) An additional list of witness(es) to be called at the trial,
 - (b) An additional deposition on oath of the witness(es),
 - (c) Additional list and copies of every document to be relied upon at the trial.
3. Where a Counterclaim is pleaded, a reply thereto is called a Defence to counterclaim *Reply to Counterclaim*
and shall be subject to the rules applicable to Defence.

ORDER 25

ADMISSIONS

1. Any party to a proceeding may give notice by his Pleadings or otherwise in writing, that he admits the truth of the whole or part of the facts stated in the other party's pleading. *Notice of Admission of facts*
 2. (1) A party may by notice filed and served not later than Seven (7) days before the first Case Management Conference require any other party to admit any document. *Notice to Admit Document*
 (2) The party served with the notice shall, not later than four (4) days after service, give notice of admission or non-admission of the document, failing which he shall be deemed to have admitted it, unless a Judge directs otherwise.
 (3) When a party decides to challenge the authenticity of any document he shall not later than seven (7) days from the service of the document give notice that he does not admit the document and require it to be proved at the trial.
 3. (1) Any party may by notice filed and served not later than seven (7) days before the first Case Management Conference require any other party to admit any specific fact mentioned in the notice. *Notice to Admit Facts*
 (2) The party served with the notice shall not later than four (4) days after service give notice of admission or non-admission of the fact, failing which he shall be deemed to have admitted it unless a Judge directs otherwise.
 (3) Any admission made under sub-rule (2) shall be deemed to be made only for the purpose of the proceedings and shall not be used against any other party other than the party giving the notice.
 (4) Where there is a refusal or neglect to give notice as provided under sub-rule (2) of this Rule or within such further time as may be allowed by the Judge, the costs of proving such fact shall be paid by the party so refusing or neglecting whatever the result of the proceedings, unless the Judge is satisfied that the refusal to give notice was reasonable or the Judge otherwise directs.
- Where admissions of fact have been made, either on the Pleadings or otherwise at Case Management Conference or at any other stage of the proceedings, the Judge may upon application make such orders or grant Judgment in favour of any party in respect of the admissions, pending the determination of any other question between the parties. *Judgment or Order Upon Admission of Facts*
- Where a Notice to admit or produce comprises documents which are not necessary, the Judge may order the party giving the notice to bear the costs occasioned by same, which shall not be less than ₦2,500.00 (Two Thousand, Five Hundred Naira). *Costs of Notice Where Documents are unnecessary*

ORDER 26

DEFAULT OF PLEADING

1. Where the claim is for a debt or liquidated demand only and the Defendant does not within the time allowed by these rules file a Defence, the Claimant may at the expiration of such time apply for final Judgment for the amount claimed with costs. *Claim for Debt or Liquidated Demand*
2. Where one or more of several Defendants default under the provisions of rule 1 of this Order, the Claimant may without prejudice to his right to proceed against the other Defendants, apply that final Judgment be entered against the Defendant in default. *Default by One or Several Defendants*
3. (1) If the Claimant's claim is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages, and the Defendant defaults as provided in rule 1 of this Order, the Claimant may apply to a Judge for interlocutory Judgment against the Defendant. *Damages and Detention of Goods*
 (2) The value of the goods and the damages, or the damages only as the case may be, shall be ascertained as the Judge may order.
 (3) Where damages are to be ascertained and in all cases where declaratory reliefs are sought the Judge shall set down the matter for trial.
4. (1) Where one or more of several Defendants default in any action as provided under rule 3 of this Order, the Claimant may apply to a Judge for interlocutory Judgment against the defaulting Defendant and proceed with his action against the other Defendants. *Default of one or more Defendants*
 (2) In such case, the value and amount of damages against the defaulting Defendant shall be assessed at the trial of the action or issues against the other Defendants, unless the Judge orders otherwise.
5. Where in a claim for debt or liquidated demand and also for pecuniary damages or for detention of goods with or without a claim for pecuniary damage but includes a liquidated demand, the Defendant is in default, as provided in rule 1 of this Order, the Claimant may apply to a Judge to enter – *Debt or Damages and Detention of Goods or Damages*
 (a) final Judgment for the debt or liquidated demand;
 (b) interlocutory Judgment for the value of the goods and damages, or the damages only as the case may be, and proceed as provided in rules 3 and 4.
6. In an action for the recovery of land, if the Defendant is in default as provided in rule 1, the Claimant may apply for Judgment stating that the person whose title is asserted in the Originating Process shall recover possession of the land. *Recovery of Land*

7. Where in an action for recovery of land the Claimant endorsed a claim for *mesne* profits or arrears of rent in respect of the premises claimed or part of the premises; or damages for breach of contract or wrong or injury to the premises claimed; one or more Defendants defaults as provided in rule 1, the Claimant may apply for final Judgment against the defaulting Defendant and proceed as provided in rules 3 and 4. *Claim for Mesne profits, Arrears or Damages*
8. (1) If the Claimant's claim is for: *Defence to Part of Claim Only*
 - (a) a debt or liquidated demand or for pecuniary damages only; or
 - (b) detention of goods with or without a claim for pecuniary damages; or
 - (c) the recovery of land or any such matters; and the Defendant files a Defence which purports to offer an answer to part of the Claimant's alleged cause of action, the Claimant may apply for final or interlocutory Judgment as the case may be, for the part unanswered.

(2) Without prejudice to the provisions of sub-rule (1) of this Rule where:

 - (a) the unanswered part consists of an inseparable or in severable cause of action or its severable Judgment may not be granted;
 - (b) there is a Counterclaim, execution of any Judgment in respect of the Claimant's claim shall not issue without the leave of a Judge.
9. (1) In all actions other than those in the preceding rules of this Order, if the Defendant defaults in filing a Defence, the Claimant may apply to a Judge for Judgment, Judgment shall be given upon the statement of claim as the Judge may consider just and appropriate. *Defendant in default*

(2) Where there is no Defence, and the matter before the Court cannot be adjudged without the Claimant adducing evidence to prove the case, the Claimant shall apply to set the matter down for trial and Judge shall proceed to hear the matter.
10. Where in any such action as provided in rule 9 of this Order, there are several Defendants, if one of such Defendants is in default as aforesaid, the Claimant may apply for Judgment against the Defendant in default, and proceed against the other Defendants. *One of Several Defendants in Default*
11. Where issues arise in a proceeding other than between the Claimant and Defendant, if any party to any such issue is in default of filing any Pleadings, the opposing party may apply for Judgment, and the Judge may enter Judgment accordingly or make such other order(s) as may be deemed fit. *Default of Third Party*
12. (1) Any Judgment entered upon under this Order or any provision of these rules shall be final and valid. *Setting Aside Judgment by Default*

(2) The Judgment may be set aside upon application to the Judge on the grounds of fraud, non-service or lack of jurisdiction and on such terms as the Court may deem fit.

ORDER 27**PAYMENT INTO AND OUT OF COURT**

1. (1) Where, after service in any proceedings for debt or damages, a Defendant intends to pay money into Court in respect of the proceedings, he shall notify the Chief Registrar who will direct him to pay the money into an interest-yielding account in a Commercial Bank and he shall file the teller of such payment with the Chief Registrar.
- (2) Where a teller for payment is filed with the Chief Registrar, he shall immediately give notice of the payment to the Claimant who may apply to a Judge for an order to withdraw the amount so paid.
- (3) Where a Defence of tender before action is set up, proof of such 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 in **Form 14** with such modifications or variations as circumstances may require, 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 unless a Judge otherwise directs.
- (6) The notice may be modified or withdrawn or delivered in an amended form by leave of a Judge upon such terms as may be just and receipt of same shall be acknowledged by the Claimant within three (3) days.
- (7) Where money is paid into Court with denial of liability, the Claimant may proceed with the action in respect of the Claim and if he succeeds, the amount paid shall be applied so far as is necessary in satisfaction of the claim, and the balance if any, shall on the order of a Judge be repaid to the Defendant.
- (8) Where the Defendant succeeds in respect of such claim; the whole amount paid into Court shall be repaid to him on the order of a Judge.

*Payment into
and out of
Court*

(1) Where money is paid or more than one payment has been made into Court under rule 1, the Claimant:

*Claimant's
Take Out
Money*

- (a) may **within fourteen (14) days** of the receipt of the notice of payment or the last payment if more than one payment is made, accept the whole sum or any one or more of the specific sums in satisfaction of the cause of action to which the specified sum relates by giving notice to the Defendant in **Form 15**, with such modifications or variations as circumstances may require; and

- (b) shall be entitled to receive payment of the accepted sum or sums in satisfaction of the claim.
- (2) Proceedings in the action or in respect of the specified cause or causes of action as the case may be shall abate upon payment to the Claimant or on his written authority to his Legal Practitioner.
- (3) If the Claimant accepts money paid into Court in satisfaction of his claim, or if he accepts a sum or sums paid in respect of one or more specified causes of action, and gives notice that he abandons the other causes of action, he may:
 - (a) after four (4) days from payment out of Court, unless a Judge otherwise orders, tax his costs incurred prior to the time of payment into Court; and
 - (b) forty-eight (48) hours after taxation shall sign Judgment for the taxed costs.
- (4) Where in an action for libel or slander, the Claimant accepts money paid into Court, either party may apply for leave by summons to a Judge to allow the parties or either of them to make a statement in open Court on terms approved by the Judge.
3. If the whole of the money in Court is not taken out under rule 2, the money remaining in Court shall not be paid out except by an order of a Judge made at any time before, during or after the trial, in satisfaction of the claim or specified cause or causes of action in respect of which it was paid. *When only a part of money is paid*
4. (1) Money may be paid into Court under rule 1 by one or more of several Defendants sued jointly or in alternative upon notice to the other Defendant or Defendants. *Several Defendants*
- (2) If the Claimant elects within fourteen (14) days after receipt of notice of payment into Court to accept the sum paid into Court, he shall give notice in **Form 16** with such modifications or variations as circumstances may require, to each Defendant and 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 accepted under sub-rule (2) shall not be paid out except in pursuance of an order of a Judge dealing with the cause or causes of action.
- (4) In an action for libel or slander against several Defendants sued jointly, if any Defendant pays money into Court, the Claimant may within 14 days elect to accept the sum paid into Court in satisfaction of his claim against the Defendant making the payment and shall give notice to all the Defendants in **Form 15** with such modifications or variations as circumstances may require.
- (5) The Claimant may:

- (a) tax his costs against the Defendant who has made such payment in accordance with Rule 2(3) of this Order and the action shall abate against that Defendant.
- (b) continue with the action but the sum paid into Court shall be set-off against the damages awarded to the Claimant against the Defendant in respect of whom the action is continued.

5. A person made a Defendant to a Counterclaim may pay money into Court in accordance with the above Rules, with necessary modifications.

Counterclaim

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

Persons Under Legal Disability

(2) No money or damages in any way recovered or adjudged; ordered or awarded or agreed to be paid in any such proceedings regarding the claims of any person under legal disability whether by Judgment, settlement, compromise, payment into Court or otherwise, before, during or after the trial, shall be paid to the Claimant or to the guardian of the Claimant or to the Claimant's Legal Representative unless by the direction of a Judge which may be general or specific or include how:

(a) the money is to be applied or dealt with; or

(b) any payment is to be made either directly or out of money paid into Court, to the Claimant or the guardian for expenses incurred or for maintenance or otherwise for or on behalf of or for the benefit of the person under legal disability;

(c) any payment is to be made to the Claimant's legal Practitioner in respect of costs.

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

Payment and Withdrawal of Money from Court

ORDER 28

PROCEEDINGS IN LIEU OF DEMURRER

1. No demurrer shall be allowed.

*Demurrer
Abolished*

2. (1) Any party may by his Pleadings raise any point of law and the Judge may dispose of the point so raised before or at the trial.

*Points of law
may be raised
by pleading*

(2) If in the opinion of the Judge, the decision on such point of law substantially disposes of the whole proceedings or any part of it, the Judge may make such decision as may be just.

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

ORDER 29

WITHDRAWAL OR DISCONTINUANCE

1. (1) The Claimant may by notice in writing duly filed and served, at any time before service of the Defence, wholly discontinue his claim against all or any of the Defendants or withdraw or discontinue any part or parts of his claim. *Claimant withdraw or discontinue before Def.*
 (2) The Claimant shall pay such Defendant costs of the action, or if the action is not wholly withdrawn or discontinued, costs occasioned by the matter so withdrawn or discontinued.
 (3) The withdrawal or discontinuance as the case may be, shall not be a Defence to any subsequent claim.
2. (1) Where a Defence has been filed, the Claimant may, with the leave of a Judge before taking any other step in the proceedings withdraw or discontinue the proceedings or any part of it on such terms and conditions as the Judge may order. *Claimant Withdraw Discontinue after Def.*
 (2) Where 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 terms imposed on him by the Judge have been fully complied with.
 (3) The Judge may in like manner and like discretion as to terms, upon the application of a Defendant order the whole or any part of his alleged grounds of Defence or Counterclaim to be withdrawn or struck out.
3. (1) Where a cause is ready for trial, it may be withdrawn by either Claimant or Defendant upon producing to the Registrar, consent in writing signed by the parties and a Judge shall strike out the matter without the necessity of attendance of the parties or their Legal Practitioner. *Withdrawn consent*
 (2) The withdrawal with the consent of the parties under this Rule shall be a bar to further proceedings.
4. Where trial has commenced, the Claimant may with the leave of Court withdraw or discontinue the claim or any part of it and the Judge may dismiss the claim wholly or in part or make such order as the Judge shall deem fit. *Claimant withdraw the trial*

ORDER 30

AMENDMENT

1. A party may amend his Originating Process and Pleadings at any time before the close of Case Management Conference and not more than twice during the trial but before the close of the parties' case. *Amendment of Originating Process and Pleadings*
2. (1) An Application for amendment shall: *Application*
 - (a) exhibit the proposed amendment and show the paragraphs of the proposed amendment;
 - (b) be supported by an affidavit.
- (2) The Judge may allow the application upon such terms as to costs or otherwise as may be just.
3. An application to amend an Originating Process or a Pleadings must be filed: *Amendment of Originating Process*
 - (a) with a list of any additional witness to be called together with the deposition on oath of such witness;
 - (b) in the case of an existing witness, with further written deposition on oath;
 - (c) with a list and copies of any document to be relied upon consequent on such amendment by the amending party.
4. If a party who has obtained an order to amend does not amend accordingly within the time limited for that purpose by the order of a Judge, or if no time is specified in the order, **within seven (7) days** from the date of the Order, the party shall pay an additional fee of **N500.00 (Five Hundred Naira)** for each day of default. *Failure to amend after Order*
5. Upon amendment of an Originating Process or Pleadings, a copy of the document as amended shall be filed in the Registry and additional copies served on all the parties to the action. *Filing and service of amended process*
6. Whenever any endorsement or pleading is amended, it shall be marked in the following manner: *Date of Order and date of amendment to be displayed*

"Amended day of pursuant to Order of (name of Judge) dated the day of....."
7. A Judge may upon application at any time correct errors arising from accidental slip or clerical mistakes in judgments or orders without an appeal being filed. *Clerical mistakes and accidental omissions in Judgments etc.*

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

General
power to
amend

ORDER 31

CASE MANAGEMENT CONFERENCE AND SCHEDULING

1. (1) **Within Fourteen (14) days** after close of Pleadings, the Claimant shall apply for the issuance of a Case Management Conference Notice as in **Form 17**.
- (2) Upon the application by a Claimant under sub-rule (1) above, the Judge shall cause to be issued to the parties and their Legal Practitioners where applicable, a Case Management Conference Notice in **Form 17** accompanied by a Case Management Information Sheet in **Form 18** for the following purposes:
 - (a) disposal of matters which must or can be dealt with on interlocutory application;
 - (b) giving such directions as to the future course of the action as appears best adapted to secure its just, expeditious and economical disposal;
 - (c) promoting amicable settlement of the case or adoption of alternative dispute resolution (ADR).
- (3) If the Claimant does not make the application within the time specified under sub-rule (1) of this Rule, the Defendant(s) may do so or apply for an order to dismiss the action.

*Case
Management
Conference
Notice: Form 17
and Form 18*

2. At the Case Management Conference, the Judge shall consider and take appropriate action with respect to any of the following or aspect of same as may be deemed necessary or desirable:

Agenda

- (a) Formulation and settlement of issues;
- (b) Amendments, 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) settlement of documents to be admitted as exhibits at the trial;
- (f) narrowing the field of dispute between expert witnesses, by either participation at Case Management Conferences or in any other manner;
- (g) hearing and determination of application and objections on point of law;
- (h) giving orders or directions for separate trial of a Claim, Counter-Claim, Set-Off, Cross- Claim or Third Party Claim or of any particular issue in the case;
- (i) settlement of issues, inquiries and accounts under Order 35;
- (j) securing statement of Special Case of law or facts under Order 36;
- (k) determining the form and substance of the Case Management Order;
- (l) making referrals to the Oyo State Multi-Door Courthouse or other relevant ADR bodies;
- (m) implementing any ADR Order made under (l) above

(n) any other matter as may facilitate the just and speedy disposal of the action.

3. (1) The duration of the Case Management Conference stage with respect to any matter shall **not exceed Forty-Five (45) days** from its commencement. *Time-Table*
 (2) As far as practicable, Case Management Conferences shall be held from day to day or adjourned only for purposes of compliance with Case Management Conference Orders.
 (3) A Judge may extend Case Management Conference period where he deems it expedient to do so.
 (4) The parties and their Legal Practitioners shall co-operate with the Judge in working within this time-table.
4. The Judge shall issue a report after close of the Case Management Conference which shall guide the subsequent course of the proceedings unless modified by the Trial Judge. *Report*
5. If a party or his Legal Practitioner fails to attend the Case Management Conference or obey a Scheduling Order or is substantially unprepared to participate in the Conference or fails to participate in good faith, the Judge shall; *Sanctions*
 (a) in the case of the Claimant dismiss the claim;
 (b) in the case of a Defendant enter Judgment against him.
6. (1) A Judgment entered under rule 5 of this Order may be set aside upon an application **within seven (7) days** of the Judgment or such other period as may be allowed by the Judge or ADR Judge. *Application to set aside Judgment and ADR directives*
 (2) The application shall be accompanied by an undertaking to participate effectively in the Case Management Conference or ADR, as the case may be.
7. The Judge shall direct the Case Management Conference with due regard to its purpose and agenda as provided under this Order and require the effective cooperation of parties or their Legal Practitioners in dealing with the Conference agenda. *Management*

ORDER 32

ALTERNATIVE DISPUTE RESOLUTION (ADR) PROCEEDINGS

1. This Order applies to:
 - (a) Cases screened in reference to ADR;
 - (b) Matters referred to ADR pursuant to Order 31 Rule 1(2)(c) and 2(1);
 - (c) Applications for enforcement of Arbitral Awards.

Applications
2.
 - (1) When Pleadings are deemed closed, the case may be referred to Oyo State Multi-Door Courthouse or other appropriate ADR Institution or Practitioner(s).
 - (2) Where a case has been referred to ADR under Order 31 of these rules, the referral Judge shall, in case of recalcitrant parties consider and give appropriate directives on the filing of Statement of Case and other necessary issues.
 - (3) Upon the directive of the Judge in sub-rule (2) of this Rules, the Claimant shall, **within fourteen (14) days** file his Statement of Case and the Defendant shall file his response **within fourteen (14) days** of service of the Statement of Case.
 - (4) The Judge shall direct the ADR proceedings with due regards to its purpose and agenda as provided under this Order and shall require parties or their Legal Practitioners to cooperate with him effectively.

All applications to be taken by the ADR Judge
3.
 - (1) An application in any ADR proceedings under these rules shall be by Originating Motion on Notice.
 - (2) The application may be brought to:
 - (a) revoke an arbitration agreement;
 - (b) appoint an Arbitrator;
 - (c) stay proceedings
 - (d) remove an Arbitrator or umpire;
 - (e) seek injunction against arbitration (or suit pending arbitration)
 - (f) enforce or set aside an award;
 - (g) subpoena a witness to attend arbitral proceedings.
 - (3) The Originating Motion as provided under this Order shall:
 - (a) state in general terms the grounds of the application;
 - (b) where the motion is founded on evidence by affidavit, it should be accompanied by a copy of the affidavit intended to be used; and
 - (c) be supported by a Written Address.
 - (4) A party applying for enforcement of an Award, shall supply the:

Mode of ADR Application

- (a) duly authenticated original award or certified copy of the Award;
- (b) original arbitration agreement or duly certified copy of same;
- (5) A party served with an application under this Order may oppose the application by filing a counter-affidavit supported by a Written Address within fourteen (14) days from the date of service of the application.
- (6) The Applicant may file a Reply on Point of Law and or Further Affidavit within seven (7) days from the date of receiving the counter affidavit or any other process filed by the Respondent.

4. (1) An Award made by an Arbitrator of a decision reached at the Multi-Door Courthouse may be enforced by leave of a Judge in the same manner as a Judgment or Order of Court.

Enforcement of Award

(2) An application to set aside or remit any Award may be brought at any time within three (3) months after such award has been made and published to the parties.

Provided that a Judge may by Order before or after the expiration of three (3) months on good cause being shown, extend the time allowed by this Rule to set aside or remit an Award.

5. Where a cause or matter is not resolved, the ADR Judge shall issue a status report and the matter shall be remitted to the Chief Judge for assignment to a trial Judge.

Report by ADR Judge

ORDER 33

AMICABLE SETTLEMENT

1. Where parties before the Court have indicated their desire for an amicable settlement of their disputes, the Court may adjourn the matter to allow the parties negotiate and reach an amicable agreement within three (3) months or such longer period as the Judge may allow upon good cause being shown.
2. Where parties in an action before the Court agree to settle amicably out of Court; they shall, at the conclusion of their negotiation, file the Terms of Settlement in Court.
3. The Terms of Settlement shall contain:
 - (a) the names of the Parties;
 - (b) the Suit Number and the heading "Terms of Settlement" stating the terms and conditions of the amicable agreement;
 - (c) the amount of money to be paid and the mode of payment shall be stated clearly, if it is for monetary settlement.
4. The parties or their representatives shall execute the Terms of Settlement respectively.
5. If the person signing is signing on behalf of:
 - (a) a group in a representative action; or
 - (b) a corporate body or institution,

the person signing shall write party's name and shall disclose the status of such a person in the body corporate or institution and affix body or institution's official stamp or corporate seal to authenticate the agreement.
6. (1) Where Terms of Settlement have been executed, the Terms of Settlement shall be filed at the Registry of the Court for adoption and to be entered as the Judgment of the Court in the matter.
- (2) Upon receipt of the Terms of Settlement by the Court, the Court shall cause hearing notices to be issued and served on the parties and their Counsel.
- (3) The hearing notice shall indicate the date and time fixed for the Terms of Settlement to be adopted and entered as the Judgment of the Court.
7. On the date fixed by the Court, parties or their counsel shall adopt the said Terms of Settlement and move the Court to enter the Terms of Settlement as the Judgment of the Court.

Court may adjourn for parties to reach agreement.

Filing of Terms of Settlement

Content of Terms of Settlement.

Parties to sign Terms of Settlement

Signing and sealing by representative of corporate body, etc.

Terms of Settlement to be entered as Judgment of Court

Adoption and entering of Terms of Settlement as Judgment of the Court

8. Any of the parties may by motion on notice, supported by an affidavit deposing to the facts that the parties have settled amicably, attach the Terms of Settlement and move the Court to adopt the Terms of Settlement at a date earlier than the date fixed by the Court for the adoption of the Terms of Settlements as its Judgment.
9. Every application under rule 8 of this Order shall be filed and an advance copy shall be forwarded to the other party not less than five (5) days before the date fixed for hearing.

Party may apply for adoption of Terms of Settlement at earlier date
Application of party to be served on other party

ORDER 34

DISCOVERY AND INSPECTION

1. (1) In any cause or matter, the Claimant or Defendant may deliver Interrogatories as provided in **Form 19** with such modifications or variations as circumstances may require for the examination of the opposing party *Discovery by Interrogatories: Form 19*
 (2) Where such Interrogatories relate to more than one party it shall have a note at the end of it stating which of the Interrogatories each person is required to answer.
 (3) Interrogatories shall be delivered **within seven (7) days** of close of Pleadings and shall form part of the agenda for the Case Management Conference.
2. If a party to any cause or matter is a: *Corporation or companies*
 - (a) limited or unlimited company, body corporate;
 - (b) firm, enterprise, friendly society, association; or
 - (c) 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, the opposing party may deliver Interrogatories to any member or officer of such party.
3. An objection to answering any of the Interrogatories on the ground that it is scandalous or irrelevant may be taken at the Case Management Conference. *Objection to interrogatories*
4. (1) Interrogatories shall be answered by affidavit as provided in **Form 20** with such modifications or variations as circumstances may require. *Answer by Affidavit: Form 20*
 (2) Two (2) copies of the affidavit shall be filed and supplied to the Registrar within seven (7) days, or such time as the Judge may allow.
 (3) Where a process filed under this Order is not accompanied by a document referred to in the process, a Judge may on application strike out such process.
5. If any person interrogated omits to answer or answers insufficiently, the Case Management Judge shall on application issue an order requiring him to answer or to answer further as the case may be. *Order to answer or answer further*
6. (1) A party to a proceeding may, serve a written request on any other party to make discovery on oath of the documents relating to any matter in question in the action that are or have been in his possession, custody, or under his power or control. *Application for discovery of documents*
 (2) The request for discovery shall be served **within seven (7) days** of the close of Pleadings and form part of the agenda of the Case Management Conference.
 (3) The party on whom the request is served shall **within seven (7) days** of the request

or such time as the Judge may allow answer on oath completely and truthfully.

- (4) Every affidavit in answer to a request for discovery of documents shall be accompanied by office copies of the documents referred to therein.
 - (5) The affidavit in answer to a request for discovery of documents shall be in Form 21 with such modifications or variations as circumstances may require and specify which, if any, of the listed documents he objects to producing, stating the grounds of his objection.
7. (1) Any process to be filed after the Case Management Conference shall be accompanied by copies of documents referred to in the process. *Processes filed after Case Management Conference*
 - (2) Where a process filed is not accompanied by the document referred in the process a Judge may on application strike out the process.
 8. (1) Where any document required to be attached to any process or produced under this Order or any other provision of these rules is a Business Book, a Judge may upon application order a copy of any entry in the book to be furnished and verified in an affidavit deposed to by a person in charge of the book or under whose supervision the book is kept. *Verification of Business Book*
 - (2) Notwithstanding that a copy of the Business Book has been supplied, a Judge may order inspection of the book from which the copy was made.
 - (3) The Judge may upon application, whether or not an affidavit of document has been ordered or filed, make an order requiring any party to state by affidavit -
 - (a) whether any particular document or class of document is or has at any time been in his possession or custody; or under his power or control,
 - (b) when he parted with the document and what has become of it.
 9. An Order for Interrogatories or Discovery or Inspection made against any party, if served on his Legal Practitioner shall be sufficient service to file an application for citation of the party for disobedience of the Order. *Attachment of Party after service on Legal Practitioner*
 10. A Legal Practitioner upon whom an Order against any party for Interrogatories or Discovery or Inspection is served under rule (9), who neglects without reasonable excuse to give notice of the order to his client, shall be liable to committal. *Attachment or Citation of Legal Practitioner*
 11. A party may, at the trial of any cause or matter use any one or more of answers or any part of an answer of the opposite party to interrogatories in evidence without putting in the others or the whole of such answer: *Using answers to Interrogatories at Trial*

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

- 12.** In any action against or by a Sheriff in respect of any matter connecting the Sheriff with the execution of his office, a Judge may on application of either party, order that the affidavit in answer either to interrogatories or to any Order for discovery shall be made by the officer actually concerned. **Discovery against Sheriff**
- 13.** This Order shall apply to persons under legal disability and their guardians. **Person under Legal disability**

ORDER 35

ISSUES, INQUIRIES, ACCOUNTS AND REFERENCES TO REFEREES

1. (1) Issues of facts in dispute in any proceedings shall be defined by each party and filed within 7 days after close of Pleadings.
(2) If the parties differ on the issues, the Case Management Judge may settle the issues.
2. The Judge may at any time order the whole cause or matter or any question or issue of facts arising in the matter 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, which may require that the cause or matter should proceed in the ordinary manner.
3. 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 information with detailed instructions as may appear necessary for his guidance, and shall direct the parties if necessary to appear before the Referee during the inquiry.
4. The Referee may, subject to the Order of the Judge:
 - (a) hold the inquiry at or adjourn it to any place and hold any inspection or view which may be deemed expedient for the disposal of the controversy before him; and
 - (b) So far as practicable, proceed with the inquiry from day to day.
5. (1) Subject to any Order made by the Judge under rule 2 of this Order, 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 attendance of such witness may be enforced before the Court.
 - (2) The inquiry shall be conducted in the same manner or as nearly as circumstances will admit, as trials before a Court.
 - (3) The Referee shall have the same authority in the conduct of any inquiry as a Judge when presiding at a trial.
 - (4) Nothing in these rules shall authorize any Referee to commit any person to prison or to enforce any Order by attachment or otherwise; but the Judge may, in respect of matters before a Referee, make such Order of attachment or committal as he may consider necessary.

Issues of fact

Reference to Referee

Instructions to Referee

General Powers of Referee

Evidence

6. (1) The Referee shall submit a report of the inquiry held pursuant to a reference under this Order to the Judge and a notice of the report shall be served on the parties. *Reports made in pursuance of reference under order*
- (2) A Referee may by his Report submit any question arising in the report for the decision of the Judge or make a special statement of facts from which the Judge may draw such inferences as he deems fit.
- (3) On the receipt of a Referee's Report, the Judge may:
- (a) adopt the Report in whole or in part;
 - (b) vary the Report;
 - (c) require an explanation from him;
 - (d) remit the whole or any part of the question or issue originally referred to him for further consideration by the Referee or any other Referee;
 - (e) decide the question or issue originally referred to him on the evidence taken before him, either with or without additional evidence.
- (4) An application to vary the Report or remit the whole or any part of the question or issue originally referred, may be made at the hearing for the further consideration of the cause or matter by the Judge, after giving not less than 4 days' notice, and any other application with respect to the Report may be made at such hearing without notice.
- (5) Where in respect of a reference under this Order a Judge orders that the further consideration of the cause or matter in question shall not stand adjourned until the receipt of the Referee's Report, the order may contain directions with respect to the proceedings on the receipt of the Report and the above provisions of this Rule shall have effect subject to any such directions.
7. (1) The Judge may direct an account to be taken or by any subsequent Order, give special directions with regard to the mode in which the account is to be taken or vouched. *Special directions as to mode of taking account*
- (2) Subject to the right of objection by any interested party, the Judge may direct that in taking the account, the books of accounts in which the Accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the content.
8. (1) Where any Account is directed to be taken, the accounting party shall make out his Account and verify the same by affidavit which must be left in the Registry. *Accounts to be verified by affidavit*
- (2) The items on each side of the Account shall be numbered consecutively, and the Account shall be attached to the affidavit as an exhibit. *Accounts and inquiries to be numbered*

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

Made of
vouching
accounts

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

Surcharge

11. (1) Where any Account is directed to be taken or Inquiries to be made by any Judgment or Order each such direction shall be numbered.

Account
directed
to be taken

(2) The distinct Account and Inquiry may be designated by a number and such Judgment or Order shall be in Form 22 with such modifications or variations as the circumstances of the case may require.

12. In taking any Account pursuant to any Judgment or Order, all just allowances shall be made without any direction for that purpose.

Just
Allowances

ORDER 36

SPECIAL CASE

1. (1) At the Case Management 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. *Special Case by Consent*
(2) 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 decide the questions.
(3) Upon the argument of the Special Case the Judge and the parties may refer to the contents of such documents and the Judge may draw any inference of facts or law from the facts and documents stated in such Special Case which might have been drawn if proved at a trial.
2. (1) If at the Case Management Conference, it appears to the Judge that there is in any cause or matter a question of law, which could be conveniently decided before any evidence is given or any question or issue of fact is tried, the Judge may make an Order accordingly, and may raise such questions of law or direct the questions to be raised at the trial either by Special Case or in such other manner as the Judge may deem expedient. *Special Case by Order before Trial*
(2) Further proceedings in the matter may be stayed as the decision of such question of law render such proceedings unnecessary.
3. Any Special Case by consent under rule 1 of this Order shall be signed by the parties or their Legal Practitioners and be filed by the Claimant or other party having conduct of the proceedings. *Special Case to be signed*
4. An application to set down a Special Case in any cause or matter where 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 affect the interest of the person are true. *Application to set down where a person under disability is a party*
5. (1) The parties to a Special Case may enter into a written agreement 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 party with or without costs. *Agreements for payment of Money and Costs*
(2) The Judgment of the Court may be entered for the sum so agreed or ascertained with or without costs, and execution may issue immediately after such Judgment, unless otherwise agreed or stayed on appeal.
- i. This Order shall apply to every Special Case stated in a cause or matter and in any incidental proceedings. *Application Order*

ORDER 37

CAUSE LISTS

1. (1) The Registrar shall keep a Case Management List which shall consist of actions directed to be set down for Case Management Conference under Order 31 Rule 3. *List of cases for hearing*
 (2) The Registrar shall also keep a Weekly Cause List of all other actions which are ready for trial or hearing.
2. (1) The Registrar shall on every Friday post a Case Management and Weekly Cause List which shall set out the arrangement of causes before each of the Judges sitting in Court during the following week. *Case Management and Weekly Cause List*
 (2) Nothing in this Rule shall preclude the Chief Judge from making special arrangement, whenever necessary or convenient, for the disposal of causes and matters included in the List.
3. Where any Friday is a public holiday, the Case Management List and Weekly Cause List shall be posted on the day last preceding which is not a public holiday. *Public holiday*
4. 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(s) taken by the named Registrar, shall be entered in the Court file. *Judge unable to sit*
5. Case Management List and Weekly Cause Lists and other such lists shall be posted up on one or more notice boards set up in such place(s) within or near the Court premises as the Chief Judge may designate. *Notice Board*

ORDER 38

PROCEEDINGS AT THE TRIAL

The order of proceedings at the trial of a cause shall be as prescribed under this Order.

Order of Proceedings

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

Non-appearance of both parties

Where the Claimant appears when a cause is called for hearing but the Defendant does not appear, the Claimant may prove his claim, so far as the burden of proof lies upon him.

Default of appearance by Defendant

Where the Defendant appears when a cause is called for hearing but the Claimant does not appear, the Defendant shall if he has no Counterclaim, be entitled to Judgment dismissing the action, but if he has a Counterclaim, then he may prove such Counterclaim, so far as the burden of proof lies upon him.

Default of appearance by Claimant

(1) Where a cause is struck out under this Order, either party may apply that it be restored on the Cause List on such terms as the Judge may deem fit.

Judgment by default may be set aside on terms

(2) A Judgment obtained upon the non-appearance of any party at the trial may be set aside by the Judge on such terms as he may deem fit.

(3) An application to re-list a cause struck out or to set aside a Judgment shall be made within 7 days after the Order or Judgment has been granted or such extended period as the Judge may allow.

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

Adjournment of trial.

The Registrar or other designated officer present at any trial or hearing shall make a note of times at which the trial or hearing commences and terminates and the duration of such trial on each day it goes on for communication to the Taxing Officer if required.

Time of commencement and termination of trial.

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

Party with burden of proof to begin

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

Documentary evidence

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

Additional witness

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

11. (1) A party shall close his case when he has concluded his evidence; however, the Claimant or Defendant may make oral application to have the case of the other party closed. *Close of case of parties*

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

12. (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 who put in the exhibit or where more convenient mark the witness by whom the exhibit is tendered with a number. *Exhibits during trial*

- (2) The exhibits put in by a party or proved by a witness are numbered in one consecutive series and the Registrar shall cause a list of all the exhibits in the action to be made.

- (3) The list of exhibits when compiled 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 through whom the exhibit is tendered.

13. Where 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. *Written Address by Party beginning*

14. Where the other party calls evidence he shall within 21 days after the close of evidence file a Written Address. Upon being served with the other party's Written Address, the party beginning shall within 21 days file his own Written Address. *Written Address by the other party*

15. 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 Written Address. *Reply on point of Law.*

15. (1) An exhibit shall not be released to the party who put it in after the trial except by leave of a Judge: *Custody of Exhibit after trial*

Provided that the exhibit shall not be released unless the:

- (a) period during which Notice of Appeal may be given has lapsed without such notice having been given.

- (b) 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
 - (c) release of the exhibit will not in any way prejudice any other party.
- (2) After a Notice of Appeal has been filed, an exhibit produced at the trial shall not be released by the High Court unless leave to release such exhibit is granted by the Court of Appeal.
17. (1) Any party may apply for and on payment of the prescribed fee obtain an office copy of the list of exhibits. *Office copy of list of Exhibits*
- (2) Where there is an appeal, certified copy of the list of exhibits shall be included in the documents supplied for the purpose of the appeal.

ORDER 39

DILIGENT PROSECUTION

1. All parties and Counsel to the cause or matter shall ensure diligent prosecution of their case. *Party to ensure Diligent Prosecution*
2. A Judge may, at any stage of the proceedings in a matter, upon application or *suo motu* strike out a matter not being prosecuted diligently. *Indolent Prosecution*
3. When a matter is pending in Court, and no proceedings is held or application filed in the case for a period of Six (6) months, the Court shall deem same abandoned and strike out the case. *Abandoned Cause*

ORDER 40

FILING OF WRITTEN ADDRESSES

1. (1) A Written Address shall be printed on white opaque size A4 paper and set out in paragraphs numbered serially and shall contain: *Content of a Written Address*
 - (a) the claim or application on which the address is based;
 - (b) a brief statement of the facts and reference to the exhibits, if any, 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.
- (2) The Written Address shall be legible and typed in clear typographic character. The font shall be Arial, Times New Roman or Tahoma of 14 font size with at least 1.5 line spacing between.
- (3) Every Written Address, whether in physical or electronic form, which does not comply with the page limit and page size requirement of this order shall not be accepted by the registry for filing.
2. (1) All Written Addresses shall be concluded with a numbered summary of the points raised and the party's prayer. *Summation of address*
 - (2) A list of all authorities referred to shall be submitted with the Address and where any unreported Judgment is relied upon, the Certified True Copy shall be submitted along with the Written Address.
 - (3) When the Written Address is in respect of an application, the Written Address of any party **shall not exceed Ten (10) pages** and the Reply on point of law, if any, with respect thereto **shall not exceed Three (3) pages** except with the leave of Court.
 - (4) When the Written Address is in respect of a Final Address, the Written Address of any party **shall not exceed Twenty (20) pages** and a Reply on point of law **shall not exceed Ten (10) pages** except with the leave of Court.
3. (1) Oral argument of **not more than twenty minutes** shall be allowed for each party. *Oral Argument*
 - (2) If any party or Legal Practitioner appearing for him does not appear to present oral arguments, the Written Address will be deemed as having been duly adopted.
4. Each party shall file two copies of his Written Address with the Court and serve a copy on every party. *Copies of Written Address*

- (a) the name or firm and the place of business, telephone number and email address of the Legal Practitioner intending to issue out the same, and
 - (b) the name of firm and place of business, telephone number and email address of the Principal Legal Practitioner, where such Legal Practitioner is agent, shall in all cases be delivered and filed at the Registry.
 - (2) No *Subpoena* shall be issued unless all Court fees have been paid including fee for service unless sufficient conduct money on the prescribed scale is deposited to cover the first day's attendance.
20. A *Subpoena* shall be in one of Forms 27, 28, or 29 with such variations as circumstances may require. *Form of subpoena: Forms 27, 28 and 29*
 21. Where a *Subpoena* is required for the attendance of a witness for the purpose of proceedings to be held in Chambers, such *Subpoena* shall be issue from the Registry upon the directive of the Judge. *Subpoena for attendance of witness in Chambers*
 22. In the interval between the issue and service of any *Subpoena*, the Legal Practitioner issuing it may *Correction of errors in Subpoena*
 - (a) correct any error in the names of parties or witnesses, and
 - (b) have the Writ 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.
 23. (1) A *Subpoena* shall be served personally unless substituted service has been ordered by a Judge in a case where a person persistently evades service. *Personal service of subpoena*
 - (2) The provisions of Order 10 and Order 11 shall so far as possible apply to service and proof of service of a *Subpoena*.
 24. Any *Subpoena* shall remain in force from the date of issue until the trial of the action or matter in which it is issued. *Duration of Subpoena*
 25. Any person may commence an action to perpetuate any testimony which may be material for establishing a right which he cannot bring to trial before the happening of such a future event, where such person by the circumstances alleged by him is entitled to any honour, title, dignity or office, or to any estate or interest in any property, real or personal. *Action to perpetuate testimony*
 26. A witness shall not be examined to perpetuate his testimony unless an action has been commenced for that purpose. *Examination of witnesses to perpetuate testimony*
 27. No action to perpetuate the testimony of a witness shall be set down for trial. *Such action not to be set down for trial*

ORDER 42

VIRTUAL HEARING

- | | |
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| 1. The Court may, on application on notice by any of the parties supported by an affidavit stating the grounds for the application, or <i>suo motu</i> , order that proceedings be conducted virtually where it deems fit. | <i>Virtual Hearing of Court Proceedings</i> |
| 2. Virtual hearing shall be by means of any audio-visual or video conferencing platform approved by the Court and a link shall be provided to enable the public to observe the virtual proceedings. | <i>Medium and Access Link for Virtual Hearing</i> |
| 3. Where the Court adopts virtual hearing for any proceedings, the Registrar shall notify the parties. | <i>Notification of Virtual Hearing</i> |
| 4. The Judge and Counsel appearing in the proceedings shall be fully robed for the virtual hearing. | <i>Dress Code</i> |
| 5. All rules and practices on decorum and etiquette during physical hearing shall be observed by Counsel and parties during virtual hearing. | <i>Rules of Etiquette</i> |
| 6. Cases for virtual hearing shall be stated in the cause list of the Court by the Registrar and shall be posted on the official website and Notice Board (manual or electronic) of the Court, and shall be communicated to the parties either by e-mail or any other electronic means, as the Court may direct. | <i>Publication of cases for Virtual Hearing</i> |
| 7. It shall be the duty of the Court to give directives on the conduct of virtual hearing in any proceedings which shall be in accordance with any relevant law, the Rules of Court and any Practice Direction made pursuant to these rules. | <i>Directive of Court</i> |
| 8. The Chief Judge may periodically issue Practice Directions for the regulation of virtual hearing. | <i>Practice Direction on Virtual Hearing</i> |

ORDER 43

AFFIDAVITS

1. Upon any Motion, Summons or other application, evidence may be given by affidavit, but the Judge may *suo motu* or on application, order the attendance of the deponent for cross-examination and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence save by special leave. *Evidence on motions, etc*
2. Every affidavit shall bear the title in the cause or matter in respect of which it is sworn but in every case in which there is more than one Claimant or Defendant, it shall be sufficient to state the full name of the first Claimant or Defendant respectively, and that there are other Claimants or Defendants, as the case may be. *Title of Affidavit*
3. The Judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by mis-description of parties or otherwise in the title or jurat, or any other irregularity in the form of the affidavit and may direct a memorandum to be made on the document indicating that it has been so received. *Use of defective Affidavit*
4. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the Judge. *Special time for filing Affidavit*
5. Except by leave of the Judge no order granted *ex-parte* in respect of an application based on any affidavit shall have effect unless the affidavit was made before the order was applied for and produced or filed at the time of making the application. *No retroactive Affidavit in Ex parte order*
6. The party intending to use any affidavit in support of any application made by him shall give notice to the other parties concerned. *Notice of intention to use Affidavit*
7. Every alteration in any account verified by affidavit shall be marked with the initials of the Commissioner before whom the affidavit is sworn and such alterations shall not be made by erasure. *Alterations in accounts to be initialed*
8. Accounts, extracts from registers, particulars of creditors' debt and any other documents referred to by affidavit, shall not be annexed to the affidavit or referred to as annexed, but shall be referred to as exhibits. *Exhibits*
9. Every certificate on an exhibit referred to in an affidavit signed by the Commissioner before whom the affidavit is sworn shall be marked with the short title of the cause or matter. *Certificate of Exhibit*
10. The provisions of sections 107 to 120 of Evidence Act, 2011 and any subsequent amendment thereto which set out provisions governing affidavits shall be applicable under these rules. *Application of Evidence Act, 2011*

*Deposition in
Deponent's
language*

11. Where in these rules, depositions and affidavits are required to be made and the Deponent does not understand English Language, such deposition or affidavit shall be in a language the Deponent understands but must be accompanied by an interpretation of the deposition in English Language. Save that a deposition or affidavit made in English Language but with a jurat and shown to have been so written or prepared by a Legal Practitioner for and at the instance of a Deponent may be exempted.

ORDER 44

NON-SUIT

- | | | |
|----|---|---|
| 1. | Where satisfactory evidence entitling the Claimant or Defendant to the Judgment is not given, the Judge may <i>suo motu</i> or on application non-suit the Claimant, but the parties' Legal Practitioners shall have the right to make submissions about the propriety or otherwise of making such order. | <i>Power of Court to non-suit</i> |
| 2. | The Judge may upon a motion for a new trial or review of Judgment, order a non-suit or judgment to be entered, although no leave has been reserved at the trial. | <i>Non-suit where no leave reserved</i> |

ORDER 45**JUDGMENT, ENTRY OF JUDGMENT**

1. The Judge shall, at the Case Management Conference or after trial, deliver Judgment in open Court, and shall direct Judgment to be entered. *Delivery of Judgment at or after trial*
 2. 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 unless the Judge otherwise orders. *Judgment to be dated the day pronounced in Court*
 3. When any Judgment is directed to be entered by an order made on application for Judgment, the Judgment shall, unless the Judge otherwise orders, be dated as of the day on which the order is made and take effect from that date. *Date of Judgment directed to be entered*
- Provided that the order may direct that the Judgment shall not be entered until a given date, in which case it shall take effect from that date.
4. The Judge may at the time of making any Judgment or order or at any time afterwards, direct the time within which the payment is to be made or other act is to be reckoned, from the date of the Judgment or Order, or some other point of time, as the Judge deems fit and may order interest at a rate not more than 20% *per annum* to be paid upon any Judgment. *Judge may direct time for payment or performance and interest*
 5. (1) 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. *Time to be stated, for doing any act, Memorandum to be indorsed*
 (2) There shall be indorsed on the Judgment or Order, a Memorandum by the Registrar in the following words, and same shall be served upon the person required to obey the Judgment or Order viz:
 "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)". *Memorandum to be indorsed*
 6. 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. *Judgment by consent where Defendant appears by a Legal Practitioner.*
 7. Where the Defendant has no Legal Practitioner, such Order shall not be made unless the Defendant gives his consent in person or through his agent in open Court. *Judgment by consent where Defendant has no Legal Practitioner.*
 8. A certificate of Judgment delivered by the Judge, and directed to be entered as in **Form 48** may be issued by the Registrar of the Court upon the application of either party to a suit and payment of the prescribed fees. *Certificate of Judgment*

ORDER 46**DRAWING UP OF ORDERS**

- 1- Every Order shall bear the date on which it was made and shall take effect accordingly unless the Judge otherwise direct. *Date of Order, when drawn*
- 2- (1) Where an Order has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceedings or doing any act or granting leave for – *Orders that need not be drawn up*
- (a) the issuance of any Writ other than a Writ of Attachment;
 - (b) the amendment of any Writ or Pleading;
 - (c) 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 the Judge shall be sufficient authority for such enlargement of time, issuance, amendment, filing or other act.
- (2) A direction that the costs of such Order shall be costs in any cause or matter shall not be deemed to be a special direction within the meaning of this Rule.
- 3- An Order shall be sealed and shall be marked with the name of the Judge by whom it is made. *Form of order*

ORDER 47

TRANSFERS AND CONSOLIDATION

I. TRANSFERS

1. (1) The Chief Judge may, in exercise of powers conferred under any enactment order the transfer of any action or matter from a lower Court to the High Court.
(2) The Order shall be fully certified by the Registrar and immediately forwarded to the Registrar of the lower Court.
(3) The Registrar of the lower Court shall immediately transmit the documents referred to in the relevant law and processes or relevant documents to the High Court.
2. (1) Upon receipt of the relevant documents and processes, the Registrar shall notify the party who applied for the transfer, or where the order of transfer was not made on the application of any party.
(2) Without prejudice to the question of how costs shall ultimately be borne, the Claimant or such other party upon whose application the order for transfer was made shall, pay the fees for filing the processes and other documents.
(3) The notification under sub-rule (1) of this Rule shall be effected by serving a notice personally on the party concerned.
3. (1) The Registrar shall **within seven (7) days** of payment of the prescribed fees:
 - (a) file the documents received from the Lower Court;
 - (b) make an entry of the filing in the Cause Book; and
 - (c) transmit the documents to the Chief Judge or such other Judge appointed by the Chief Judge.(2) The Registrar shall after transmitting the documents notify parties to attend in person or by Counsel before a named Judge on the day and at the time specified in the notice.
(3) The fees for the service of this notice shall be borne in the first instance by the party who paid the fees for filing as provided by rule 2 of this Order.
4. (1) The Chief Judge or any Judge appointed by him shall, **not later than fourteen (14) days** after receiving the documents referred to in rule 3 of this Order:
 - (a) hear the parties or their Legal Practitioner(s);
 - (b) take cognizance of the documents; and
 - (c) give directions for the trial or hearing of the action or matter.

Order
transferring
proceedings
High Court

Payment of
filing fees

Duties of
Registrar

Directly

(2) Directions given under this Rule may include directions for the filing and service of Pleadings.

5. (1) If the Claimant fails to attend in compliance with a notice give under rule 3 of this Order, the Judge shall record his default and may, *suo motu* or on application by the Defendant, dismiss the action or make such other Order on such terms as he deems just.

Party failing to attend

(2) If the Defendant fails or all of the several Defendants fail to attend in compliance with a notice given under rule 3, the Claimant may enter Judgment with costs or obtain the Order prayed for in the transferred proceedings.

Construction

6. In the preceding rule of this Order, reference to the Claimant and the Defendant shall, in relation to proceedings commenced otherwise than by Writ, be construed as reference to the Applicant and the Respondent.

II. CONSOLIDATION

Consolidation of actions

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

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

(3) An Order to consolidate may be made where more than one action is pending between:

(a) the same Claimant(s) and Defendant(s); or

(b) the same Claimant(s) and different Defendant(s); or

(c) different Claimant(s) and the same Defendant(s); or

(d) different Claimant(s) and different Defendant(s):

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

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

ORDER 48

INTERLOCUTORY ORDERS

1. (1) Where 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, a Judge may make an order for the preservation or interim custody of the subject matter of the litigation or may order that the amount in dispute be brought into Court or otherwise secured. *Preservation or interim custody of subject matter of disputed contract*
- (2) An application for an order under sub-rule (1) may be made by the Claimant at any time after asserting the right by his pleadings.
2. Upon an application for an injunction or other order before trial, the Judge may, before or at the hearing of such application, make an order for trial or such order as the justice of the case may require if it appears that the issues in controversy can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purpose of the application. *Early trial of Cause*
3. The Judge may upon the application by a party make an order for the sale of any goods, wares or merchandise which may be of a perishable nature, or likely to injure from keeping, or which for any other just and sufficient reason is desirable to sell at once by any person named in such order and in such manner or on such terms as the Judge may deem desirable. *Order for sale of perishable goods, etc.*
4. (1) A Judge may upon the application of a party to an action and subject to such terms as may be just: *Detention, preservation or inspection of property, the subject of an action; Inspection by Judge*
 - (a) make an order for the detention, preservation or inspection of any property or thing, being the subject of such action or in respect of which questions may arise in the actions;
 - (b) authorize any person to enter upon or into any land or building in the possession of any party to such action; or
 - (c) authorize any sample to be taken or observation to be made or experiment to be carried out, which may be necessary or expedient for the purpose of obtaining full information or evidence.
- (2) Where it appears, after granting an order for the inspection of any property or thing under this Rule, whether the application for such inspection was brought before or after Pleadings has been filed; that the inspection was requested in writing by the Applicant but was not permitted, the Judge shall, unless he is satisfied that the failure or refusal of the Respondent to permit the inspection in the circumstance was reasonable, order that costs be paid to the Applicant immediately, except where the Respondent is a "Poor Person".

- (3) The trial Judge may inspect any property or thing in respect of which any question may arise in the matter.
5. (1) Where any property has remained in possession of the Court for a period of twelve (12) months, same having been in the Court's possession before or after Judgement, a Judge may *suo motu* make an Order for the sale of that property and the proceeds of the sale shall be paid into an interest yielding account in a Commercial Bank as may be directed by the Judge for the benefit of the person that succeeds at the trial or an appeal. *Sale of property in possession of Court*
- (2) The money paid after disposal of any goods or chattels shall be withdrawn from the Bank by the successful party who shall present to the Chief Registrar a certified true copy of the Enrolment of the Judgment.
6. Where an action or Counterclaim is filed to recover specific property and the party from whom such recovery is sought does not dispute title but claims to retain by virtue of a lien or otherwise as security for any sum of money, the Judge may at the Case Management Conference order that the property claimed be given up to the party claiming it where such party agrees to pay into Court, 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 Judge may direct. *Order for recovery of specific property other than land subject to lien, etc.*
7. Where the Judge is satisfied that any real or personal estate or property being the subject matter of any proceedings, will be more than sufficient to answer all the claims in respect to such property regarding the proceedings, the Judge may at any time after the commencement of the proceedings, allow any party interested in the property or estate the whole or part of the annual income on the real estate or a part of the personal estate or property; or the whole or part of the income in respect of the property or estate, up to such time as the Judge shall direct. *Allowance from income of property pendente lite*
8. The Judge may in any action or matter in which an injunction has been or might have been claimed grant an injunction, upon an application by the Claimant on such terms as may be just, 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. *Injunction against repetition of wrongful act or breach of contract*
9. In every case in which an application is made for the appointment of a Receiver by way of equitable execution, the Judge shall, in determining whether it is just or convenient that such appointment be made, have regard to and may direct inquiries on the following or other matters: *Appointment of a Receiver by way of equitable execution*
- (a) amount of the debt claimed by the Applicant;
- (b) amount which may probably be obtained by the Receiver and probable costs of his appointment.

10. (1) Where an Order is made directing a Receiver to be appointed, the person to be appointed shall unless otherwise ordered:
 - (a) give security, as may be approved by the Judge to duly account for what he shall receive as such Receiver, and to pay the same as the Judge shall direct; and
 - (b) be allowed a proper salary or allowance.(2) The security shall be:
 - (a) by Guarantee or by an Undertaking as prescribed in Forms 30 and 31 with such variations as circumstances may require; and
 - (b) filed in the Registry and form part of the record of proceedings until it has been duly vacated.
11. Where an Order or Judgment has been granted appointing a person as a Receiver in the course of any proceedings, the Court may adjourn the proceedings to allow the person named in the Order as Receiver to give security as provided under rule 10 of this Order and may direct such Judgement or Order to be drawn up.
12. (1) When a Receiver is appointed with a direction that he shall pass accounts, he shall leave and pass such accounts quarterly or within a shorter period.
 - (2) The days when the Receiver shall leave and pass accounts or 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 shall be fixed by the Judge.
 - (3) Where any Receiver neglects to leave and pass accounts or pay the balances at the times fixed for that purpose, the Judge may when his subsequent accounts are produced to be examined and passed disallow the salary claimed by such Receiver and also charge him with interest at a rate not exceeding twenty-five percent (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.
13. Receiver's accounts shall be in Form 32 with such variations as circumstances may require.
14. (1) A Receiver shall deliver his account together with an affidavit verifying the same in Form 33 with such variations as circumstances may require, to the Registrar.
 - (2) Upon delivering the account to the Registrar, the Claimant or person having conduct of the action shall obtain an appointment for the purpose of passing such account.
15. (1) Where Receiver fails to deliver any account or affidavit or to pass such account or to otherwise make any payment, the Receiver or the parties may be required to show

*Receiver;
Security and
Remuneration;
Forms 30, 31*

*Where Receiver
appointed in
Court:
Adjournment to
give Security*

*Fixing days for
Receivers to leave
and pass their
accounts and pay
in balances and
neglect of
Receiver*

*Form of Receiver
accounts: Form*

*Delivery of
account to the
Registry: Form*

*Consequences of
default by a
Receiver*

cause why such account was not passed or such payment was not made or any other proper proceeding taken.

(2) The Judge shall after the Receiver or the parties have shown cause give such directions as may be proper; including the discharge of any Receiver or appointment of another receiver and payment of costs

16. The accounts of Guardians shall be passed and verified in accordance with the provisions of this Order.

*Passing of
Guardians'
accounts*

ORDER 49

MOTIONS AND OTHER APPLICATIONS

1. (1) Where by these rules any application is authorized 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. Every motion shall be served within 5 days of filing. *Application by motion*
- (2) Where the other party intends to oppose the application, he shall within 5 days of the service on him of such application, file his counter affidavit.
- (3) Upon receipt of the counter affidavit, the applicant shall file a Written Address and further affidavit if necessary to be served on the opposing party within 5 days.
- (4) The opposing party shall then file and serve his Written Address not later than 7 days on receipt of the applicant's Written Address and further affidavit, if any.
- (5) The Respondent shall file and serve his Written Address not later than 7 days thereof.
2. No motion or application for a rule *nisi* or order to show cause shall be made in any action. *Restriction on rule nisi and Order to show cause*
3. (1) Except where an application *Ex parte* is required or permitted under any Law or Rules, every motion shall be on notice to the other party. *When notice of motion should be given*
- (2) No application for an injunction shall be made *Ex parte* unless the applicant files with it a Motion on Notice in respect of the application.
- (3) An order of injunction made upon an application *Ex parte* shall abate after 7 days.
- (4) A Judge may upon application extend the effective period of an order made *Ex parte* if he is satisfied that the Motion on Notice has been served and that such extension is necessary in the interest of justice or to prevent an irreparable or serious mischief. The application for such an extension shall be made before abatement of the order and the extension shall not be for a period exceeding 7 days from the day the extension is granted.
4. (1) Every Motion on Notice to set aside, remit or enforce an arbitral Award shall state in general terms the grounds of the application and where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion. *Motion on arbitral award*

- (2) The party relying on an award, on applying for its enforcement, shall supply:
 - (a) the duly authenticated original Award or a duly certified copy thereof;
 - (b) the original arbitration agreement or a duly certified copy thereof.
- (3) An Award made by an Arbitrator or a decision reached at the Multi-Door Courthouse may by leave of a Judge be enforced in the same manner as a Judgment or Order of Court.
- (4) An application to set aside or remit any Award may be made at any time within 6 weeks after such Award has been made, and published to the parties:

Provided that a Judge may by order extend the said time either before or after the same has elapsed.

5. Unless a Judge grants special leave to the contrary, there must be at least 2 clear days between the service of all processes in respect of a Motion and the day named in the notice for hearing the Motion. *Special leave*
6. If on the hearing of a Motion or other application, the Judge shall be of the opinion that any person to whom notice has not been given ought to have had such notice, the Judge may either dismiss the Motion or application or adjourn the hearing thereof, in order that such notice may be given upon such terms, if any, as the Judge may deem fit to impose. *Motions may be dismissed or adjourned where necessary notice not given*
7. The hearing of any Motion or application may from time to time be adjourned upon such terms, if any, as the Judge shall deem fit. *Adjournment of hearing*
8. A Claimant may file any application along with an Originating Process and may serve both on any Defendant simultaneously. *Service of motion with Writ*
9. Where the relationship of Legal Practitioner and client exists or has existed, a summons may be issued by the client or his representative for the delivery of a cash account or the payment of moneys or the delivery of securities, and a Judge may from time to time order the Respondent to deliver to the Applicant a list of the moneys or securities which he has in his custody or control on behalf of the Applicant or to bring into Court the whole or any part of the same within such time as the Judge may order. In the event of the Respondent alleging that he has a claim for costs, the Judge may make such provision for the taxation and the payment or security thereof or the protection of the Respondent's lien, if any, as he may deem fit. *Account by Legal Practitioner*
10. If during the taxation of any bill of costs or the taking of any account between *Interim certificate*

Legal Practitioner and client, it shall appear to the taxing officer that there must, in any event, be moneys due from the Legal Practitioner to the client, the taxing officer may from time to time make an interim certificate as to the amount so payable by the Legal Practitioner. Upon the filing of such certificate, a Judge may order the moneys so certified to be forthwith paid to the client or brought into Court.

ORDER 50

APPLICATION FOR JUDICIAL REVIEW

1. (1) An application for an:

Cases appropriate for Judicial Review

 - (a) Order of *mandamus*, prohibition or *certiorari*; or
 - (b) 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 under sub rule (1) of this Rule may be made by way of an application for judicial review and the court may grant the declaration or injunction by way of judicial review as may be deemed just and convenient having regards to:
 - (a) the nature of the matter 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;
 - (c) all the circumstances of the case.
2. On an application for judicial review, any relief mentioned in rule 1 may be claimed as an alternative or in addition to any other relief if same arises out of, relates to or is connected with the same matter.

Joinder of claims for relief
3. (1) No application for judicial review shall be made unless the leave of the court has been obtained in accordance with this Rule.

Grant of leave to apply for judicial review
- (2) An application for leave shall be made *Ex parte* to the Judge and shall be supported by:
 - (a) a statement setting out the name and description of the Applicant, the reliefs sought and the grounds on which they are sought;
 - (b) an affidavit verifying the facts relied on; and
 - (c) a Written Address in support of application for leave.
- (3) The Judge upon 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 may be deemed fit.
- (4) The Judge shall not grant leave unless he considers that the Applicant has sufficient interest in the matter to which the application relates.
- (5) 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 bringing the appeal, the Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(6) Where leave to apply for judicial review is granted:

- (a) for an order of prohibition or *certiorari* and the Judge 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 Judge otherwise orders;
- (b) for any other relief, the judge may at any time in the proceedings grant such interim relief as could be granted in an action commenced by Writ;
- (c) the Judge may impose such terms as to costs and as to giving security as he deems fit.

4. An application for judicial review shall be brought within three (3) months from the date of occurrence of the subject of the application.

Time within which to bring application

5. (1) When leave has been granted, the application for judicial review shall be made by Motion or by Originating Summons.

Mode of application

(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 such acts or any Order made in the proceedings, the Notice or Summons shall be served on the Clerk or Registrar of the court and on the Judge where any objection to the conduct of the Judge is to be made.

(3) Unless the Judge granting leave otherwise directs, there shall be at least seven (7) days between the service of the Notice of Motion or Summons and the day named for hearing of the application.

(4) A Motion shall be entered for hearing within fourteen (14) days after the grant of leave.

(5) An affidavit giving the names, addresses; 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.

(6) If any person who ought to be served under this Rule has not been served, the affidavit shall state the reason for the non-service and the affidavit shall be before the Judge at the hearing of the Motion or Summons.

(7) If at the hearing of the Motion or Summons the Judge is of the opinion that any person who ought to have been served under this Rule or otherwise, has not been

served, he may adjourn the hearing on such terms, as he may direct to allow the Notice or Summons to be served on such person.

6. (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 sub-rule (2) of this Rule, no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the Statement. *Statements and Affidavits*
- (2) The Judge may on the hearing of the Motion or Summons allow:
 - (a) The Applicant to amend his statement by specifying additional grounds or reliefs, or otherwise modifying the existing grounds or reliefs or as he deems fit.
 - (b) Further affidavits to be used where such affidavits deal with new matters arising out of an affidavit of any other party to the application.
- (3) An Applicant who intends to amend his Statement or to use further affidavits shall give notice of his intention and of any proposed amendment to the other party.
- (4) A party to the application shall supply to the other party a copy of each affidavit intended to be used at the hearing including, in the case of the Applicant, the affidavit in support of the application for leave under rule 3.
7. On an application for judicial review, the Judge may, subject to rule 2, award damages to the Applicant if: *Claim for damages*
 - (a) the Applicant has included in the Statement in support of his application for leave under rule 2 a claim for damages arising from any matter to which the application relates; and
 - (b) he is satisfied that if the claim had been made in an action commenced by the Applicant at the time of making his application, he could have been awarded damages.
8. Any interlocutory application may be made to the Judge in proceedings on an application for judicial review. *Interlocutory application*
9. (1) On the hearing of any Motion or Summons under rule 5, any person who desires to be heard on the Motion or Summons and appears to the Judge to be a proper person to be heard, shall be heard notwithstanding that he has not been served with Notice of the Motion or the Summons. *Hearing of application for Judicial Review*
- (2) Where the relief sought is or includes an order of *certiorari* to remove any proceedings for the purpose of quashing such proceedings, 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:

- (a) has filed a copy of same verified by affidavit or
- (b) accounts for his failure to do so to the satisfaction of the Judge hearing the Motion or Summons.
- (3) Where an Order of *certiorari* is made in any such case as is referred to in sub-rule (2), the Order shall, subject to sub-rule (4), direct that the proceedings shall be quashed immediately on their removal into Court.
- (4) Where the relief sought is an Order of *certiorari* and the Judge is satisfied that there are grounds for quashing the decision to which the application relates, the Judge may, in addition to quashing it, remit the matter to the court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Judge.
- (5) Where the relief sought is a declaration, an injunction or damages and the Judge considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action commenced by Writ at the time of making the application, the Judge may, instead of refusing the application, order the proceedings to continue as if it had been commenced by Writ.
- 10. No action or proceedings shall be brought or prosecuted against any person in respect of anything done in obedience to an Order of *mandamus*. *Person acting in obedience to an Order of mandamus*
- 11. Where there is more than one application pending against several persons in respect of the same matter and on the same grounds, the Judge may order the applications to be consolidated. *Consolidation of Applications*

ORDER 51

JURISDICTION OF CHIEF REGISTRAR

- In this Order, any reference to the Chief Registrar means the Chief Registrar of the High Court and includes the Deputy Chief Registrar(s). *Chief Registrar*
- The Chief Registrar may transact all such business and exercise all such authority and jurisdiction as may be transacted or exercised by a Judge in respect of the following matters: *Business to be transacted by Chief Registrar*
- (a) applications for:
 - (i) the taxation and delivery of Bills of Costs and
 - (ii) the delivery by any Legal Practitioner of deeds, documents and papers;
 - (b) the taking of an account in any case where a Judge has ordered that the account be taken by the Chief Registrar;
 - (c) the taxation of Bills of Costs;
 - (d) applications leading to the issue of the grant of probate of the Wills or Letters of Administration of the Estates of deceased persons and any other functions that may be assigned by the Chief Judge to the Chief Registrar.
1. (1) If it appears to the Chief Registrar that it is proper that any matter be referred for the decision of a Judge, he may refer such matter to the Chief Judge or the Judge who referred the matter to the Chief Registrar. *Chief Registrar may refer matter to the Chief Judge*
- (2) The Chief Judge or the Judge may either dispose of the matter or refer the same back to the Chief Registrar with such directions as he may deem fit.
4. (1) Any person affected by an order or decision of the Chief Registrar in the exercise of the jurisdiction conferred upon him by this Order may appeal to a Judge. *Appeal from order of Chief Registrar*
- (2) Such appeal shall be by notice in writing, without a fresh summons to appear before the Judge within five (5) days after the decision complained of or such further time as may be allowed by the Judge.
- (3) Unless otherwise ordered by the Judge:
- (a) there shall be at least two (2) clear days between service of the Notice of Appeal and the day of hearing;
 - (b) an appeal from the decision of the Chief Registrar shall not operate as a stay of proceedings unless so ordered by the Judge.
5. The Lists of matters to be heard by the Chief Registrar shall be made out and published *Chief Registrar's List*

by being posted on the Court's notice boards.

6. In any proceedings before the Chief Registrar under this Order, a Legal Practitioner may represent any party.

Legal Practitioner may represent party

CHIEF REGISTRAR'S CERTIFICATE

7. Except as otherwise provided for in these rules, the directions concerning any proceedings before the Chief Registrar shall require no particular form, but the result of such proceedings shall be stated in a concise certificate.

Certificate

8. The certificate of the Chief Registrar regarding accounts and inquiries shall not set out the Judgment, Order or any documents, evidence or reasons unless the circumstances of the case render it necessary, but shall refer to the Judgment or Order, documents and evidence of particular paragraphs of same as basis for the contents of the certificate.

Reference to Judgment, etc.

9. (1) In case of accounts and inquiries, the certificate of the Chief Registrar shall be in Form 34 with such variations as the circumstances may require and:

Form and contents of certificate cases of accounts inquiries Form 34

- (a) state the result of the account and not set same out by way of schedule;
- (b) refer to the account verified by the affidavit filed;
- (c) specify which of the items have been disallowed or carried by the numbers attached to the terms in the account.
- (d) state what additions, if any, have been made by way of surcharge or otherwise;
- (e) refer to transcript of an altered account, where the account verified by the affidavit has been altered and a fair transcript of the account so altered is necessary or has been made by the party prosecuting the Judgment or Order.

(2) The accounts and transcripts, referred to by certificate, if any, shall be filed together.

10. The certificate with the accounts, if any, to be filed shall be transmitted by the Chief Registrar to the Registry for filing and shall be binding on all the parties to the proceedings unless discharged or varied upon an application made to a Judge before the expiration of **Eight (8) clear days** after the filing of the certificate.

When certificate becomes binding

11. When taxing a Bill of Costs, the Chief Registrar shall insert in red ink against every item disallowed, reduced or altered by him, the substance of the modification made by him and at the bottom of the Bill of Costs, he shall certify the net result of the taxation. The Bill of Costs shall then be transmitted by the Chief Registrar to the Registry for filing and the provisions of rule 10 of this Order shall apply in respect of such certificate.

Taxation of Costs

1. The Judge may, if the special circumstances of the case require, upon an application, direct a certificate to be discharged or varied at any time after the same has become binding on the parties.

Discharge or
variation
of certificate

ORDER 52

HABEAS CORPUS, ATTACHMENT FOR CONTEMPT

1 - Habeas Corpus

1. An application for an Order of *Habeas Corpus Ad Subjicendum* shall be made to the Court, except that:
 - (a) during vacation or at any time when no Judge is sitting in Court it may be made to a Judge sitting otherwise than in Court;
 - (b) in cases where the application is made on behalf of a child, it shall be made in the first instance to a Judge sitting otherwise than in Court.

Application: How made
2. (1) The application may be made *Ex parte* and shall be accompanied by an affidavit setting out the nature of restraint and deposed to by the person restrained showing that it is made at his instance.

Affidavit to accompany Ex parte application

(2) Where the person restrained is unable owing to the restraint to make the affidavit, the application shall be accompanied by an affidavit to the like effect made by some other person which shall state that the person restrained is unable to make the affidavit himself.
3. (1) A Judge to whom the application is made may make the Order forthwith

Power to issue Order or release immediately

(2) Where the application is made to a Judge sitting otherwise than in Court, he may direct the Order to issue or that an application therefore be made by notice of motion to the Judge or to any other Judge.

(3) A Judge to whom the application is made may adjourn it so that notice thereof may be given to the person or authority holding the person restrained in custody.

(4) Where the person detained is produced before a Judge, he may discharge him immediately with or without conditions.
4. (1) The Summons or Notice of Motion aforesaid shall be served on the person against whom the Order is sought and on such other persons as the Judge may direct.

Service of notice

(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.
- i. Every party to the application shall supply to the other party or parties copies of affidavits which he proposes to use at the hearing of the application.

Copies of affidavits

(1) The Order or Notice of Motion may be served personally or by courier on the person or authority confining or restraining the person or on any other public official and copies of the Order or Motion may be served in like manner on each person connected with or having authority over the place of confinement or restraint.

*Service of
Order to
release*

(2) The order shall contain the date on which the person restrained is to be brought before a Judge and that in default of obedience, contempt proceedings may be initiated against such person.

Upon service of the Order or Notice of Motion on the person confining or restraining the person restrained, he shall within 2 days file a statement which shall be verified by an affidavit deposed to by such person or authority stating the reasons for the detention, the period of the detention and any other matter that may be directed by the Judge.

*Statement and
verifying
affidavit*

(1) Where the person restrained is brought up in accordance with the Order, his Legal Practitioner shall be heard first, then the Legal Practitioner for the State and then the Legal Practitioner for the person restrained in Reply.

*Procedure at
hearing.*

(2) Where the person restrained is not brought in accordance with the Order, a Judge may upon the application of his Legal Practitioner order that he be discharged or make any other Order.

II. Contempt Proceeding for disobedience

(1) The procedure in applications for attachment for contempt of Court in cases to which this Rule applies shall be the same as for applications for an Order for Judicial Review under Order 49 so far as may be applicable.

*Procedure for
attachment*

(2) The Notice of Motion shall be personally served unless the Judge dispenses with such service.

(3) This Rule applies to cases where the contempt is committed:

(a) in connection with proceedings to which this Order relates;

(b) in connection with criminal proceedings;

(c) subject to the provisions of the Sheriff and Civil Process Act, any proceedings in the High Court or where the contempt consists of disobedience to an Order of the Court;

(d) in connection with the proceedings in an inferior Court;

Provided that this Rule, shall not apply where the contempt is committed in *facie curiae*.

10. When an Order enforceable by committal has been made against a Judgment Debtor, and if the Order is for delivery of goods without the option of paying their value or is in the nature of an injunction, the Registrar shall when the Order is drawn up immediately endorse it as follows:

Procedure in
Disobedience
of Court

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

11. Upon service of the application for committal issued in a case to which rule 9 of this Order applies, the Respondent shall before the return date stated in the application file a statement stating the reasons why an Order for attachment should not be issued. The statement shall be verified by an affidavit deposed to by the Respondent.

Response

12. Every Order of Attachment issued in a case to which rule 9 of this Order applies shall be made returnable before the Judge. If a return of *non est inventus* (not found) is made, a subsequent Order or Orders may be issued on the return of the previous Order

Return

ORDER 53

INTERPLEADER

1. 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 which he is, or expects to be sued by two or more parties ("the Claimants") making adverse claims:
When relief by inter-pleader is granted
Provided that where the Applicant is a Sheriff or other Officer charged with the execution of process by or under the authority of the High Court, the provisions of Section 34 of the Sheriffs and Civil Process Act and the rules made under it shall apply.
2. An Applicant seeking relief by way of Interpleader shall file an Interpleader Summons supported by an affidavit inviting the Claimants to:
Interpleader summons
 - (a) appear, state the nature and particulars of their claims, and
 - (b) maintain or relinquish the claims.
3. The Applicant must satisfy the Judge by affidavit or otherwise that he:
Matter to be proved by application
 - (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.
4. The Applicant shall not be disentitled to relief by reason only that the title alleged by the Claimants is adverse to and independent of one another.
Adverse titles of Claimants
5. Where the Applicant is a Defendant, application for relief may be made at any time after service of the Originating Process.
When application to be made by a Defendant
- If the application is made by a Defendant in an action, the Judge may stay all further proceedings in the action.
Stay of action
- If the Claimants appear to the Summons, the Judge may order either that any Claimant be made a Defendant in any action already commenced in respect of the subject matter in dispute in lieu of or in addition to the Applicant or that an issue between the Claimants be stated and tried, and in the latter case may direct which of the Claimants is to be Claimant and which is to be Defendant.
Order upon summons
- (1) Where the question is a question of law and the facts are not in dispute, the Judge may either decide the questions without directing the trial of an issue or order that a special case be stated for the opinion of the Judge.
Questions of law
- (2) If a special case is stated, the provision of Order 36 shall as far as practicable apply.

9. If a Claimant, having been duly served with a Summons calling on him to appear and maintain or relinquish his claim, fails to appear 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, perpetually barred against the Applicant and persons claiming under him but the Order shall not affect the rights of the Claimants as between themselves.

Failure of Claimant to appear, or neglect to obey Summons

10. The Judge may, in any Interpleader proceedings, make Orders as to costs and for such other matters as may be just.

Orders as to Costs, etc.

ORDER 54

COMPUTATION OF TIME

1. Where by any Law or Order made by a Judge a time is appointed or limited for the doing of any act, the period shall be reckoned:

Rules for computation of time

 - (a) as excluding the day on which the Order is made or on which the event occurs;
 - (b) where the last day of the period is a holiday, the time shall continue until the end of the next day following which is not a Public holiday;
 - (c) where the act is required to be done within a period which does not **exceed 6 (six) days**, Saturdays and holidays shall be left out of account in computing the period.
 2. In this Order, holiday means a day which is a Sunday or a Public holiday.

Holiday
 3.
 - (1) No Pleadings, Summons, Motions, Orders, Originating Process, documents and other processes shall be served **before 6.00 a.m. or after 6.00 p.m.**

Time of service
 - (2) Service effected **after 6.00 p.m.** shall be deemed to have been effected the following day, provided that service effected **after 6.00 p.m.** on Saturday shall be deemed to have been effected on the following Monday.
 4. The Judge may, as often as he deems fit, and either before or after the expiration of the time appointed by these rules or by any Judgment or Order of the Court, extend or adjourn the time for doing any act or taking any proceedings.

Court may extend time
- Provided that any party who defaults in performing an act within the time authorized by the Judge or under these rules, shall pay to the Court an additional fee of **₦500.00 (Five Hundred Naira Only)** for each day of such default at the time of compliance.

ORDER 55

MISCELLANEOUS PROVISIONS

I. Court Sittings and Vacation

1. Subject to the provision of the High Court Law, the Judge may, in his discretion, appoint any day(s) and place(s) from time to time for the hearing of actions as circumstances require. *Days of sittings*
2. The sittings of the Judge for the hearing of causes shall ordinarily be public but subject to the provisions of the Constitution of the Federal Republic of Nigeria, the Judge may for special reasons, hear any particular cause or matter in the presence only of the parties, with their Legal Practitioners, if any, and the officers of Court. *Public or private sittings of the Court*
3. The several offices of the Court shall be open at such times as the Chief Judge shall direct. *Office hours*
4. Subject to the directions of the Chief Judge, sittings of the High Court for the dispatch of civil matters shall be held on every week day except:
Days of sittings and long vacation
 - (a) on any public holidays;
 - (b) during the week beginning with Easter Monday;
 - (c) during the period beginning three (3) days before Christmas and ending on the 5th January next following;
 - (d) during the period of five (5) days beginning on the eve of Eid-el-fitr and Eid-el-Kabir respectively.
5. during the long vacation, that is, the period beginning by the middle of July and ending on a date **not more than six (6) weeks** as the Chief Judge may by notification in the Public Notice appoint. *Annual Vacation*
6.
 - (1) Notwithstanding the provisions of Rule 4, any cause or matter may be heard by a Judge during any of the periods mentioned in paragraphs (b), (c) or (d) of Rule 4 except on a Sunday or public holiday, where such cause or matter is urgent or a Judge, at the request of all the parties concerned, agrees to hear a cause or matter.
 - (2) An application for an urgent hearing shall be made by motion *ex-parte* and the decision of the Judge on such an application shall be final.
7. The time for filing and service of pleadings shall not run during the annual vacation unless otherwise directed by the Judge. *Vacation not reckoned in the pleadings*

II General

8. All fines, forfeitures, pecuniary penalties and costs ordered to be paid may be levied by distress, seizure and sale of the movable and immovable property of the person making default in payment. *Recovery of penalties and costs*
9. When 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 Judge. *Publication of Notice*
10. (1) A document shall not be filed unless it has indorsed on it the:
Filing of Documents
 - (a) name and number of the cause,
 - (b) date and party filing (as Claimant or Defendant).
- (2) On being filed such indorsement shall be initialed by the Registrar and recorded in the Process Register.
11. 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. *How process addressed*
12. No fees are to be taken in respect of any proceedings where such fees would be payable by any Government Department. *No fees where proceedings by Government Department.*

Provided however that when any person is ordered to pay the costs of the State or of any Government Department in any case, whether criminal or civil, all fees which would have been payable but for the provisions of this Rule shall be taken as paid and shall be recoverable from such person.
13. A Judge shall take concrete and identifiable steps towards improving the efficiency of the Registrars, Bailiffs and Staff attached to his Court whose activities the judge shall review periodically and any allegation by any Lawyer or person of any unprofessional or unethical practice(s) against any Court Staff shall be investigated by the Judge who shall report same to the Chief Judge for disciplinary action as may be appropriate. *Duty of a Judge to ensure professionalism of Court Staff*
14. The Regulations regarding fees payable for filing or doing any act or performing any duty prescribed by these Rules shall be by Practice Direction(s) to be issued periodically by the Chief Judge. *Regulation*
15. Where no provision is made by these rules or by any other written Law, the Court shall adopt such procedure as will in its view do substantial justice between the parties concerned. *Savings*

ORDER 56

ARREST OF ABSCONDING DEFENDANT

1. The following rules shall apply to proceedings under Section 31, High Court of Oyo State Law. *Application*
2. If in any action the Defendant is about to leave Nigeria, the Claimant may at or after the institution of the suit until final Judgment apply to the Judge by a Motion *Ex parte* for an Order directing the Defendant to 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. *Defendant leaving Nigeria*
3. (1) If the Judge after making such investigation as he may consider necessary is of the opinion that there is probable cause for believing that the Defendant is about to leave Nigeria and that the execution of any Judgment which may be made against him is likely to be obstructed or delayed by reason of such exit, the Judge shall issue a Warrant to bring the Defendant before him to show cause why he should not give good and sufficient bail for his appearance. *Warrant to arrest*
(2) The Defendant shall be brought to Court within 2 (two) days of the execution of the Warrant.
4. (1) If the Defendant fails to show cause, the Judge shall order him to give security 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 given against him in the suit; or the satisfaction of such Judgment. *Security for appearance satisfaction*
(2) The surety shall undertake in default of such appearance or satisfaction to pay any sum of money that may be adjudged against the Defendant in the suit with costs.
5. (1) Where a Defendant offers to deposit a sum of money sufficient to answer the claim against him, with costs of the suit in lieu of security for his appearance, the Judge may accept such deposit and direct that the deposit be paid into an interest yielding account in a bank. *Deposit in lieu of security appearance*
(2) Where a Defendant offers security sufficient to answer the claim against him for his appearance other than money, the Judge may accept the security and make such order as he may deem fit in the circumstance.
6. (1) If the Defendant fails to furnish security or offer a sufficient deposit, the Judge may commit him into custody until the determination of the suit or if Judgment has been given against the Defendant, until the execution of the Judgment. *Commitment default*
(2) Committal to custody under this Rule shall not exceed a period of two (2) 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.

1. (1) The expenses incurred for the subsistence of the person so arrested in Correctional Centre shall be paid in advance by the Claimant, and the amount so disbursed may be recovered by the Claimant in the suit, unless the Judge otherwise orders.
- (2) The Judge may upon failure of the Claimant to pay the subsistence allowance release the person so imprisoned, or in case of serious illness, order his removal to hospital.

Costs of subsistence of person arrested

ORDER 57

PROCEEDINGS IN FORMA PAUPERIS.

1. This Order shall apply to proceedings in respect of which there is no statutory provision for Legal Aid. Application
2. The Chief Judge may admit a person to sue or defend *in forma pauperis* if satisfied that his means do not permit him to employ legal representation in the prosecution of his case and that he has reasonable grounds for suing or defending as the case may be. Who may sue or defend in forma pauperis
3. (1) A person seeking relief under this Order shall forward to the Chief Judge a written application accompanied by an affidavit deposed to by the Applicant, stating that by reason of poverty he is unable to afford the services of a Legal Practitioner. Conditions to be fulfilled
(2) If in the opinion of the Chief Judge the application is worthy of consideration the Chief Judge shall appoint a Legal Practitioner to act for the Applicant.
(3) Where a Legal Practitioner is so appointed the Applicant shall not discharge the Legal Practitioner except with the leave of the Chief Judge.
4. Court fees payable by a person admitted to sue or defend *in forma pauperis* may be remitted either in whole or in part as a Judge may deem fit and a person so admitted to sue or defend shall not, unless the Judge otherwise orders, be liable to pay or be entitled to receive any costs. Fees and Costs
5. (1) The Legal Practitioner shall not, except by leave of the Chief Judge, take or agree to take any payment from the Applicant or any person connected with the Applicant or the Applicant's action. Procedure to be followed
(2) If the Applicant pays or agrees to pay any money to any person in connection with his application or the action relating to the application 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, he shall at once report in writing to the Chief Registrar.
6. (1) The Chief Judge may at any time revoke the order granting the application, and the Applicant shall consequently not be entitled to the benefit of this Order in any proceedings to which the application relates unless otherwise ordered. Revocation of Order, Discontinuance, etc.
(2) Neither the Applicant nor the Legal Practitioner assigned to him shall discontinue, settle or compromise the action without the leave of the Judge.

7. The Judge may order payment to be made to the Legal Practitioner out of any money recovered by the Applicant or may charge in favour of the Legal Practitioner upon any property recovered by the Applicant, such sum as in all the circumstances he may deem fit. *Payment to Legal Practitioner*
8. Every Order, Notice or application on behalf of the Applicant, except an application for the discharge of his Legal Practitioner, shall be signed by his Legal Practitioner, who shall take care that no application or Notice is made or given without reasonable cause. *Duty of Legal Practitioner*
9. No person shall be permitted to appeal *in forma pauperis* except by leave of the trial or the appellate Court and then only on grounds of law; but if so permitted the provisions of this Order shall apply *mutatis mutandis* to all proceedings in the appeal. *Appeal*

ORDER 58

CHANGE OF LEGAL PRACTITIONER

1. A Legal Practitioner who is engaged in any cause or matter shall be bound to conduct same on behalf of the Claimant or Defendant until final Judgment, unless allowed for any special reason to cease acting in the proceedings. *Legal Practitioner to conduct cause or matter to final Judgment*
2. An application for a change of Legal Practitioner may be made by any party or the Legal Practitioner or a Legal Practitioner may apply to withdraw his services not less than three (3) clear days before the date fixed for hearing. *Application for change of Legal Practitioner or withdrawal of services*
3. 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. *Service of application by Legal Practitioner*

ORDER 59

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 necessary expenses he has incurred in the course of proceedings and compensated for his time and effort in coming to Court. *Principle to be observed in fixing costs*
- (2) The expenses shall include the:

 - (a) costs of legal representation and assistance of the successful party to the extent that the Judge determines that the amount of such costs is reasonable;
 - (b) travel and other expenses of parties and witnesses to the extent that the Judge determines that the amount of such expenses is reasonable, and such other expenses that the Judge determines ought to be recovered, having regard to the circumstances of the case.
- (3) When costs are ordered to be paid, the amount of such costs shall, if practicable, be summarily determined by the Judge at the time of delivering the Judgment or making the Order.
- (4) 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 to such costs shall be referred by the Judge for determination by an Assessment Officer.
1. Where an offer of settlement made in the course of Case Management Conference or ADR is rejected by a party and the said party eventually succeeds at trial but the Award is not in excess of the offer of settlement earlier made, the winning party shall pay the costs of the losing party from the time of offer of settlement up to Judgment. *Rejection of offer of settlement: costs*
3. In any cause or matter in which security for costs is required, the security shall be such amount to be given at such times and in such manner or form as the Judge may direct. *Security for costs*
4. A Claimant ordinarily resident out of the jurisdiction may be ordered to give security for costs, notwithstanding that he may temporarily reside within jurisdiction. *Security for costs by Claimant temporarily within jurisdiction*
5. In an action brought by any person 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. *Action founded on Judgment or bill of exchange*

6. 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. *Bond as security for costs*
7. Subject to the provisions of any applicable law and these rules, the costs of and incidental to all proceedings in the High Court, including the administration of Estates and trusts, shall be at the discretion of the Judge, who shall have the power to determine the extent of costs to be paid and the party to pay such costs. *Costs at discretion of Court*
8. The Judge may order costs to be paid out of any fund or property to which a suit or proceedings relates. *Costs out of fund or property*
9. 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 proceedings or connected with it to be stayed until the costs are paid or security given, but such Order shall not supersede the use of any other lawful method of enforcing payment. *Stay of proceedings till payment of costs*
10. (1) Costs may be dealt with by the Judge at any stage of the proceedings. *Stage of proceedings at which costs to be dealt with*
 (2) Costs when ordered become payable immediately, and shall be paid within seven (7) days of the Order, otherwise the defaulting party or his Legal Practitioner may be denied further audience in the proceedings.
11. 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 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. *When costs follow event*
12. The Judge in exercising discretion as to costs shall take into account any offer or contribution made by any of the parties including any payment into Court and the amount of such payment. *Matters to be taken into account in exercising discretion*
13. (1) Where in any cause or matter, anything is improperly or unnecessarily done or omitted, by or on behalf of a party, the Judge may direct that any costs to that party in respect of the matter shall not be allowed to him and that the costs occasioned by such act or omission to the other party shall be paid by him. *Costs arising from misconduct or neglect*
 (2) Without prejudice to the generality of sub-rule (1) of this Rule, the Judge, shall have regard in particular to the following matters:
 (a) The omission to do anything the doing of which would have been calculated to save costs;

- (b) The doing of anything calculated to occasion or in a manner or at a time calculated to occasion unnecessary costs;
 - (c) Any unnecessary delay in the proceedings.
- (3) Without prejudice to sub-rule (1), the Judge may direct the Assessment or Taxing Officer to inquire into the act or omission and if it appears to him that the direction provided under sub-rule (1) should have been given and act as if the appropriate direction had been given.
14. (1) Subject to the following provisions of this Rule, where in any proceedings, costs are incurred improperly or without reasonable cause or wasted by undue delay or any other misconduct or default, the Judge may make an Order against and Legal Practitioner whom he considers to be responsible, whether personally or through a servant or agent:
- Personal liability of Legal Practitioner for costs*
- (a) disallowing the costs as between the Legal Practitioner and his client; and
 - (b) directing the Legal Practitioner to pay to his client costs which the client has been ordered to pay to other parties; or
 - (c) directing the Legal Practitioner to personally indemnify such other parties against costs payable by them.
- (2) The provisions of rule 14 sub-rule (1) shall apply where proceedings cannot conveniently proceed or fails or are adjourned without useful progress being made because of the failure of the Legal practitioner to:
- (a) attend in person or by a proper representative; or
 - (b) 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 assessment of costs to be paid out of a fund, one sixth or more of the amount of the bill for those costs is net off, the Legal Practitioner liable to pay the bill shall not be allowed the fees to which he would otherwise be entitled.

15. Every bill of costs (other than a bill delivered by a Legal Practitioner to his client which falls to be taxed under the Legal Practitioner 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. *Taxation of costs*
16. The party applying for taxation shall file the bill and give notice to any other party entitled to be heard on the taxation, and shall at the same time, if he has not already done so, supply the party with a copy of the bill. *Notice to other party*
17. A Taxing Officer shall have power to tax any costs, as may be required by any law or directed by Order of a Judge. *Power of Taxing Officer*
18. A Taxing Officer may, in the discharge of his functions with respect to taxation of costs: *Supplementary Powers of Taxing Officer*
 - (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 jointly represented in any proceedings before him to be separately represented;
 - (c) examine any witness in those proceedings;
 - (d) direct the production of any document which may be relevant in connection with those proceedings.
19. (1) A Taxing Officer may: *Extension of time*
 - (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 connection with proceedings before that Officer;
 - (b) where no period is specified by these rules or 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, the Taxing Officer may from time to time extend the period so specified on such terms as he deems fit, unless the Judge otherwise directs.
 - (3) A Taxing Officer may extend any such period as is referred to in this Rule although the application for extension is not made until after the expiration of the period.
20. 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; *Power of Taxing officer where party liable to be, and to pay*

- (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.
11. (1) A party entitled to require any costs to be taxed shall begin proceedings for the taxation of the costs by filing in the Registry, a Bill of Costs and securing the date of the taxation. *Mode of beginning Proceedings for taxation*
- (2) The party shall give at least seven (7) days' notice of the day and time appointed for taxation proceedings to the party and serve a copy of his Bill of Costs if he has not already done so.
- (3) A notice under sub-rule (1) of this Rule need not be given to any party who has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.
12. (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. *Provision as to bills of costs*
- (2) Before a Bill of Costs is left for taxation it shall be indorsed with:
- (a) the name or firm and business address, e-mail and telephone number of the Legal practitioner whose bill it is; and
- (b) if the Legal Practitioner is the agent of another, with the name or firm and business address, e-mail and telephone number of the principal.
13. (1) If any party entitled to be heard in any taxation proceedings does not attend within a reasonable time after the time appointed for the taxation, the Taxing officer, if satisfied by affidavit or otherwise that the party had due notice of the time appointed, may proceed with the taxation. *Provisions as to taxation Proceedings*
- (2) The Taxing Officer by whom any taxation proceedings are being conducted may, if he deems it necessary, adjourn those proceedings from time to time.
14. (1) Subject to Rule 21, and the following provisions of this Rule, the scale of costs contained in the High Court of Oyo State (Fees) Rules for the time being in force together with the notes and general provisions contained in the Rules as may be amended, shall apply to the taxation of all costs incurred in relation to contentious business done after the commencement of these rules. *Scale of costs*
- (2) Where the remuneration of a Legal Practitioner in respect of non-contentious business connected with sales, purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is regulated, in the absence of agreement to the contrary, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything in the scale contained in the High Court of Oyo State

(Fee) Rules.

25. Upon completion of the taxation of any Bill of Costs, the Taxing Officer shall certify the result of his taxation including the costs of same. Certificate of Taxing Officer
26. 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. Fees on taxation
27. 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. Application for review
28. (1) An application under the Rules 27 shall be made by Summons at any time within 14 days after the Taxing Officer's certificate. Application by summons
 (2) Unless the Judge otherwise directs, no further evidence shall be received on the hearing of an application under this Rule, and no ground of objection shall be raised which was not raised on taxation but, save as aforesaid, on the hearing of any such application the Judge may exercise all such powers and discretion as are vested in the Taxing Officer in relation to the subject matter of the application.
 (3) On an application under this Rule the Judge may:
 - (a) make such order as the circumstances require and
 - (b) in particular, may order the Taxing Officer's decision to be amended or, order the item to be remitted to the same or another Taxing Officer for taxation, except where the dispute as to the item under review is as to amount only.

ORDER 60**BUSINESS IN CHAMBERS****I. Business in chambers**

1. In any proceedings before a Judge in Chambers, any party may, if he so desires, be represented by a Legal Practitioner. *Representation in Chambers*
2. Unless the opposite party or his Counsel objects, the Judge may on application, conduct any proceeding, except actual trial, in Chambers, and may also on application, adjourn any such proceedings from Court to Chambers or vice versa. *Matter to be disposed of in chambers*

II. Proceedings Relating to Persons under Legal Disability

3. Upon application for the appointment of guardians of infants and allowance for maintenance, the evidence shall show: *Evidence upon application for appointment of Guardians of infants and allowance for maintenance*
 - (a) the ages of the infants;
 - (b) the nature and amount of the infants' fortunes and incomes; and
 - (c) what relations the infants have.
4. At any time during the proceedings under any Judgment or Order, the Judge may, if he deems fit, require a guardian to be appointed for any person under legal disability not adjudged a lunatic, who has been served with notice of such Judgment or Order. *Guardian with reference to proceedings in Chambers*

III. Further Consideration

5. Where any matter originating in Chambers shall, at the original or any subsequent hearing have been adjourned for further consideration in chambers, such matter may, after the expiration of 8 days and within 14 days from the date of the adjournment, be brought or further consideration by a Summons to be taken out by the party having the conduct of the matter, and after the expiration of such 14 days by a Summons to be taken out by any other party. Such Summons shall be in the form following: *Further consideration of matter originating in Chambers*

"That this matter, the further consideration whereof was adjourned by the Order of the Hon. Justice.....made.....on.....day of.....20..... may be further considered" and shall be served 7 clear days before the return.

Provided that this Rule shall not apply to any matter which was adjourned for further consideration at the original or any subsequent hearing in Court.

IV. Registering and Drawing up of Orders in Chambers

6. Notes of proceedings in the Judges' Chambers shall be kept with proper dates, so that *Notes of proceedings in Chambers.*

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,

7. 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.

Drawing up any entry of Orders made in Chambers

8. Subject to the provisions of the Law and of these rules, the costs of, and incidental to all proceedings in Chambers shall be at the discretion of the Judge.

Costs

9. (1) Where any party to proceedings in Chambers does not intend to accept the decision of the Judge in Chambers as final, he shall forthwith request to have the Summons adjourned into Court for argument. If such request is refused, the party may proceed by way of Motion on Notice in Court to discharge, set aside or vary the Order made or the Judgment given or Order made in Chambers.

Decisions given in Chambers. How set aside or varied

- (2) The Motion on Notice shall be:

- (a) filed not later than seven (7) days after the drawing up of the Order made in Chambers unless the Court grants an extension of time on good and sufficient reason being shown, and
- (b) heard and determined by the Judge who has dealt with the matter in Chambers, unless this proves impossible or inconvenient owing to such Judge's death or retirement or prolonged absence from Oyo State.

- (3) This Rule shall apply to decisions given by a Judge in Chambers on appeal from the Chief Registrar under Rule 4 of Order 51.

ORDER 61

FORECLOSURE AND REDEMPTION

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 an Originating Summons, for such relief of the nature or kind following as may by the Summons be specified, and as the circumstances of the case may require; that is:

*Originating
summons for
foreclosure.*

- (a) payment of money secured by the mortgage or charge;
- (b) sale;
- (c) foreclosure;
- (d) delivery of possession, whether before or after foreclosure, to the mortgagee or person entitled to the charge, by the mortgagor or person having the property subject to the charge, or by any other person in, or alleged to be in possession of the property;
- (e) redemption;
- (f) re-conveyance;
- (g) delivery of possession by the mortgagee.

2. Orders for payment and for possession shall be in **Forms 35, 36 and 37** of these rules with such variations as the circumstances of the case may require, and the like forms shall be used under corresponding circumstances in actions for the like relief commenced by Writ.

*Forms 35, 36
and 37*

3. The Judge may give any special directions concerning the execution of the Judgment, or the service thereof upon persons not parties to the cause or matter as he deems fit.

*Service and
execution of
Judgment*

ORDER 62

SUMMONS TO PROCEED WITH ACCOUNT AND INQUIRIES AFTER JUDGMENT

I. Summons to Proceed

1. Every Judgment or Order directing accounts or inquiries to be taken or made shall be brought to a Judge by the party entitled to prosecute the same within 10 days after such Judgment or Order shall have been entered or filed, and in default thereof any other party to the cause or matter shall be at liberty to bring in the same, and such party shall have the prosecution of such Judgment or Order unless the Judge shall otherwise direct.

Bringing in Judgment etc. directing accounts and inquiries

2. (1) Upon a copy of the Judgment or Order being left, a Summons shall be issued to proceed with the accounts or inquiries directed.

Summons to proceed with accounts and inquiries: Directions

- (2) On the return of such Summons the Judge shall, if satisfied by proper evidence that all necessary parties have been served with notice of the Judgment or Order, give directions relating to the:

- (a) manner in which each of the accounts and inquiries is to be prosecuted;
- (b) evidence to be adduced in support thereof;
- (c) parties who are to attend on the several accounts and inquiries; and
- (d) time within which each proceedings is to be taken and a day or days appointed for the further attendance of the parties.

- (3) The directions may subsequently be varied by addition thereto or otherwise, as may be found necessary.

3. (1) Where by a Judgment or Order a Deed is directed to be settled by a Judge in case the parties differ, a Summons to proceed shall be issued, and upon the return of the Summons the party entitled to prepare the draft Deed shall be directed to deliver a copy of the Deed, within such time as the Judge may direct, to the party entitled to object to same.

Settling deed where parties differ

- (2) The party entitled to object shall be directed to deliver to the other party within 8 days after the delivery of such copy, a statement of his objections in writing and the proceedings shall be adjourned until after the expiration of such period.

4. Where, upon the hearing of the Summons to proceed, it appears to the Judge that by reason of absence, or for any other notice of sufficient cause, the service of notice of the Judgment or Order upon any party cannot be made, the Judge may if he shall deem fit order any substituted service or notice by advertisement or otherwise in lieu of such

Where service of notice of Judgment or Order may be dispensed with

service.

- 4 (a) If at the hearing of the Summons to proceed, it appears that all necessary parties are not parties to the action or have not been served with notice of the Judgment or Order, directions may be given for advertisement for creditors, and for leaving the accounts in Chambers.

*Non-service of
notice of
Judgment or
Order: Stoppage
of proceedings*

(b) No Proceedings or Adjudication on creditors' claims and the accounts shall be continued or taken, except for the purpose of ascertaining notice of the parties to be served, until all necessary parties shall have been settled and directions given as to the parties who are to attend the proceedings.

- 6 Copies, abstracts, extracts of or from accounts, deeds or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the Judge, and where so directed, copies shall be handed over to the other parties.

*Documents:
Copies for use of
Judge*

Provided that no copies shall be made of Deeds or documents where the originals can be brought in unless the Judge shall otherwise direct.

II. Summons to Proceed Book

1. At the time any summons to proceed is obtained, an entry thereof shall be made in Summons Book, stating the date on which the summons issued, the name of the cause or matter, and by what party, and shortly for what purpose such summons is obtained, and at what time such summons is returnable.

*Entry in
summons to
proceed book*

ORDER 63

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

1. (1) This Order shall not apply where the person in occupation of land is:

Application of this Order

 - (a) a tenant; or
 - (b) a tenant holding over after termination of his tenancy; or
 - (c) a licensee of the owner or person entitled to possession; or
 - (d) a person who had the consent of the predecessor in title of the person who is entitled to possession.

- (2) Where a person claims possession of land which he alleges is occupied solely by a person not listed in rule 1 of this Order, proceedings may be brought by Originating Summons in accordance with the provisions of this Order.

Proceedings to be brought by originating summons

2. The Originating Summons shall be in **Form 38** and no acknowledgement of service shall be required.

Form of originating summons: Form 38

3. The Claimant shall file in support of the Originating Summons an affidavit stating:

Affidavit in support

 - (a) his interest in the land;
 - (b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and
 - (c) that he does not know the name of any person occupying the land who is not named in the Summons.

4. (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:

Service of Originating summons

 - (a) personally or in accordance with Order 7 (4); or
 - (b) by leaving a copy of the Summons and the affidavit or sending them to him at the premises; or
 - (c) in such other manner as the Judge may direct.

- (2) The Summons shall, in addition to being served on the named Defendants, if any, in accordance with sub-rule (1) of this Rule be served, unless the Judge otherwise directs by:
 - (a) affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises; or

- (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"; or
- (c) placing stakes in the ground at conspicuous parts of the occupiers' land, to which shall be affixed a sealed transparent envelope addressed to "the occupiers" and containing a copy of the Summons and the affidavit.

(3) Every copy of an Originating Summons for service under sub-rule (1) or (2) of this Rule shall be sealed with the seal of the Court issuing the Summons.

Without prejudice to rule 16 of Order 19 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.

Application by occupier to be made a party

(1) An Order for possession in proceedings under this Order shall be in Form 39 with such variations as circumstances may require.

Order for possession: Form 39

(2) The Judge may immediately order a Writ of Possession to issue.

(3) Nothing in this Order shall prevent the Judge exercising any power which could have been exercised if possession had been claimed in an action commenced by Writ or ordering possession to be given on a specified date.

(1) No Writ of Possession to enforce an Order for possession under this Order shall be issued after the expiration of three (3) months from the date of the Order without the leave of the Judge.

Writ of possession

(2) The application for leave may be made *Ex parte* unless the Judge otherwise directs.

(1) The Judge may, on such terms as he deems fit, set aside or vary any Order made in proceedings under this Order.

Setting aside of order

(2) In this Order "landed property" means land with or without building on it.

ORDER 64

STAY OF EXECUTION OR PROCEEDINGS PENDING APPEAL

1. Where any application is made to a Judge for a stay of execution or of proceedings in respect of any Judgment or decision appealed from, such application shall be made by Motion on Notice supported by affidavit stating the grounds upon which a stay of execution or of proceedings is sought. *Stay of execution or of proceedings pending appeal*
2. An Applicant for stay of execution of a Judgment or stay of proceedings shall compile the Record of Appeal within 90 days from the date of filing a Notice of Appeal and where the record is not so compiled, the Respondent may apply to strike out the application or discharge the Order if already granted. *Compilation of Record*
3. (1) Application for stay of execution or of proceedings shall be regarded as an urgent matter. *Court may grant or refuse Order for Stay*
 (2) Where a Judge has struck out an application for a stay of execution, no further application for a stay of execution shall be made in the same matter.
4. Where any application is made to the Judge under this Order, a formal Order bearing the date the Order is made and embodying the terms of the decision of the Judge shall be drawn up. *Formal Order to be drawn up.*

ORDER 65

APPEALS FROM MAGISTRATES' COURTS

Every appeal shall be brought by Notice of Appeal which shall be lodged in the Lower Court within thirty (30) days of the decision appealed from and served on all other parties affected by the appeal within that period.

Notice of appeal

(1) The Notice of Appeal which shall be in Form 40 shall set out the reference number of the proceedings in which the decision complained of was given, the names of the parties, the date of such decision and the grounds for appeal in full.

*Contents of
Notice of Appeal:
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 the Appellant's address within the Judicial Division in which is situated the Lower Court appealed from, to which notices may be sent for the Appellant, and such notices may be sent to him by registered post or electronic means.

(1) The Registrar of the Lower Court shall, within forty-five (45) days after the filing of a Notice of Appeal, prepare, serve the parties and transmit certified copies of the proceedings required for the consideration of the appeal to the Registrar of the High Court in the Judicial Division in which the Lower Court is situated.

*Copies of
Proceedings*

(2) Pursuant to rule 3(1) above, the Registrar of the Lower Court shall within 7 days from the filing of the Notice of Appeal summons the parties as in Form 41 and fix the amount to be deposited by the Appellant, which shall be receipted for, to cover the estimated cost of preparing and transmitting the certified copies of the proceedings.

The appeal shall be decided by the Judge of the Judicial Division within whose Judicial Division the appeal emanated except with the leave of the Chief Judge who may direct otherwise upon application showing cause otherwise by the parties.

*Appeal to Judge
of High Court*

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

*Party to be
supplied with
copy of
proceedings*

The times prescribed in rules 1 to 4 may be enlarged at any time by the Court on such terms, if any, as the Court may deem fit, after notice has been given to the Respondent by the Appellant of his application for the enlargement of time.

*Proceedings
time*

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

*Where time
expires*

8. All civil appeals from the Lower Courts shall be heard by one Judge of the Court.
9. The appeal shall come on for hearing at such time and at such place as the Registrar of the Court shall notify to the parties.
10. (1) The Appellant shall within **twenty-one (21) days** of the receipt of the Record of Appeal from the Court below file in the Court a Written Brief, being a succinct statement of his argument in the appeal.
(2) The Respondent shall within **twenty-one (21) days** of the receipt of the Appellant's brief, file in the Court a Written Respondent's Brief, being a succinct statement of his answer to all material points of substance contained in the Appellant's brief and shall contain all points raised therein which the Respondent wishes to concede as well as reasons why the appeal ought to be dismissed.
(3) The Appellant may also, if necessary, **within seven (7) days** of the service on him of the Respondent's brief but **not later than three clear days** before the date set down for the hearing of the appeal, file and serve on the Respondent a Reply Brief which shall deal with all new legal points arising from the Respondent's brief.
(4) All briefs shall be concluded with a numbered summary of the points to be raised and the reasons upon which that argument is founded. The reasons shall be supported by particulars of the titles, dates and pages of cases reported in the Law Reports or elsewhere including the summary of the decisions in such cases, which the parties propose to rely upon.
(5) Where it is necessary, reference shall also be made to relevant statutory instruments, law books and other legal journals. Reference shall also be made to all relevant documents or exhibits admitted at the Court below on which they propose to rely in argument.
(6) All parties, whose interests are identical or joint, may file joint briefs, and separate brief may be filed only by those parties whose interests are separate or in conflict.
(7) A Respondent may, without leave, include arguments in respect of a Cross-Appeal or a Respondent's Notice in his brief for the original appeal and the Cross-Appeal or Respondent's Notice.
(8) Where the Appellant fails to file his brief within the time allowed by this Rule or such extended time by the Court, the Respondent may apply to the Court for the appeal to be dismissed for want of prosecution. If the Respondent fails to file his brief, he will not be heard in oral argument except by leave of the Court. Where the Appellant fails to file a Reply Brief within the time allowed by this Rule or such extended time, he shall be deemed to have conceded all new points or issues

*Constitution of
Court Hearing
Appeals
Time and place
for hearing*

*Provisions for
Brief of appeal*

arising from the Respondent's Brief.

- (9) The Counsel to the parties shall be at liberty to advance before the Judge handling the appeal oral submissions of not more than 20 minutes to expatiate on the Written Brief and if on the day fixed for hearing, or any adjourned date that the hearing is fixed for, if any or all the Counsel in the appeal is/are absent, the appeal shall be deemed as argued on the brief(s) filed provided such absent Counsel was/were aware that the appeal was fixed for hearing for that day.
11. 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: *Appeal limited to grounds given in notice*

Provided that where, in the opinion of the Court, other grounds for appeal than those set forth in the memorandum of grounds for appeal should have been given, or 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.
12. (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 Judgment; *Request to confirm Judgment on other grounds*

(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 Fourteen (14) days of service on the Respondent of the notice and grounds for appeal, and shall be served on the Appellant.
13. (1) The Respondent may file grounds for appeal against any part of the decision of the Lower Court. *Cross-Appeal*

(2) Such grounds shall be filed by the Respondent within Fourteen (14) days of service on him of the Appellant's notice and grounds for appeal, and shall be served on the Appellant.
14. (1) No objection on account of any defect in the form of setting forth any ground for 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. *Objections to Form of grounds of appeal*

(2) In any case where the Court is of the 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.

15. On any appeal from a decision of a Lower Court, no objection shall be taken or allowed to any proceedings 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 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:

Defects in proceedings under appeal

Provided, however, that if any error, defect, or variance mentioned in this Rule appears to the Court at the hearing of any appeal to be such that the Respondent has been thereby deceived or misled, it shall be lawful for the Court either to refer the case back to the Lower Court with directions to re-hear and determine the same or to reverse the decision appealed from, or to make such other Order for disposing of the case as justice may require.

16. 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 such appeal for any alleged error or defect therein: but if any such error or defect appears to the Court to be such that the Respondent on such appeal has been thereby deceived or misled, it shall be lawful for the Court to amend the same and, if it is expedient to do so, also to adjourn the further hearing of the appeal, the amendment and the adjournment, if any, being made on such terms as the Court may deem just.

Defects in notice of appeal or recognisance

17. The Court may on application of either parties, in any case where it may consider it necessary that additional evidence should be adduced, either:

Additional evidence

- (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.

18. (1) When additional evidence is to be taken by the Lower Court and specific findings of fact reported, it shall certify such evidence to the Court which shall thereupon proceed to dispose of the appeal.

Mode of taking evidence

- (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.

- | | | |
|-----|--|--|
| 14. | The applicable fees in the schedule hereto shall be chargeable in civil appeals save where the same would have to be paid by a Government officer acting in his official capacity or where the Lower Court or the Court waives or remits the same on the ground of the poverty of the person chargeable therewith where it appears that there are substantial grounds of appeal. | <i>Fees</i> |
| 15. | Allowances may be made to witnesses in accordance with the provisions of the schedule on fees. | <i>Allowances to witnesses</i> |
| 16. | After the pronouncement of the Judgment or Order of the Court, the Lower Court from which the appeal came shall have the same jurisdiction and power to enforce, and shall enforce, any decision which may have been affirmed, modified, amended, or substituted by the Court or any Judgment which may have been pronounced by the Court, in the same manner in all respects as if such decision or Judgment had been pronounced by itself. | <i>Enforcement of Judgments and Orders</i> |

ORDER 66

FAST TRACK PROCEDURE

1. The main objective of the Fast Track procedure is to reduce the time spent on litigation to a period not exceeding nine (9) months from commencement of the action till final Judgment. *Objective*
2. The Chief Judge shall designate such number of Fast Track Judges as he thinks fit, who may act as Motion Fast Track Judges and/or Trial Fast Track Judges. *Fast Track Judges*
3. Where any of the parties specifically requests to proceed by way of Fast Track as in **Form 42**, the Fast Track Court shall have jurisdiction to hear and determine that case and any other case requiring exceptional urgency including but not limited to the following: *Jurisdiction of Fast Track Division*
 - (a) Banker/customer disputes;
 - (b) Commerce and Industry;
 - (c) Landlord and tenant – Leases;
 - (d) the revenue of the Oyo State Government or Local Government or Council Revenue; in which the Oyo State Government or Local Government Area Council Revenue or any of its departments, agencies or parastatals is suing or being sued.
 - (e) Where any of the parties specifically requests to proceed by way of Fast Track as in **Form 42**.
 - (f) Provided that the monetary claim in paragraphs (a), (b) and (c) above is not less than **₦30,000,000.00 (Thirty Million Naira)**; and
 - (g) Any other case which the Chief Judge may approve.
4. (1) The Chief Judge shall appoint an Officer as coordinator for the Fast Track Division. *Coordinator, Fast Track Division*
 - (2) The Coordinator shall:
 - (a) Process Fast Track cases;
 - (b) Monitor the performance of the Fast Track Division and submit weekly and monthly performance appraisal report to the Chief Judge;
 - (c) Make recommendations on how to improve the operation of the Fast Track

- (d) Publish the weekly Cause List every Friday or on an earlier day if Friday is a Public holiday;
 - (e) Manage, coordinate and supervise the operation of the Fast Track Division; and
 - (f) Perform any other function that may be assigned to him by the Chief Judge.
5. A Fast Track Judge may not be assigned more than three cases a week. *Assignment of Cases*
6. (1) The Claimant or Counterclaimant shall present his Originating Process; General Form of Writ of Summons (Fast Track) as in Form 43, prepared by his Legal Practitioner accompanied by: *Procedure for filing Cases*
- (a) Statement of claim
 - (b) List of witnesses to be called at the trial,
 - (c) Written statement on oath of the witnesses
 - (d) List and Copies of every document or exhibit to be relied on at the trial, and
 - (e) Certificate of pre-action counseling.
- (2) The Coordinator shall upon receipt of the processes in (1) above issue an acknowledgement and forward the cause or matter to the Chief Judge for approval or otherwise as in Form 44 or 45.
- (3) Where a matter is placed on the Fast Track, a filing fee of **₦100,000.00 (One Hundred Thousand Naira Only)** shall be paid by the Applicant apart from the other fees chargeable.
7. Where a process is placed on the Fast Track, upon payment of the filing fees, the Coordinator shall cause the Originating Process to be marked **"QUALIFIED FOR FASTTRACK"**. *Marking and payment of Filing Fees*
8. The Originating Process under this Order shall be served within **fourteen (14) days** of filing. *Service of Originating Process*

9. (1) The Bailiff /Process Server shall serve all processes or notices filed within 48 hours of filing and file a proof of service. *Filing of Process*
- (2) Where a Bailiff is unable to effect service, a certificate of non-service shall be filed.
- (3) Any Court Official who receives or dispatches a file or process relating to a Fast Track case shall state the date and time of receipt or dispatch.
- (4) Service of process may be effected on parties or Counsel in the Court.
- (5) All proofs of service must be filed within 24 hours.
10. (1) The coordinator shall render monthly report of cases held and summary of Order to the Chief Judge as in **Form 46**. *Monthly report to the Chief Judge and account for Fees:*
- (2) The Coordinator shall render monthly account of the monies received by the Revenue Officer(s) for filing processes, forms or notices under this Order to the Chief Judge in a form or manner as may be prescribed by the Chief Judge.
11. Trial shall be conducted on daily basis and parties are bound by hearing dates fixed in advance. *Hearing dates*
12. (1) A Judge may not grant an application for an adjournment, unless it is for cogent and compelling reasons. *Adjournments*
- (2) Where an application for adjournment is granted, the Order shall not exceed three days from the date of the Order.
13. (1) Where a party or his Counsel will be absent from Court, the party or his Counsel shall promptly inform the Court. *Absence of Counsel*
- (2) Where a trial has commenced, the Court will hold Counsel responsible to his commitment to continuous trial.
- (3) Where a matter is adjourned at the instance of a party, he shall pay costs of **not less than Ten Thousand Naira (₦10,000.00)** per day for every day of the adjournment to each other party.
14. The timetable for steps in Fast Track action is as follows: *Time Table for taking steps*
- (a) Administrative action by the Chief Judge after filing of process, form or notice shall be within 24 hours;

- (b) Service of process shall be effected within 3 days;
- (c) Memorandum of Appearance, Defence and accompanying documents shall be filed within 7 days and 30 days if the party is outside jurisdiction;
- (d) Reply to Defence shall be filed within 7 days;
- (e) Case Management Conference shall be conducted, and Motions and other applications shall be heard and concluded within 7 days of close of pleadings;
- (f) Commencement to conclusion of trial shall be within 30 days;
- (g) Filing and adoption of final addresses shall be concluded within 17 days; (Defendant's Final Address - 7 days, Claimant's Final Address - 7 days, Reply on Point of Law - 3 days)
- (h) Judgment shall be delivered within 14 days; and
- (i) Issuance of certified true copy of Judgment shall be within 4 days.

*Compliance
with time table*

- 15. (1) Where service has been duly effected and there is proof of service, an extension of the time provided under the timetable for taking steps, shall not be allowed, unless for cogent and compelling reasons.
- (2) A Party who fails to comply with the period prescribed in the timetable shall not be heard on an interlocutory application, except on an application for extension of time.

*Absence of
Parties*

- 16. (1) Where trial cannot commence on a date fixed for hearing due to the absence of the Claimant, the case shall be struck-out.
- (2) Where the trial cannot commence on a date fixed for trial due to the absence of the Defendant, hearing shall continue and may be concluded without further notice to the Defendant.
- (3) Where a case is struck-out under paragraph (1) above, the Claimant may apply to relist within five (5) working days.
- (4) Where a case is relisted pursuant to sub rule (3) above, the Claimant shall pay costs as shall be determined by the Court.

*Form of
Addresses,
Objections
and
Applications*

- 17. (1) Addresses, objections and applications, except those arising *extempore*, shall be in writing and served on the other party.
- (2) Final addresses shall be deemed adopted in the absence of parties.

18. (1) The Registrar shall prepare record of proceedings within three (3) days of the conclusion of sittings.

Application for
Transcript Form
47

(2) Parties may apply for the record of proceedings upon payment of fees, to be issued within three (3) days of the application as in Form 47.

ORDER 67

PROBATE AND ADMINISTRATION

I. Grant of Probate or Administration in General

- (1) Subject to the provisions of Rules 44 and 45 of this Order when any person subject to the jurisdiction of the Court dies, all petitions for the granting of any Letters of Administration or 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. *Petition to be made to the Probate Registrar*
- (2) The Chief Judge shall request a Judge 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 Judge under this Order, and every Judge 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 Fourteen (14) days of the death of the deceased, and no grant of administration without the Will annexed, shall issue within Twenty-One (21) days of such death.
2. The Judge shall, when the circumstances of the case appear so to require, forthwith on the death of a person, or as soon after as may be, appoint and authorize an Officer of the Court, or some other fit person, to take possession of his property within its jurisdiction, or put it under seal and so keep it until it can be dealt with according to Law. *Preservation of property*
3. If any person other than the named Executor or Administrator, or an Officer of the Court, or person authorized by the Judge, takes possession of and administers or otherwise deals with the property of any deceased person, he shall, besides the other liabilities he may incur, be liable to a fine of not less than ₦500,000.00 (Five Hundred Thousand Naira) as the Judge, 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. *Unauthorized persons intermeddling with property*
4. Any person having in his possession or under his control any paper or Writing of any deceased person, being or purporting to be testamentary shall forthwith deliver the original to the Probate Registrar of the Court. If any person fails to do so within 3 months after having had knowledge of the death of the deceased, he may be liable to a fine of ₦20,000.00 (Twenty Thousand Naira) as the Judge may, having regard to the condition of such person in default and other circumstances of the case, deem fit to impose. *Production of testamentary papers.*

5. Where it appears that any paper of the deceased, being or purporting to be testamentary is in the possession of, or under the control of any person, a Judge may upon an *Ex parte* application, whether a suit or proceedings respecting probate or administration is pending or not, order him to produce the paper and bring it into Court.

*Judge may
order
production*

6. Where it appears that there are reasonable grounds for believing that any person had knowledge of any paper being or purporting to be testamentary, although it is not shown that the paper is in his possession or under his control, a Judge may upon an *Ex parte* application, whether a suit or proceedings in respect of probate or administration is pending or not, order that he be examined in respect of the same in Court, or on interrogatories, and that he attends for that purpose, and after examination that he produces the paper and brings it into Court.

*Examination
respecting
papers*

7. The Judge may on the application of any person claiming an interest under a Will give notice to the Executors therein named, to come in and prove the Will, or to renounce probate, and they, or some or one of them, shall within 21 days after notice, come in and prove or renounce accordingly.

*Notice to
Executor to
come in and
prove*

8. If any 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 for or dispute in respect of probate or administration, he may independent of any other liability be deemed to be in contempt of Court, and shall be liable to such fine of not less than N50,000.00 (Fifty Thousand Naira) as the Judge deems fit to impose.

*Liability of
Executor
neglecting to
apply for
probate*

9. The Judge shall require evidence, in addition to that offered by the Applicant, where additional evidence in that behalf seems to the Judge 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 to the grant of probate or administration sought by the Applicant or in respect of any other matter which may be considered by the Judge relevant to the question whether the Applicant is the proper person to whom the grant should be made.

*Evidence of
Identity*

Provided that the Judge may refuse the grant unless the Applicant produces the required evidence on these points or any of them as required by the Judge.

10. Where it appears to the Judge that some person or persons other than the Applicant may have at least an equal right with the Applicant to the grant sought, the Judge 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 respect of the application.

*Judge may
refuse grant
until all persons
interested are
given due notice*

Provided that the Judge may in his 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. Every Applicant for a grant of Letters of Administration shall file in the Court a true declaration on oath of all the personal properties of the deceased and the *verified* value thereof:
Value of property

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. All inquiries a Judge deems fit to institute shall be answered to his satisfaction before the issuance of Letters of Administration. The Judge shall afford as great a facility for the obtaining of Letters of Administration as is consistent with due regard to the prevention of error and fraud.
Answers required before grant
13. Suits in respect of administration shall be instituted and carried on as nearly as may be in the like manner and subject to the same rules of procedure as suits in respect of ordinary claims.
Form of suits
14. Any person may deposit his Will for safe custody in the Probate Registry sealed under his own seal and the seal of the Court.
Testator may deposit Will
15. Every original Will, of which probate or administration with Will annexed is granted, shall be filed and kept in the Probate Registry in such manner as 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.
Custody of Wills of which probate is granted.
16. No original Will shall be given out for any purpose without the direction in writing of a Judge. A certified transcript under the seal of the Court of the probate or administration with the Will annexed may be obtained from the Court.
Will not given out without Order of Judge
17. (1) On receiving an application for administration with Will annexed, a Judge 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.
Examination of Will as to its execution

(2) If the Will appears to be so signed and subscribed, the Judge shall refer to the attestation clause and consider whether the wording thereof states the Will to have been in fact executed in accordance with those enactments.
18. (1) Where a Will contains no attestation clause or the attestation clause is insufficient or where it appears to the Judge that there is some doubt about the due
Evidence as to due Execution of Will

execution of the Will, he shall before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the Will was executed.

(2) If no affidavit can be obtained in accordance with the foregoing paragraph, the Judge 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 Judge after considering the evidence is satisfied that the Will was not duly executed, he shall refuse probate and mark the Will accordingly;

19. Where both 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 present at the execution of the Will; but if no such affidavit can be obtained, proof shall be required of that fact, and of the handwriting of the deceased and of the subscribing witnesses and also of any circumstances raising a presumption in favour of the due execution of the Will.

Evidence on failure of attesting witnesses

20. (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 the re-execution of the Will or by the execution of a Codicil, the Judge 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.

Evidence as to terms, conditions and date of execution of Will

Provided that this sub-rule shall not apply to any alteration which appears to the Judge to be of no practical importance.

(2) Where from any mark on the Will it appears to the Judge 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 Judge may require the document to be produced and may call for such evidence in respect of the attachment or incorporation of the document as he may deem fit.

(3) When there is doubt as to the date on which a Will was executed, the Judge may require such evidence as he deems necessary to establish the date.

21. Any appearance of attempted revocation of a Will by burning, tearing or otherwise and every other circumstance leading to a presumption of revocation by the Testator, shall be accounted for to the satisfaction of the Judge.

Attempted revocation of a Will

22. The Judge 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

Affidavit as to due execution terms, etc. Will

execution of a Will, the deponent shall depose to the manner in which the Will was executed.

13. Where it appears to the Judge that there is *prima facie* evidence that a Will is one to which Section 8 of the Wills Law of Oyo State, Cap 170, 2000 or any other applicable law in force in the State relates, the Will may be admitted to proof if the Judge is satisfied that it was made by the Testator in accordance with the provision of that section or enactment as the case may be.

Wills of persons in military service and seamen

14. Where evidence of foreign law is required on any application for a grant, the Judge 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.

Evidence of foreign law

15. 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:

Order of priority for grant where deceased left a Will

- (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 Judge 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 Judge 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 of this Order to any Legatee or Devisee entitled to, or to a share in the estate so disposed of; without regard to the persons entitled to share in any residue not disposed of by the Will;
- (e) any specific Legatee or Devisee or any creditor or, subject to sub-rule 3 of rule 59, the personal representative of any such person or where the estate is not wholly disposed of by Will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an 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 (1) An application to join with a person entitled to a grant of administration, a person entitled in a lower degree shall, in default of renunciation by all persons entitled in priority to the latter, be made to the Judge 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 Judge may require;

*Joinder of
Administrators*

(2) An application to join with a person entitled to a grant of administration, a person having no right to it, shall be made to the Judge 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 Judge may require.

Provided that there may, without any such application, be joined with person entitled to administration;

- (a) 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;
- (b) unless the Judge otherwise directs, any person whom the guardian of a minor may nominate for the purpose;
- (c) a trust Corporation.

27. Where the Testator was blind or illiterate, the Judge shall not grant administration with the Will annexed, unless the Judge 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.

*Blind or Illiter.
Testator*

28. (1) The Judge, on being satisfied that the Will was duly executed, shall inspect it to see

*Interlineation,
Erasures,
Obliteration*

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 attested in the mode required by the said enactments; or unless they have been made valid by the re-execution of the Will or by the subsequent execution of some Codicil thereto.

(3) Where interlineations, alterations, erasures, or obliterations appear in the Will, unless duly executed or recited in or otherwise identified by the attestation clause, an affidavit in proof of their having existed in the Will before its execution shall be filed.

(4) Where 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.

- (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 Judge 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 given. A document cannot form part of a Will unless it was in existence at the time when the Will was executed.
- Documents referred to in a Will or annexed or attached thereto*
- (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 them shall be required, and if it is not produced, a satisfactory account of its non-production shall be given.
- Where a person appointed Executor in a Will survives the Testator but either dies without having taken probate or having without been called on by the Court to take probate and does not appear, his right in respect of the Executorship wholly ceases; and, further renunciation, the representation to the testator and the administration of his property may go and be committed as if that person had not been appointed Executor.
- Executor dying without proving or not appearing*
- 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:
- Marking of Wills*
- Provided that where the Judge 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.
- In every case where evidence is directed or allowed to be given by affidavit, the Judge 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 Judge deems fit.
- Viva voce examination of persons making affidavits*
- (1) A Judge in granting Letters of Administration shall proceed as far as may be in case of probate.
- Letters of Administration*
- (2) The Judge shall ascertain the time and place of the deceased's death and the value of the property to be covered by the administration.
- (1) The person to whom administration is granted shall give a bond with two or more responsible sureties to the satisfaction of the Judge. The bond shall affirm that the Administrator shall be duly conditioned to collect, getting in and administering the personal property of the deceased.
- Administration bond*
- (2) The Judge may, if he deems fit, take two sureties only where the gross value of the estate exceeds ₦1,000,000.00 (One Million Naira) 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 Judge deems it expedient to reduce the amount.
- (4) The Judge 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(1) The Judge shall not require a guarantee as a condition of making a grant where it is proposed to make it:

Guarantee

- (a) by virtue of Rule 25(c) to a creditor or the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;
 - (b) under Rule 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 Judge to be resident elsewhere than in the State; or
 - (g) except where the Judge 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 surety for the purpose of the Order shall be in **Probate Form 1** 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 authorized officer, Commissioner for Oaths or other person authorised by law to administer an oath.
 - (5) Unless the Probate 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 ₦250,000.00 (two hundred and fifty thousand naira) or a Corporation is a proposed surety, and in those cases one will suffice;

- (b) no person shall be accepted as a surety unless he is resident in the State;
 - (c) no officer of the judiciary shall 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 Judge 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.

The Judge 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, and may recover thereon, as trustee for persons interested the full amount recoverable in respect of any breach of the bond.

Assignment of bond

Any person claiming to be a creditor or legatee or the next of kin or one of the next of kins 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 the Court and show cause why an Order for the administration of the property of the deceased should not be made.

Administration Summons

(1) On proof of service of the Summons or on appearance of the Executor or Administrator, and on proof of all such other things as the Judge may direct, the Judge may, if he deems fit, make an Order for the administration of the property of the deceased.

Order for administration

(2) The Judge may make or refuse any such Order or give any special directions in respect of the carriage or execution of it and where there are applications for such an Order by two or more different persons or classes of persons, to grant the same to such one or more of the Claimants or classes of Claimants, as the Judge deems fit.

(3) Where the Judge deems fit, the carriage of the Order may subsequently be given to such person, and on such terms, as he may direct.

Where the Judge makes such an Order or at any time afterwards, he may, if he 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.

Order relating to property

In a case of intestacy, where the special circumstances of the case require the Judge may, if he deems fit on the application of any person having interest in the estate

Administration may be granted to officers

of the deceased or of his 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. (1) The Officer or person so appointed shall act under the direction of the Judge, and shall be indemnified thereby.

Officer to act under the direction of Judge

(2) The Judge shall require and compel him to file in Court the accounts of his administration at intervals not exceeding 12 months.

42. Where a person has died intestate as to his personal estate or leaving a Will affecting personal estate, but without having appointed an Executor thereof willing and competent to take probate or where the Executor shall, at the time of the death of such person, be resident out of the jurisdiction, and it shall appear to the Judge 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 Judge may appoint such person as he shall deem fit to be such Administrator upon his giving such security, if any as the Judge shall direct, and every such Administrator may be limited as the Judge shall deem fit.

Court may appoint person to be Administrator

43. The Judge 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 he shall deem fit not exceeding 10% on the amount of the realized property, or, when not converted into money, on the value of the property duly administered and accounted for by him.

Remuneration of the Administrator

Provided that where the Judge is satisfied that by reason of exceptional circumstances the administration of the property has required an extraordinary amount of labour to be bestowed on it, he may allow in respect of such property a higher rate of remuneration.

44. Where any citizen of any foreign Country dies within the jurisdiction without leaving within the jurisdiction a widower, widow or next of kin, the Probate Registrar shall collect and secure all moneys and other property belonging to the deceased and shall then inform the nearest Consular Officer of such Country of death, and transmit to him a list of the money and property leaving of the deceased.

Securing collection of estate

45. 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 Judge may make such Order as to security for payment of debts and the method of administration as the Judge shall deem fit, and vary such Order when and so often as it is expedient.

Application Consular Officer or person authorised him to administer estate

- 46(1) Every person to whom a grant of probate or Letter of Administration shall have been made, and every Administrator appointed by the Judge shall, file in Court the accounts of his administration every 12 months from the date of the grant or the appointment until the completion of the administration.

Accounts filed

- (2) Any Executor or Administrator who fails to file his accounts or returns within the prescribed period as aforesaid shall be liable to a penalty of ₦500.00 (Five Hundred Naira) for every day of default. A fine for non-payment shall 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 Judge shall scrutinize such account and if it appears to the Judge that by reason of improper, unvouched or unjustifiable entries or otherwise such account is not a full and proper account, the Judge shall require the person filing the account to remedy such defects as there may be within such time as the Judge may deem reasonable for the purpose; and on failure to remedy such defects within such time, the person who filed such defective account shall be deemed to have failed to file an account within the meaning of this Rule and proceedings may be taken against such person accordingly.
- (4) The Probate Registrar shall bring to the notice of the Judge the fact that any Executor or Administrator has failed to file his accounts as required by this Rule.
- (5) The Judge may, on the motion of any party interested, or summon any Executor or Administrator failing as aforesaid, to show cause why he should not be punished.
- (6) The Judge 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) The accounts shall be open to the inspection of any person who satisfies the Probate Registrar that he is interested in the administration.
- (9) In this Rule, the word "accounts" shall mean and include an inventory, an account of the administration, the vouchers in the hands of the Executor or Administrator relating thereto and an affidavit in verification.
47. The Judge may refuse to entertain any application under rule 2 of this Order if he considers that there has been unreasonable delay by the Applicant in making the application.
48. The grant of Letters of Administration under this Order shall be signed by the Probate Registrar on behalf of the Court.

*Court may
refuse
application to
review*

*Grant to be
signed by
Probate
Registrar*

II. Probate (Non-Contentious) Procedure

49. In this Part. Rules 1.4.5.6,7,8.11.12,14.15.16.17.19.26,27,28,29,30,31,71(1) and 72(1) or (4) of this Order shall also apply.
50. Every Legal Practitioner through whom an application for a grant is made shall give the address of his place of business within the jurisdiction.
- 51 (1) An Applicant for a grant may apply in person.

Application

*Application
for grants
through Legal
Practitioners*

*Personal
Applications*

- (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 Judge 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 Judge 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 Judge 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 Judge otherwise directs, every oath, affidavit or guarantee required of a personal application shall be sworn or executed by all the deponents or sureties before an authorized Officer.
- 52 (1) The Probate Registrar shall not allow any grant to issue until all inquiries which he may deem fit to make have been answered to his satisfaction. *Duty of Probate Registrar on receiving application grant*
- (2) The Judge 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 3 months of the death of the deceased; and no grant of administration (not with the Will annexed) shall issue within 3 months of such death.
- 53 (1) Every application for a grant shall be supported by an oath in the form applicable to the circumstances of the case, which shall be contained in an affidavit sworn to by the Applicant, and by such other papers as the Probate Registrar may require. *Oath in sup of grant*
- (2) Unless otherwise directed by the Probate Registrar, the oath shall state where the deceased was domiciled at the time of death.
54. Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the Applicant shall state in the oath the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name; or as to any other reason that there may be for the inclusion of the other name in the grant. *Grant in addition name*
- 55 (1) Where the Probate Registrar considers that in any particular case a *Engross for purp record*

photocopy of the original Will would not be satisfactory for purposes of record, he may require that an engrossment suitable for photo reproduction be lodged.

(2) Where a Will contains alterations which are not admissible to proof, there shall be lodged an engrossment of the Will in the form in which it is to be proved.

(3) Any engrossment lodged under this Rule shall reproduce the punctuation, spacing and division into paragraphs of the Will and, if it is one to which sub-rule 2 of the rule applies, it shall be made in form of book 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. 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.

Grant to attesting witnessing etc.

57. (1) Where all the persons entitled to the estate of the deceased under a Will have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace in order of priority for a grant of probate the assignor or if there are two or more assignors, the assignors with the highest priority, in the absence of a proving Executor.

Right of assignee to a grant

(2) Where there are two or more assignees, probate may be granted with the consent of the others to anyone or more but not exceeding four of them.

(3) In any case where probate is applied for by an assignee, a copy of the Instrument of Assignment shall be lodged in the Registry.

58. (1) An application to add a personal representative shall be made to the Probate 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 Judge may require.

Additional personal representatives

(2) On any such application, the Probate 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. (1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same degree.

Grant where two or more 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 Probate Registrar.

(3) If an application under this Rule is brought before the Judge, he shall not allow any grant to be sealed until such application is finally disposed of.

(4) Unless the Probate Registrar otherwise directs, administration shall be granted to a living person in preference to the personal representative of a person

who would, if living, be entitled in the same degree and to a person not under disability in preference to an infant entitled in the same degree.

- 60 (1) Nothing in Rules 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.

Prevention of grant

- (2) The rules mentioned in the last foregoing paragraph shall not apply where the deceased died domiciled outside the State, except in a case the provisions of rule 63 apply.

61. 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 person who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or one or more but not exceeding four of such persons.

Grants to person having special succession

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. Where the deceased was domiciled outside the State, the Probate Registrar may order that a grant should issue:

Grants where deceased was domiciled outside the State

- (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) of this Rule or if in the opinion of the Probate Registrar the circumstances so require to such person as the Probate Registrar may direct;
- (d) if a grant required to be made to, or if the Probate Registrar in his discretion considers that a grant should be made to, not less than two Administrators, to such person as the Probate Registrar may direct jointly with any such person as is mentioned in paragraph (a) or (b) of this Rule 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) Where the Will is in English or in the local language, to the Executor named therein;
 - (ii) Where 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.

- (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 Probate Registrar may direct:

Grant to attorney

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 Probate 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 Probate Registrar may direct.

- (1) Where the person to whom a grant would otherwise be made is a minor, a grant for his use and benefit until he attains the age of 18 years shall subject to sub-rules 3 and 5 of this Rule, be granted:

Grants on behalf of minors

- (a) to both parents of the minor jointly or to any guardian appointed by a Probate Registrar; or
- (b) where there is no such guardian able and willing to act and the minor has attained the age of 16 years, to any next of kin nominated by the minor, or where the minor is a married woman, to any such next of kin or to her spouse if nominated by her.

- (2) Any person nominated under sub-rule 1 (b) of this Rule may represent any other minor whose next of kin he is, being a minor below the age of 16 years entitled in the same degree as the minor who made the nomination.

- (3) Notwithstanding anything in this Rule, administration for the use and benefit of the minor until he attains the age of 18 years may be granted to any person assigned as guardian by Order of a Court in default of, or jointly with, or to the exclusion of any such person as is mentioned in sub-rule 1 of this Rule and such an Order may be made on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the Court, an affidavit of fitness sworn to 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 Probate 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 Probate Registrar otherwise directs, be granted to the person entitled to the

residuary estate.

- (6) A minor's right to administration may be renounced only by a person assigned as guardian under sub-rule 3 of this Rule and authorized to renounce by the Probate Registrar.

- 65 (1) Where one of several Executors is a minor, probate may be granted to the adult Executors, with power reserved for making the like grant to the minor on his attaining the age of 18 years and administration for the use and benefit of the minor until he attains the age of 18 years may be granted under rule 64 only if the adult Executors renounce or, on being cited to accept or refuse a grant, fail to make an effective application.

Grant where minor is co-executor

- (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 (1) Where the Probate Registrar is satisfied that a person entitled to a 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:

Grants in case of mental or physical incapacity

- (a) in the case of mental incapacity, to the person authorized by the Probate Registrar to apply for the grant;
- (b) where there is no person so authorized or in the case of physical incapacity:
 - (i) if the person incapable is entitled as Executor and has no interest in the residuary estate of the deceased, to the person entitled to such residuary estate;
 - (ii) where 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 Probate Registrar may by Order direct.

- (2) Unless the Probate 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) Where legal disability arises out of unsoundness of mind or insanity notice of intended application for a grant under this Rule shall, unless the Probate Registrar otherwise directs, be given to his guardian.

- (4) Where there is physical disability, notice of intended application for a grant under this Rule shall unless the Probate Registrar otherwise directs be given to the person alleged to be incapable.

- 67 (1) Renunciation of probate by an Executor shall not operate as renunciation of any right which he may have to a grant of Administration in some other capacity unless he expressly renounces such right.

Renunciation of Probate administration

(2) Unless the Probate 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 Probate 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. Where 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 Oyo State Attorney-General and the Probate Registrar may direct that no grant shall issue within a specified time after the notice has been given.

*Notice to State
of intended
application for
grant*

69(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.

Resealing

(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 Probate 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 Probate 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 Probate Form 2 with such variations as circumstances may require.

(4) Except by leave of the Probate 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 Judge.

(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 Probate 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. If a Probate Registrar is satisfied that a grant should be amended or revoked, he may make an order accordingly:

*Amendment
and
revocation
of grant*

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. (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 **Probate Form 3** 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 **Probate Form 3** 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 **Probate Form 4**.
- (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 Probate 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 Probate Registrar shall not allow any grant to be sealed if he has knowledge of an effective *caveat* in respect thereof:

*Notice to
prohibit grant;
Caveats.*

Provided that no *caveat* shall operate to prevent the sealing of a grant on the day on which the *caveat* is entered.

- (8) A warning in **Probate Form 5** may issue from the Registry against a *Caveator* at the instance of any person interested, in this Rule called "the person warning", which shall state his interest and, if he claims under a Will, the date of the Will, and shall require the *Caveator* to give particulars of any contrary interest which he may have in the estate of the deceased; and every warning or a copy thereof shall be served on the *Caveator*.

- (9) A *Caveator* having an interest contrary to that of the person warning may, **within 8 days of service** of the warning upon him inclusive of the day of such service; or at any time thereafter if no affidavit has been filed under sub-rule 12 of this Rule, enter an appearance in the Registry by filing **Probate Form 6** and making an entry in the appropriate book, and shall forthwith serve on the person warning a copy of **Probate Form 6** sealed with the seal of the Registry.
- (10) A *Caveator* who has not entered an appearance to a warning may at any time withdraw his *caveat* by giving notice at the Registry and the *caveat* shall then cease to have effect and if he has been warned, the *Caveator* shall forthwith give notice of withdrawal of the *caveat* to the person warning.
- (11) A *Caveator* having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to that person may, **within 8 days of service** of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under sub-rule 12 of this Rule, issue and serve a notice, which shall be returnable before the Probate 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 the last foregoing sub-rule, 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 Probate Registrar otherwise directs:
 - (a) any *caveat* in force at the commencement of proceedings by way of Citation or Motion shall, unless withdrawn pursuant to sub-rule 9 of this Rule, remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such proceedings, and upon such application any *caveat* entered by a party who had notice of the proceedings shall cease to have effect;
 - (b) any *caveat* in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;
 - (c) the commencement of a probate action shall whether or not any *caveat* has been entered, operate to prevent the sealing of a grant until application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such action, and

upon such application any caveat entered by a party who had notice of the action, or by a *Caveator* who was given notice under sub-rule 13 of this Rule, shall cease to have effect.

- (15) Except with the leave of the Probate Registrar, no further *caveat* may be entered by or on behalf of any *Caveator* whose *caveat* has ceased to have effect under sub-rule 12 or 14 of this Rule.

72 (1) Notices in the nature of Citation shall be given in such manner as the Judge directs.

Citations

- (2) Every Citation shall be settled by the Probate Registrar before being issued.
- (3) Every averment in a Citation and such other information as the Probate 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 Probate 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 a Judge, 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 Judge 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 sub-rule 5 of rule 35 or sub-rule 2 of rule 69 of this order enter an appearance in the Registry by filing **Probate Form 6** and making an entry in the appropriate book, and shall thereafter serve on the Citor a copy of **Probate Form 5** sealed with the seal of the Registry.

73 (1) A Citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

Citation to accept or refuse a grant

- (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 is pending.

- (4) A person cited who is willing to accept or take a grant may apply *Ex parte* to the Judge for an Order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the Citor with notice of any application for a grant to himself.
- (5) If the time limited for appearance has expired and the person cited has not entered an appearance, the Citor may:
 - (a) in the case of a Citation under sub-rule 1 of this Rule apply to the Judge for an Order for a grant to himself;
 - (b) in the case of a Citation under sub-rule 2 of this Rule, apply to the Judge 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 or interest in respect thereof have ceased;
 - (c) in the case of a Citation under sub-rule 3 of this rule, apply to the Judge by Summons, which shall be served on the person cited, for an Order requiring such person to take a grant within a specified time or for a grant to himself or some other person specified in the Summons.
- (6) An application under sub-rule 5 of this Rule 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 sub-rule 4 of this Rule, or has failed to prosecute his application with reasonable diligence, the Citor may:
 - (a) in the case of a Citation under sub-rule 1 of this rule, apply by Summons to the Judge for an Order for a grant to himself;
 - (b) in the case of a Citation under sub-rule 2 of this Rule, apply by Summons to the Judge for an Order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (b) of sub-rule 5 of this rule;
 - (c) in the case of a Citation under sub-rule 3 of this Rule, apply by Summons to the Judge for an Order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the Summons; and the Summons shall be served on the person cited in each case.

- 74 (1) A Citation to propound a Will shall be directed to the Executors named in the Will and to all persons interested there under, and may be issued at the instance of any Citor having any interest contrary to that of the Executors or such other persons.

*Citation to
propound
Will*

- (2) Where the time limited for appearance has expired, the Citor may:
- (a) where no person cited has entered an appearance, apply to the Judge for an Order for a grant as if the Will were invalid;
 - (b) in the case of a Citation under sub-rule 2 of rule 73 of this Order apply by Summons to the Judge for an Order striking out the appearance and for endorsement on the grant of such a note as mentioned in paragraph (b) of sub-rule 5 of rule 73 of this Order;
 - (c) in the case of a Citation under sub-rule 3 of rule 73 of this Order apply by Summons to the Judge 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. All *Caveats*, Citations, warnings and appearances shall contain an address for service within the jurisdiction.

Address for service

76. (1) An application for an Order requiring a person to bring in a Will or to attend for examination may, unless a probate action has been commenced, be made to the Court by Summons, which shall be served on every such person as aforesaid.

Application for order to bring or to attend for examination

(2) An application for the issue by the Judge of *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. An application for an order for a grant limited to part of an estate may be made to the Judge and shall be supported by an affidavit stating:

Limited grants

- (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. An application for an Order for grant of administration where the goods in the estate are of perishable nature may be made to the Judge, and shall be supported by an affidavit setting out the grounds of the application.

Grants ad Colligenda bona

79. An application for leave to swear to the death of a person in whose estate a grant is sought may be made to the Judge 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.

Application for leave to swear to death of a person

80. (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 Judge:

Grants in respect of Codicils and copies of Wills

Provided that where a Will is not available owing to its being retained in the custody of a foreign Court or Official, a duly certified copy of the Will may be admitted to proof without any such Order as aforesaid.

(2) The application shall be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the Applicant can adduce as to:

- (a) the due execution of the Will
- (b) its existence after the death of the Testator; and
- (c) the accuracy of the copy or other evidence of the contents of the Will, together with any consent in writing to the application given by any person not under disability who would be prejudiced by the grant.

81. Any application for an order for a grant of special administration where a personal representative resides outside the State shall be made to the Judge by a Motion.

Grants Durants absentia

82. (1) Where a surviving spouse who is the sole personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to the Probate Registrar by filing a notice in **Probate Form 7** with such variations as circumstances may require.

Notice of election by surviving spouse to redeem life interest.

(2) A notice filed under this rule shall be notice on the grant and the record shall be open to inspection.

83. (1) Where copies are required of original Wills or other documents deposited under the provisions of any written Law 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 Probate Registrar to be true copies shall be issued only if it is required that the seal of the Court be affixed thereto.

Photocopy of Wills or other documents may be certified and sealed

(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 Probate Registrar to be a true copy and may in addition be sealed with the seal of the Court.

84. The Probate Registrar may require any application under this Order to be made by Motion or Summons to a Judge.

Power to require application to be made by summons or motions.

85(1) A Judge 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 may direct.

Service of notices of motion and summons.

(2) Where by the provisions of this Order or by any direction given under sub-rule 1 of this Rule 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.

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| 86. | Unless the Judge 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 persons address for service, or if he has no address for service, his last known address. | <i>Services of notices, etc. at the person's address.</i> |
| 87. | Every affidavit used in non-contentious probate business shall satisfy the requirements of Order 43. | <i>Affidavit</i> |
| 88. | The provisions of Order 54 shall apply to the computation, enlargement and abridgement of time under this Order. | <i>Time</i> |
| 89. | Subject in any particular case to any direction given by a Judge, this Order shall apply to any proceedings which is pending on the date on which these rules come into operation as well as to any proceedings commenced on or after, that date:

Provided that where the deceased died before the commencement of these rules, the right to a grant shall, subject to the provisions of any enactment, be determined by the principles and rules in accordance with which the Court would have acted at the date of the death. | <i>Application</i> |
| 90. | 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. | <i>Contentious probate: Form of suits.</i> |

III. Proceedings Generally Probate actions.

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| 91. | 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. | <i>Probate actions</i> |
| 92. | In probate actions service of a Writ of Summons may by leave of a Judge be allowed out of Nigeria. | <i>Service of Writ of Summons</i> |
| 93. | 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 a Judge no evidence shall be given of any other instances at the trial. | <i>Pleadings and further actions.</i> |
| 94. | 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. | <i>Where Claimant disputes Defendant's interest.</i> |
| 95. | In probate actions the party opposing a Will may, with his defence give opposition notice to the party setting up the Will that he merely insists upon the Will to 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 | <i>Notice of opposition to Will</i> |

shall not in any event be liable to pay the costs of the other side unless the Judge finds that there was no reasonable ground for opposing the Will.

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 of such, personal estate are outstanding or undisposed of, unless the Judge shall otherwise direct.

*Inquiry as to
outstanding
personal estate*

Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Judge otherwise orders be entitled to the costs of such proceedings in so far as they are not recovered, from or paid by any other person out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Judge may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

*Discretion to Order
costs*

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 ought 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:

*Originating
summons relating
to deceased
person*

- (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 others;
- (c) the furnishing of any particular accounts by the Executors or Administrators or Trustees and the vouching, when necessary, of such accounts;
- (d) the payment into Court of any money in the hands of the Executors or Administrators or Trustees;
- (e) directing the Executors or Administrators or trustees to do or abstain from doing any particular act in their character as such Executors or Administrators or Trustees;
- (f) the approval of any sale, purchase, compromise, or other transaction;
- (g) the determination of any question arising in the administration of the estate or trust.

9. Any of the persons named in rule 98 of this Order may in like manner apply for and obtain an Order for:

*Order for
administration of
estate of
deceased and of
trust.*

- (a) the administration of the personal or real estate of the deceased;
- (b) the administration of the trust;
- (c) any act to be done or step to be taken which the Judge could have ordered to be done or taken if any such administration Order as aforesaid had previously been made.

100. The persons to be served with the summons under Rules 98 and 99 of this Order in the first instance shall be the following:

Persons to be served

Where the Summons is taken out by an Executor or Administrator or Trustee:

- (a) for the determination of any question, under paragraph (a), (c), (f) or (g) of rule 98 of this Order, 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 98 of this Order any member or alleged member of the class;
- (c) for the determination of any question under paragraph (c) of rule 98 of this Order, any person interested in taking such accounts;
- (d) for the determination of any question under paragraph (d) of rule 98 of this Order, any person interested in taking such money;
- (e) for relief under paragraph (a) of rule 99 of this Order, the residuary Legatees, or next of kin, or some of them, or the residuary Devisees, or heirs, or some of them, as the case may be;
- (f) for relief under paragraph (b) of rule 99 of this Order, 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;
- (h) Where the Summons is taken out by any person other than the Executors, Administrators or Trustees the Executors, Administrators or Trustees, or some of them must be served.

Where summons taken out by any other person

101. It shall not be obligatory on the Judge to pronounce or make Judgment or Order, whether on Summons or otherwise for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined without such Judgment or Order.

Judge not bound to order administration

102. Upon an application for administration or execution of trusts by a creditor or beneficiary under a Will, Intestacy, or Deed of Trust, where no accounts or insufficient accounts have been rendered, the Judge may, in addition to the powers already existing:

Order which be an application for administration or execution of trusts, where accounts or insufficient accounts have been rendered

- (a) order that the application shall stand over for a certain time, and that the Executors, Administrators or Trustees in the meantime shall render to the Applicant proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings;

- (b) when necessary, to prevent proceedings by other creditors, or by persons beneficially interested, make the usual Judgment or Order for administration with a proviso that no proceedings are to be taken under such Judgment or Order without leave of the Judge.
103. The issue of a summons under rule 98 of this Order shall not interfere with or control any power or discretion vested in any Executor, Administrator or Trustee except so far as such interference or control may necessarily be involved in the particular relief sought. *Interference with discretion of trustees*
104. 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 a vesting Order or other Order consequential on the appointment of a new Trustee where the appointment is made by a Judge;
 - (c) an application for vesting or other consequential Order in any case where a Judgment or Order has been given or made for the sale, conveyance or transfer of any land or stock or the suing for or recovering any chose in action;
 - (d) an application relating to a fund paid into Court in any case coming within the provisions of rule 8 of this Order. *Payment out of Court*
105. (1) The provisions of the Interpretation Law shall apply to the interpretation of this Order. *Interpretation Law Cap. 65 Vol. 3 Laws of Oyo State, 2000*
- (2) In this Order, unless the context otherwise requires:
- "authorized officer" means any Officer of the Registry who is for the time being authorized by Law to administer any oath or to take any affidavit required for any purpose connected with his duties;
 - "gross value" in relation to any estate means the value of the estate without deduction for debts, encumbrances, funeral expenses or estate duty;
 - "oath" means the oath required by this Order to be sworn by every Applicant for grant;
 - "personal applicant" means a person other than a Trust Corporation who seeks to obtain a grant without employing a Legal Practitioner; and
 - "personal application" has a corresponding meaning;
 - "Registrar" means the "Probate Registrar;
 - "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 68

FEEES AND ALLOWANCES

1. Subject to the provisions of any written law and this Order;

- (1) No process shall, except by special Order of Court, be issued until all fees payable thereon as provided in the schedules hereto shall have been paid and an account thereof, initialed as received shall have been set forth by the Officers issuing the process both in the margin and in the counterfoil thereof.
- (2) All such fees shall be carried to designated 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 indorsement initialed by the Registrar or other Officer showing the amount of the fee or fees so paid and the receipt referring to the payment, provided that when any form of process specified the fees thereof, it shall be sufficient for the number of 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 stamp of the receipt given for the fees of such process.
- (5) No document in respect whereof a fee is payable shall be used in any legal proceeding, unless it shall have been initialed as aforesaid by the Registrar or other Officer or unless the Court shall at the same time Order to be produced the stamp of the receipt given for the fees of such process.
- (6) No hearing fee or other fee shall be returned, except upon a voucher, payable at the Treasury, 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.

2. The Chief Judge shall periodically issue Practice Direction fixing and regulating the fees and allowances payable under these Rules.

**HIGH COURT OF OYO STATE
(CIVIL PROCEDURE) RULES**

PAP FORM 01

STATEMENT OF COMPLIANCE WITH PRE—ACTION PROTOCOL

(O.3.r.9)

GENERAL PRE-ACTION PROTOCOL

In the High Court of Oyo State

In the Judicial Division

Holden at.....

Suit No.....

Between:

.....Claimant

And

.....Defendant

i.....(Claimant/Claimant's Legal Practitioner) (Defendant/ Defendant's Legal Practitioner) make oath and say as follows:

1. I have complied with the directions of the Pre-Action Protocol.
2. I have made attempts to have this matter settled out of Court with the Claimant/Defendant and such attempts were unsuccessful. I have attached evidence of such attempts in the Pre-Action Protocol bundle attached
3. I have by a Written Memorandum/Response to the Claimant/Defendant set out my claim, counter-claim and options for settlement.
4. I make this oath in good faith and in accordance with the Oath Law of Oyo State.

Dated at Oyo this day of 20.....

BEFORE ME

COMMISSIONER FOR OATHS

**General Form of Writ of Summons
(0.4, r. 4)**

SUIT NO:

(Here put the letter and number (see note (a) following this form)

In the High Court of Oyo State

In the Judicial Division

BETWEEN:

AND

C.D. Defendant

To C.D. of in the of

You are hereby commanded that within 30 (thirty) days after the service of this writ on you, inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit of A.B. and take notice that in default of your so doing the claimant may proceed therein, and judgment may be given in your absence.

DATED this day of 20.....

.....
Registrar

Memorandum to be subscribed on the writ

N.B:

This writ is to be served within 6 (six) calendar months from the date thereof, or, renewed, within 3 (three) calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Forms of Writs Summons, etc continued

The defendant may enter appearance personally or by Legal Practitioner either by handing in the appropriate forms, duly completed, at the registry of the High Court of the Judicial Division in which the action is brought or by sending them to the Registry by registered post.

Indorsements to be made on the writ before issue thereof:-

The claimant's claim is for, etc. (b).....

This writ was issued by G H of whose address for service (c) is

.....agent for

of Legal Practitioner for the said claimant who resides at (d)

The city, town or district and also the name of the street and number of the house of the claimant's residence, if any)

Indorsement to be made on copy of writ or forthwith after service.

This writ was served by me at on the defendant (here

insert mode of service) on the day of.....20.....

Indorsed the day of.....20.....

.....
(Signed)

.....
(Address)

Note:

(a) **Heading and Title-** if the action is for administration the writ must be headed "In the matter of the Estate of deceased".

If it is a debenture holder's action the writ must be headed in the matter of the company, and in a probate action. "In the Estate of A.B. deceased". A writ of summons claiming administration of a trust or settlement may be instituted "In the matter of the trust or settlement)"

(b) **Indorsement of Claim** – If the claimant sues, or defendant is sued, in a representative capacity, the indorsement must state in what capacity the claimant sues or the defendant is sued. See 0.5 r.2. If the claim is for a debt or liquidated demand only, the indorsement, even though not special, must strictly comply with the provisions of 0.5. r.4. including a claim for four days costs.

(c) **Address for Service** – see 0.5. r.6. The address must be within the jurisdiction.

(d) **Address of Claimant** – In the case of a company in liquidation the claimant's address should run ".....claimant, 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 10 of the Companies and Allied Matters Act the claimants' address should run thus; claimant, who are a foreign corporation within the meaning of the Companies and Allied Matters Act. The registered name and address of the person to be served are (here add registered name and address)".

(e) Indorsement of Service- See O.10. r. 18.

(f) Probate Actions – In these actions the indorsement of claim must show the nature of the claimant's interest, under which he claims (O.5. r.3) and the alleged interest of the defendant. Before the writ is issued the following certificate must be indorsed on it:

The Registry, High Court of Oyo State

In the Judicial Division

A sufficient affidavit in verification of indorsement on this writ to authorize the sealing thereof has been produced to me this.....day of.....20.....

.....
(Signature of Registrar)

FORM 2

**Writ for Service out of the Jurisdiction
(0.4, r.5)**

To C.D. of you are hereby commanded
that within (here insert the number of days directed by the Court of Judge Ordering the service or
notice) days after service of this writ on you inclusive of the day of such service, you do cause an
appearance to be entered for you in the Judicial Division of
your so doing the plaintiff may proceed therein, and judgment may be given in your absence.
Dated this day of.....20.....by order of the Court.

Registrar
Memorandum to be subscribed on the writ

N.B:

This writ is to be served within 6 (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 appearance)
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).

Indorsement to be made on the write 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 jurisdiction.

The above indorsement "N.B." must be on every writ or concurrent writ for service out of
the jurisdiction.

The indorsement "N.B." need not be made on a writ against defendants domiciled abroad,
but whom it is intended to serve within the jurisdiction.

Indorsement:- If the claim is for a debt or liquidated demand only, the indorsement, even
though not special, must strictly comply with the provisions of 0.5. r.4(1), including a claim for
costs.

See also notes to Form No. 1 supra.

FORM 3

General Form of Originating Summons (0.4, r.9)

SUIT NO:

In the High Court of Oyo 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

Let
..... within 30 (thirty) days within after the 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 issued upon the application of of who claims to be (state the nature of the claim), for the determination of the following questions: (State the questions).

DATED the day of 20.....

This summons was taken out by Legal Practitioner for the above named

.....

FORM 4

Originating Summons under (0.4, r.9)

SUIT NO:

In the High Court of Oyo 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 IBADAN) on the
 day of 20..... at 9 o'clock in the forenoon (on the
 hearing of an application on the part of).
 (State relief sought). (If for leave to endorse award under the Arbitration Law, ap. Add, "And that
 the respondent do pay the costs of this application to be taxed."

DATED the day of 20.....

This summons was taken out by

Note:

It will not be necessary for you to enter an appearance in the HIGH COURT REGISTRY, but if
 you do not attend either in person or by your Legal Practitioner, at the time and place above
 mentioned (or at the time mentioned in the endorsement thereon), such Order will be made and
 proceedings taken as the Judge may think just and expedient.

ATUNJI OGUNRINDE & CO
(YEKOGUN CHAMBERS)
LIBRARY

Date _____ Signature _____

FORM 5

**Form of Ex parte Originating Summons
(0.4, r.9)**

In the High Court of Oyo State

In the Judicial Division

SUINT 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, Oyo State, at the time specified in the margin thereof, on the hearing of an application on the part of the above named A.B., an infant, by C.D. his next friend, that etc.

This summons was taken out by of

.....Agents for.....of

.....Legal Practitioner for the applicant

LIBRARY
(RECORDS CHAMBER)
JUDICIAL COMMISSIONER'S OFFICE

FORM 6

**Form of Memorandum for Renewed Originating Process
(0.7, r.7(2))**

(Heading as in form No. 1)

Seal renewed Originating Process in this action indorsed as follows-

The Originating Process renewed on the day of.....20.....
pursuant to Order of Court made day of 20.....
for 3 months

(Copy Original Originating Process and the indorsement)

PRAECIPE

FORM 7

**Request for service Abroad
(Title as in form No. 4)
(0.11, r.3(1)(a))**

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.

Dated this day of.....20

.....
Signature of Legal Practitioner

FORM 8

**Request to Minister of Foreign Affairs to transmit
Writ to Foreign Government.
(0.11, r.3(1)(c))**

The Chief Judge of Oyo State presents his complements to the Minister of Foreign Affairs, and encloses herewith a notice of a writ of summons issued in an action of A.B.....versus C.D.....pursuant to Order out of the Judicial Division of the High Court of Oyo State for transmission to the Ministry of Foreign Affairs in the (name of country) with the request that the same may be served personally upon (name of defendant to be served) against who proceedings have been taken in the Judicial Division of the High Court of Oyo 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 Oyo 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 providing service of legal process.

The Chief Judge 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 of the High Court of Oyo State.

FORM 9

Letter Forwarding Request for Substituted Service

(0.11, r.3(1)(e))

The Chief Judge of Oyo State presents his complements to the Minister of Foreign Affairs, and encloses herewith a notice of 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 Oyo 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 Course 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 Oyo 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 providing service of legal process.

FORM 10

**Request to Minister of Foreign Affairs to Transmit
Notice of writ to a Foreign Government**

(0.11, r.4(1) (a))

The Chief Judge of Oyo State presents his compliment to the Minister of Foreign Affairs and
encloses herewith a writ of summons issues in an action.....of
Versus the (insert name of the defendant High Contracting Party) pursuant to Order, out of the
..... Judicial Division of the High Court of Oyo State for delivery to the Government
of (Insert name of the country of the High Contracting Party and to request that an official
certificate may in due course be dispatched to the Judicial Division of the
High Court of Oyo State, stating that the writ of summons has been delivered, and on what date.

FORM 11
MEMORANDUM OF APPEARANCE
(0.15, r.1)
IN THE HIGH COURT OF OYO STATE

In the Judicial Division
SUIT NO.

BETWEEN

..... Claimant (s)

AND

..... Defendant (s)

Please enter an appearance for I (a) sued as I (b)

.....

.....

.....In this action.

DATED the day of 20.....

Signed

Whose address for service is 1 (c).....

.....

N.B. Additional notes for the guidance of the defendant seeking to enter an appearance are given on the back. Please read carefully

Notes:-

1. (a) The defendant must give his or her full name.

(b) Give name by which the defendant is described in the writ if this differs from defendant's full name, otherwise delete words "such as".

(c) A defendant appearing in person must give his residence or some other place within the Judicial Division of Oyo State to which communications for him should be sent. Where he appears by a Legal Practitioner. The Legal Practitioner's place of business.

2. Where the defendant is a firm, the appearance must be entered by the individual partners by name with the description "Partners 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 may be entered by a Legal Practitioner.

5. Where the defendant is being entered by leave of the Court, a copy of the order granting leave must accompany this form.
6. Where the defendant has no defence or admits the claimant's claim, the entry of appearance will delay Judgement and may increase the costs 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 originating process.

DATED this day of 20.....

.....
Signature

FORM 12

**Notice of Counterclaim
(0.23,r.8(2))**

In the High Court of Oyo State

In the Judicial Division

SUIT NO.

BETWEEN

A.B.....Claimant

AND

C.D.....Defendants

To the within-named X.Y.

TAKE NOTICE that if you do not appear to the counterclaim of the within-named CD., Within 8(Eight) days from the service of this defence and Counterclaim upon you, you will be liable to have Judgment given against you in your absence.

Appearance to be entered at the Judicial Division. High Court of Registry, Oyo State.

FORM 13

Concession to Defence

(0.23, r.15)

In the High Court of Oyo State

In the Judicial Division

SUIT NO.

BETWEEN

A.B.....Claimant

AND

C.D., E.F and G.H.....Defendants

The Claimant concedes to the defence stated in paragraph(s).....of the Defendant's defence (or, of the Defendant's further defence).

FORM 14

**Notice of Payment into Court
(0.27, r.1(4))**

In the High Court of Oyo State

In the Judicial Division

SUIT NO.

BETWEEN

A.B. Claimant

AND

C.D., F.G and G.H. Defendants

TAKE NOTICE that the Defendant.....has paid into Court
N.....and says that (.....part of) that sum is enough to satisfy the
Claimant's claim (for and N..... the other part of the sum is enough to satisfy the
Claimant's claim for)

DATED.....day of 20.....

.....
P.O. Legal Practitioner for the Defendant, C.D.

To X.Y, the claimant's Legal Practitioner, and to Mr. R.S. Legal Practitioner for the Defendant
E.F.

To be filed in by the Cashier, High Court.

Received the above sum of Naira..... Kobo.....into Court in
action.

Dated the.....day of.....20...

FORM 15

Acceptance of Sum Paid Into Court

(0.27, r.2(1)(a))

In the High Court of Oyo State

In the Judicial Division

BETWEEN

A.B. Claimant

AND

C.D., E.F. and G.H. Defendant

TAKE NOTICE that the Claimant accepts the sum of N.....paid by the Defendant (C.D) into Court in satisfaction of the claim in respect of which it was paid in (and abandons his other claims in the action).

Dated.....day of.....20.....

.....
X.Y. Claimant's Legal Practitioner

To

fr. P.O. Legal Practitioner for the defendant C.D. and Mr. R.S. Legal Practitioner for the defendant E.F.

FORM 16

**Acceptance of Sum Paid Into the Court
By one of Several Defendants
(0.27, r.4(2))**

In the High Court of Oyo State

In the..... Judicial Division

SUIT NO.

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

Dated the..... day of..... 20.....

.....
X.Y. Claimant's Legal Practitioner

To

Mr. P.O., Legal Practitioner for the defendant C.D., and Mr. R.S. Legal Practitioner for the
Defendant E.F.

FORM 17

**Hearing Notice for Case Management Conference
(0.31, r.1(1))
In the High Court of Oyo 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 Court No..... at the High Court of Oyo State at the..... Judicial Division, on the..... day of..... 20..... at 9 o'clock in the forenoon, for a Case Management Conference for the purpose set out hereunder:

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 it's just, expeditious and economical disposal.
- (c) promoting amicable settlement of the case or adoption of alternative dispute resolution.
2. Please answer the questions in the attached Case Management Information Sheet (Form 18) on a separate sheet and submit 7 clear days before the above-mentioned date.
3. Parties shall file the issue(s) for determination along with the Case Management sheet attached.

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 Judge may deem just and expedient.

Dated the..... day of..... 20.....

Signed.....

Chief Registrar

FORM 18

Case Management Information Sheet

(0.31, r.1(2))

In the High Court of Oyo 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 Case Management Conference. Applications not covered by the standard questions raises in this Case Management Information Sheet should be entered under item 12 below.

All parties shall, **not later than 7 days** before the first Case Management Conference, file and serve on all 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 Case Management 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 originating 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 34 rule 1 of the High Court (Civil Procedure) Rules? If so, state the grounds of such objection in compliance with Order 34 rule 3 of the Rules.

5. Do you object to producing any document in respect of which request for discovery has been made pursuant to Order 34 Rule 6(1) of the High Court (Civil Procedure) Rules? If so, state the grounds of such objection in compliance with Order 34 rule 6(5) of the Rules.

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(s) 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 36 of the Rules.

12. List the applications you wish to and at the Pre-Trial Conference.

Dated this.....day of.....20.....

Signed.....

(Legal Practitioner for the.....)

For service on:

.....

FORM 19

**Interrogatories
(0.34, r.1)**

In the High Court of Oyo State

In the **Judicial Division**

SUIT NO.

BETWEEN

A.B. **Claimant**

AND

C,D,E,F and G,H. **Defendants**

**Interrogatories on behalf of the above-named (Claimant or Defendant C.D.) for the examination
of the above named (Defendants E.F, and G.H. or Claimant)**

1. Did not, etc.

2. Has not, etc.

**(The Defendant E.F. is required to answer the interrogatories numbered(The
Defendant G.H. is required to answer the interrogatories numbered.....)**

Dated.....day of.....20.....

FORM 20

**Answer to Interrogatories
(0.34, r.4)**

In the High Court of Oyo 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 says as follows:

I, the above-named Defendant E.F., do hereby solemnly swear by Almighty God that this is my name and handwriting and that the facts deposed by me in this affidavit are the truth, the whole truth and nothing but the truth.

FORM 21

Affidavit as to Documents

(0.34,r.6(5))

In the Judicial Division

SUIT NO.

BETWEEN

A.B.....Claimant

AND

C,D,E,F and G,H.....Defendants

I, the above-named Defendant CD, make oath and say as follows:

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.
2. I object to produce the said documents set forth in the second part of the said first schedule hereto (state grounds of objection).
3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.
4. The last mentioned documents were last in my possession or power on (state when and what has become of them and in whose possession they now are).
5. To the best of my knowledge, information and belief I have not now, and never had in my possession, custody or power, or in the possession, custody or power of my Legal Practitioners or agent, or in the possession, custody or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract of 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 matter, or any of them, other than and except the documents set forth in the said first and second schedule hereto.

Dated at Ibadan.....this.....day of.....20.....
(ILLITERATE JURAT)

FORM 22

**Form of Order for Accounts and Inquiries
(0.35 r.11(2))**

In the High Court of Oyo State

In the Judicial Division

SUIT NO.

BETWEEN

A.B.....Claimant

AND

C,D,E,F and G,H..... Defendants

This Court doth order that the following accounts and inquiry be taken and made; that is:

- 1.
- 2.
- 3.
- 4.

And it is ordered that the following further inquiries and accounts be made and taken;

that is:

- 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.

FORM 23

Legal Practitioner's Undertaking as to Expenses

(0.41, r.6(a))

(Heading in Form No. 1)

I (or we) hereby undertake to be responsible for all expenses incurred by the Ministry of Foreign Affairs in respect of the letter of request issued herein on the and on receiving due notification of the amount of such expenses undertake to pay 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 the day of.....20.....

.....
Legal Practitioners for
.....
.....

FORM 24

Letter of Request to take Evidence Abroad

(Convention Country)

(0.41, r.6(b)(1))

To the Competent Judicial Authority of.....in the
.....of
.....

Whereas a civil (commercial) action is now pending in the.....Judicial Division of the High Court of Oyo State, Nigeria, in which.....is the Claimant and.....is the Defendant.

And in the said action the Claimant claims.....

And whereas it has been represented to the said Court that it is necessary for the purpose of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is of and.....and.....it appears that such witnesses are resident within your jurisdiction.

Now, I the Chief Judge of the High Court of Oyo 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 give, 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* upon the subject-matter thereof or arising out of the answers thereto) such witnesses as may, after due notice in writing, be produced on their behalf, and give liberty to the other party to cross-examine the said witnesses (upon cross-interrogatories and *viva voce*) and the party producing the witness for examination liberty to re-examine him *viva voce*.

And I further have the honour to request that you will be pleased to cause (the answers of the said witnesses and all additional *viva voce* questions, whether on examination, cross-examination or re-examination the evidence of such witnesses to be reduced into writing and all books, letters, papers and documents produced upon such examination to be duly marked for identification and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as it is in accordance with your procedure, and to return the same together with (the interrogatories and cross-interrogatories) 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 name was received for transmission to the said High Court of Oyo State

And I further beg to request that you will cause me, or the agents of the parties i appointed, to be informed of the date and place where the examination is to take place.

DATED the.....day of.....20.....

FORM 25

**Order for Appointment of the Nigerian Diplomatic Agent
(As Special Examiner in Convention Country)**

(0.41, r.7)

(Heading as in Form No.1)

Upon hearing the Legal Practitioners on both sides and upon reading.....
The.....affidavit of.....

It is Ordered that the Nigerian Diplomatic Agent or his deputy at..... be appointed as Special Examiner for the purpose of making the examination, cross-examination, and re-examination, *viva voce*, on oath or affirmation of.....witnesses on the part of 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 Nigerian 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 parents at.....to whom notice relating to the examination of the said witnesses may be sent. That.....days (exclusive of Sunday) prior to the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party unless such notice be dispensed with. That the depositions when 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, Oyo 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 costs of and incident to this application and such examination be costs in the action.

Note:

If the Convention requires that the invitation or notice of the witnesses must expressly state that no compulsory powers may be used, these requirements must be complied with.

FORM 26

Forms of Praecipe

(0.41, r.19(1))

In the High Court of Oyo 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.....

FORM 27

Subpoena Ad Testificandum

(0.41, r.20)

In the High Court of Oyo State

In the.....Judicial Division

SUIT NO.

BETWEEN:..... Claimant

AND

.....Defendants

To.....of.....

You are commanded in the name of the Governor of Oyo State to attend before this Court
at.....on.....the.....day of.....20..... at
.....0'clock in the forenoon, and so from day to day till the above cause is tried, to give
evidence on behalf.....of.....the

Dated this.....day of.....20.....

.....
Judge

FORM 28

Habeas Corpus Ad Testificandum

(0.41, r.20)

In the High Court of Oyo State

In the.....Judicial Division

SUIT NO.

BETWEEN:.....Claimant

AND

.....Defendant

.....The Controller of Prison, at.....

You are commanded in the name of the Governor of Oyo State to have

....., who it is said is detained in your custody in Correctional

Centre, at.....before the Court.....at.....on

.....the.....day.....at.....O'clock in the

forenoon, and so from day to day until the above action is tried, to give evidence in the above-

named cause, and immediately after the said shall have so given his evidence you

shall duly conduct him to the Correctional Centre from which he shall have been brought.

DATED this.....day of.....20.....

.....
Judge

FORM 29

Subpoena duces Tecum

(0.41, r.20)

In the High Court of Oyo State

In the.....Judicial Division

SUIT NO.

BETWEEN:

Claimant

AND

Defendant

To.....of.....

You are commanded in the name of the Governor of Oyo State to attend before the Court at

.....on.....the.....day

of.....20.....at the hour of.....0'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 30

Form of Guarantee for the Acts and Defaults of a Receiver

(0.48, r.10(1))

In the High Court of Oyo State

In the.....Judicial Division

PARTIES

SUIT NO:

Re:.....v.....Guarantee for
N..... Annual premium N.....

This guarantee is made the day of.....20.....between (XYZ) of..... (hereafter called "the Receiver") of the first part, the above named the registered office of which is at.....in.....(hereinafter called "the words of 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 greed 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 hereof.

Now this guarantee witnesses as follows:

1. The Receiver and the Surety hereby jointly and severally covenant with the Governor of Oyo State and his successors that the Receiver shall and will from time to time duly account for what he has already received since the date of the said order appointing him and shall hereafter receive or for what since the date of the said order appointing him he has or shall hereafter be or become liable to pay or account for as such Receiver (and manager) as aforesaid including as well

every sum of money or other property so received during the period for which he has been appointed as also every sum of money or other property so received in respect of any extended period for which he may be appointed and shall and will pay or deliver every such sum or property as the Court or a Judge thereof 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 (15) fifteen days after the expiration of such twelve months pay at the office of the Surety the annual premium or sum of ₦..... 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 Oyo 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 Oyo 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 Oyo 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 ₦.....provided nevertheless that a Registrar of the High Court may by his signature to the indorsement 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 indorsement this guarantee shall continue in full force

but in that case the premium shall be correspondingly reduced or increased.

3. It is hereby further agreed between the Receiver and the Surety as follows:

(a) The Receiver will on being discharged from his office 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 Indorsement 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 of the total liability of the Surety in respect of both the within written guarantee and his indorsement being limited to the increased sum above sated.

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

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 31

Receiver's Security by Undertaking

(0.48, r.10(1))

In the High Court of Oyo State

In the.....Judicial Division

PARTIES

SUIT NO:

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 moneys and property received by me as such Receiver (or Manager) or for which I may be held liable and to pay the balances from time to time found from me and to deliver any property received by me as such Receiver (or Manager) at such times in such manner in all respects as the Court or a Judge shall direct.

And we, hereby jointly and severally (in the use of guarantee of other Company strikeout" jointly and severally") undertake with the Court to be answerable for any default by the said.....as such Receiver (or Manager) and upon such default to pay 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.....

Signatures of Receiver and his Surety or Sureties. In the case of a surety being a guarantee or other company, it must be sealed or otherwise duly executed.

FORM 32

Receiver's Account

(0.48, r.13)

(TITLE)

SUIT NO:

The (.....) account of A.B, the Receiver appointed in this cause (or, pursuant to an order made in this cause, dated.....day of.....), to receive the rent and profits of the real estate, and to collect and get in the outstanding personal estate of C.D., the testator (or, intestate) in this cause named, from the day of.....

REAL ESTATE RECEIPTS

No. of Item	Date received	Tenant's Name	Description of Premises	Annual Rent	Arrears due at.....	Amount due at.....	Amount remaining due	Arrears remaining due received	Observations
		₦	₦	₦	₦	₦	₦	₦	

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE

No. of item	Date of Payment or allowance	Names of persons to whom paid or allowed	For what purpose paid or allowed	Amount ₦
			One year's insurance of due.....	
			Bill for repairs at house let to.....	
			Allowance for a half-year's Income tax, due.....	
			Total Payment	₦
				

PAYMENT AND ALLOWANCES ON PERSONAL ESTATE

RECEIPT ON ACCOUNT OF PERSONAL ESTATE ACCOUNT

No. of paid item	Date When received	Names of persons from whom received	On what account received	Amount received	No. of item	Date when paid or allowed	Names of persons to whom paid or allowed	For what purpose paid	Amount or allowed
		received					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 on account of real estate	...	...
Amount of balance due from Receiver on last account or personal estate	...	...
Amount of receipts on the above of personal estate	...	...
Balance of last account paid into Court	...	...
Amount of payments and allowances on the above account of personal estate	...	...
Amounts of Receiver's costs of passing this account as to personal estate	...	...
Balance due from the Receiver on account of personal estate	...	...

FORM 33

Affidavit Verifying Receiver's Account

(0.48, r.14(1))

In the High Court of Oyo State

In the.....Judicial Division

BETWEEN:

A.B..... Claimant

AND

C.D. and E.F.....Defendant

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 purport to be specified.
2. and.....my Sureties named in the Guarantee (or undertaking)
dated.....20.....are both alive and neither of them has become bankrupt or
insolvent.
3. The Co. Ltd., my surety named in the.....guarantee (or undertaking) dated.....
20.....is still carrying on business and no petition or other proceeding for its
winding-up is pending).

Additional paragraphs as to wages and petty cash are sometimes necessary.

FORM 34

Certificate of the Chief Registrar

(0.51, r.9(1))

PARTIES

Pursuant to the directions given to me by Hon. Justice.....I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuant of the judgment for order, in this cause dated the.....day of.....is as follows:-

1. The Defendants.....of.....have received the amount of ₦.....and they have paid, or are entitled to be allowed in account thereof, sums of the amount of ₦ leaving a balance due from (or, to) them of ₦ on that account.
2. The particulars of the above receipts and payments appear in the account marked verified by the affidavit of.....filed on the day of and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said Defendants are charged with the following sums (state the same here or in a schedule), and except that I have disallowed the items of disbursement in the said account numbered and.....(or in cases where a transcript has been made.)
3. The Defendants.....have brought in an account verified by the affidavit of.....filed on the.....day of.....and which account is.....marked and is to be filed with this certificate.

The account marked.....and which is also to be filed with this certificate, is a transcript of the account as altered and passed.

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) consist of the following documents filed on.....day of.....20.....of the affidavit of C.D., filed.....

1. The Exhibitions.....of.....have received the amount of 44.....and they have paid, or are entitled to be allowed in account thereof, some of the amount of 24.....leaving a balance due from (or to) (or) 44.....in that account.

2. The particulars of the above receipts and payments appear in the account marked....., verified by the affidavit of.....dated on the.....day of.....and which account is to be filed with this court before.....to the same appearing on such account to have been received, the said Exhibitions are charged with the following sums (into the same box or in a schedule), and receipt that I have disclosed the name of disbursement on the said account numbered.....(or in case where a witness has been named).

3. The Exhibitions.....have been put in an account verified by the affidavit of.....dated on the.....day of.....and which account is to be filed with this court before.....

FORM 35

Order for Payment of Principal Money or
Interest secured by Mortgage or Charge
(0.61, r.2)

It is ordered that the Claimant do recover against the Defendant N..... secured by a mortgage (or charge) dated the.....day of.....20..... (being the total of the principal sum of N.....and N.....for interest thereon at N.....per cent, per annum less tax to the.....day of (date of order) and N.....for costs (or his costs of the summons to be taxed).

And it is ordered that upon the Defendant paying to the Claimant the moneys ordered to be recovered and all other moneys (if any) secured to 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.

FORM 36

**Order for Possession of Property forming a security
for payment to the Claimant of any principal**

Money or Interest

(0.61, r.2)

It is ordered that the Defendant do give the Claimant possession on or before the.....day of.....20.....of the land hereinafter described and comprised in a mortgage (or charge) dated the.....day of.....20.....that is to say..... (description of the property).

And it is ordered that the Claimant do recover against the Defendant the sum of N..... for costs (or his costs of this summons to be taxed).

And it is ordered that upon the Defendant paying to the Claimant the moneys remaining due to the Claimant upon the security of the said mortgage (or charge) the Claimant (subject and without prejudice to the due exercise of any power of sale for the time being vested in him) do re-deliver to the Defendant possession of the property subject to the said mortgage (or charge) and release to the Defendant the security constituted by the said mortgage (or charge).

And it is ordered that all parties be at liberty to apply to the Court as they may be advised.

FORM 37

Order for payment of Principal Money or Interest

**Secured by Mortgage or Charge and for
Possession of Property comprise therein**

(0.61, r.2)

It is ordered that the Claimant do recover against the Defendant N..... secured by a mortgage (or charge) dated the.....day.....of.....20.....being the total of the principal sum of N.....and N.....for interest thereon at N..... per cent per annum less.....tax.....to.....the.....day of (date of order), and N..... for costs (or his costs of this summons to be taxed).

And it is ordered that the Defendant do give the Claimant possession on or before the.....day of.....20.....of the land hereinafter described and comprised in the said mortgage (or charge) that is to say.....(description of the property).

And it is ordered that upon the Defendant paying to the Claimant the moneys hereby ordered to be recovered and all other moneys (if any) secured to the Claimant by the said mortgage (or charge) the Claimant (subject and without prejudice to the due exercise 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.

FORM 38

Originating Summons for Possession

(0.63, r.2)

In the High Court of Oyo State

In the.....Judicial Division

SUIT NO.

BETWEEN:

A.B..... Claimant

AND

C.D.,E.F and G.H Defendants

(if any) whose name is known to the Claimant

To (C.D. and) every (other)person in occupation of.....

Let all persons concerned attend before.....at the High Court of the.....

Judicial Division, Oyo State on.....the.....day of.....20

at.....9 0'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 is license or consent.

Dated this.....day of.....20.....

This Summons was taken out by.....of.....Legal Practitioner for the said

Claimant whose address is (or This Summons was taken out by

.....of.....for.....
of.....Legal Practitioner for the said Claimant whose
address is (or when the Claimant acts in
person).

This Summons was taken out by the said Claimant who resides at.....and is (state
occupation) and (if the Claimant does not reside within the jurisdiction) whose address for service
is.....

Note:

Any person occupying the premises who is not named as a Defendant by this Summons may apply
to the Court personally or by Legal Practitioner to be joined as Defendant. If a person occupying
the premises does not attend personally or by Legal Practitioner at the time and place of above-
mentioned, such order will be made as the Court may think just and expedient.

FORM 39

Order for Possession

(0.63, r.6(1))

(Heading as in Form 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 ₦.....Costs (or costs to be taxed). (The above costs have been
taxed and allowed at ₦.....as appears by a Taxing Officer's certificate dated the
day of.....20.....)

DATED the.....day of.....20.....

.....
Judge

FORM 40
NOTICE OF APPEAL
(0.65, r.2)

In the High Court of Oyo State

In the..... Judicial Division
Between.....
ABC.....Appellant

SUIT/APPEAL NO.

And

XYZ..... Respondent

TAKE NOTICE that the Appellant being dissatisfied with the decision or that part of the decision more particularly stated in paragraph 2 of the court contained in the judgment/order of sitting at Magisterial District dated the day of 20..... doth hereby appeal to the High Court of Oyo State upon the ground(s) set out in paragraph 3 and will at the hearing of the Appeal seek the relief(s) set out in paragraph 4. And the Appellant further states that the names and address(es) of the persons directly affected by the Appeal are those set out in paragraph 5.

2. Part of decision of the lower Court complained of.
3. Grounds of Appeal:
(1)
(2) e.t.c
4. Relief(s) sought from the Court of Appeal.
5. Persons directly affected by the appeal:

Name Address:

- (1)
- (2) etc.

DATED at this day of 20

.....
Appellant

Whose address for service is
Strike out works inapplicable.
If appealing against the whose decision inset "whole decision.

FORM 41

SUMMONS TO PARTIES BY REGISTRAR TO SETTLE RECORD

(0.65, r.3(2))

In the High Court of Oyo State

In the..... Judicial Division

SUIT/APPEAL NO.

Between

ABC.....Appellant

And

XYZ..... Respondent

TAKE NOTICE that all parties concerned are required to attend before me at the Court at on the day of 20..... at the hour of O'clock in the forenoon to proceed with settling of the record of the appeal therein.

DATED at this day of 20

.....
Registrar of the Lower Court

FORM 42

**Application to place matter on the Fast Track Division
(0.66, r.3)**

In the High Court of Oyo State

In the.....Judicial Division

SUIT NO. I/FT/ / /20

BETWEEN

A.B.....Claimant

AND

C.D. and E.F.....Defendant(s)

DATE.....

The Honourable Chief Judge
Oyo State High Court
Ibadan, Oyo State.

I hereby apply for the above named matter to be placed in the Fast Track Division of the Court.

I undertake to comply with all the conditions

Solicitor to Claimant

FOR THE COURT

Approved / Refused to be heard in the Fast Track Division

.....
Chief Judge

FORM 43**General Form of Writ of Summons (Fast Track)
(0.66 r.6 (1))****In the High Court of Oyo State**

In the..... Judicial Division

SUIT NO. I/FT/ / /20

BETWEEN

A.B..... Claimant

AND

C.D..... Defendant(s)

You are hereby commanded that within _____ days after the service of this writ on you, inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit A B and take notice that in default of your so doing the claimant may proceed, and judgment may be given in your absence.

DATED this day of 20....

.....
Registrar

Memorandum to be subscribed on the writ.

NB:

This writ is to be served within three calendar months from the date or if renewed, within three calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Form of Writ of Summons, continued

The defendant may enter appearance personally or by legal practitioner either by handing in the appropriate forms, duly completed at the registry of the High Court of the Judicial Division in which the action is brought or by sending them to the registry by registered post.

Endorsements to be made on the writ before issue

The Claimant's claim is for (b)

This writ was issued by G.H. of whose address for service is agent for of of Legal Practitioner for the said Claimant who resides at (d) (mention the city town or district and also the name of the street and number of the house of the Claimant's residence, if any).

Endorsement to be made on copy of writ after service.

This writ was served by me at on the Defendant (here insert mode of service) on the day of

..... 20 Endorsed the day of

..... 20

.....
(Signed)

.....
(Address)

Note:

Heading and Title — if the action is for administration, the writ must be headed - "In the matter of the Estate of deceased" If it is a debenture holder's action the writ must be headed "In the matter of the company" and in a probate action "In the Estate of A B deceased" A writ of summons claiming administration of a trust or settlement may be instituted 'In the matter of the (Trust or settlement)'"

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 relevant provisions of these rules.

Address for Service — The address must be within the jurisdiction.

Address of Claimant — In the case of a company in liquidation the Claimant's address

should run "Claimants who are a company in liquidator)".

In the case of a foreign corporation within the meaning of Companies and Allied Matters Act the claimants' address should run thus:

.....Claimants who are a foreign corporation within the meaning of the Companies and Allied Matters Act. The registered name and address of the person to be served are (here add registered name and address)".

Endorsement of Service — As provided for in these rules.

Probate Actions — In these actions the endorsement of claim must show the nature of the Claimant's interest under which he claims and the alleged interest of the Defendant.

Before the writ is issued the following certificate must be endorsed on it:

OYO STATE HIGH COURT

In the Judicial Division

A sufficient affidavit in verification of the endorsement on this writ to authorize the sealing has been produced to me this day of

.....20.....

(Signature of Registrar)

(Seal)

(Seal)

FORM 44

**Notice of Acceptance to Place Case on Fast Track Division
(O.66, r.6 (2))**

In the High Court of Oyo State

In the Judicial Division

SUIT NO. I/FT/ / /20

BETWEEN

A.B. Claimant

AND

C.D. Defendant(s)

NOTICE OF ACCEPTANCE TO PLACE CASE ON FAST TRACK DIVISION

PLEASE TAKE NOTICE that following your application in the above-named matter, the above case has been placed on **FAST TRACK LIST**.

PLEASE NOTE that henceforth this matter shall be dealt with in accordance with **FAST TRACK Case Management directions, applications and guidelines**

Dated at Ibadan, this day of 20.....

.....
COORDINATOR

FOR SERVICE ON

.....

FORM 45

**Notice of Acceptance to Place Case on Fast Track
(O.66, r.6 (2))**

In the High Court of Oyo State

In the.....Judicial Division

SUIT NO. I/FT/ / /20

BETWEEN

A.B..... Claimant

AND

C.D.....Defendant(s)

NON-ACCEPTANCE TO PLACE CASE ON FAST TRACK LIST

I refer to your application to place the above-named case on Fast Track list and wish to inform you that the case cannot be placed on Fast Track List. It has accordingly been placed on the general cause list.

You may contact the Coordinator for other details on this matter.

Dated at Oyo State High Court, Ibadan this day of 20.....

COORDINATOR

FORM 46

**Daily Record of Cases Held and Summary of Orders
(O.66, r.10)**

In the High Court of Oyo State

MONTHLY RECORD OF CASES HELD AND SUMMARY OF ORDERS

		DATE.....
1.	TITLE OF CASE	SUIT NO.....
2.	NAME OF JUDGE	TIME CASE CALLED.....
3.	COURT MANAGER	
4.	APPEARANCES:	
	Counsel for Claimant	
	Counsel for Co-Claimant	
	Counsel for Defendant	
	Counsel for Co-Defendant	
5.	CASE CALLED COUNSEL FOR ALL SIDES PRESENT	
6.	COUNSEL FOR	ABSENT PRESENT
7.	STAGE CASE HAS REACHED	
8.	ACTION FOR THE DAY: motion held, granted, not granted, adjourned.	
9.	REASONS	DATE
10.	PART HEARD STAGE	
11.	EVIDENCE OF CLAIMANT EXHIBIT TENDERED	
12.	EVIDENCE OF CLAIMANT'S WITNESS.....	
13.	EVIDENCE OF DEFENDANT	EXHIBIT TENDERED
14.	EVIDENCE OF DEFENDANT'S WITNESS.....	
15.	ADDRESS BY COUNSEL FOR THE CLAIMANT	
16.	ADDRESS BY COUNSEL FOR THE DEFENDANT	
17.	SPECIFIC ORDERS (if any) MADE IN THE DAY	
18.	TIME CASE ENDED FOR THE DAY	
19.	AT WHOSE INSTANCE	
20.	COST	FT F4

FORM 47

**Application for Copies of Proceeding (Transcript)
(O.66, r.18(2))**

In the High Court of Oyo State

FAST TRACK COURT

APPLICATION FOR COPIES OF PROCEEDING (TRANSCRIPT)

I, _____ of (Postal Address): _____
Phone Number: _____ Fax Number: _____ E-Mail Number: _____
Wish to apply for copies of daily proceedings (or state portion required) of this court in respect
of (title of case) _____
I _____ pending before (name of Judge) _____

CERTIFICATION

By signing hereunder, I commit myself to the process of electronic recording of all the proceedings
in this case and do hereby certify that I will pay all charges.

Dated at Abuja this _____ day of _____, 20 _____

Solicitor for Claimant/Defendant _____

The Coordinator,
Fast Track Court _____

FORM 48**Certificate of Judgment
(O.45 r. 8)****In the High Court of Oyo State****In the Judicial Division
Held at****CERTIFICATE OF JUDGMENT**

TITLE OF SUIT AND COMMENCEMENT	FORMS OR NATURE OF SUIT	NAME AND ADDRESS OF PARTY TO WHOM PAYMENT IS TO BE MADE OR WHOSE FAVOUR JUDGMENT IS GIVEN OR MADE	NAME AND ADDRESS OF PARTY ORDERED TO PAY MONEY OR TO DO OR NOT TO DO ANY ACT	DATE OF JUDGMENT	ABSTRACT OF JUDGMENT STATING AMOUNT (IF ANY) ORDERED TO BE PAID, THE RATE OF INTEREST (IF ANY) PAYABLE THEREON AND DATE FROM WHICH IT IS PAYABLE AND PARTICULARS OF ANY ACT ORDERED TO BE DONE OR NOT TO BE DONE	DATE OF TRIAL AND AMOUNT OF VERDICT (IF ANY)

This is to certify that this CERTIFICATE is correctly and fully set forth particular of ruling/judgment given in this Court on day of 20..

Dated this of 20.....

.....
Registrar

PROBATE FORM 1

Surety's Guarantee

(0.67, r.35(3))

In the High Court of.....State

Probate Registry Suit No.....

In the Estate of.....deceased

Whereas.....died on the.....day of.....20.....
and.....(and.....) hereinafter called "the Administrators" is/are the
intended administrator(s) of his estate.

Now therefore:

1. I/WE.....of.....(and.....of.....)
(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 may suffer in consequence of the breach by the administration(s) of
his/her/their duty

(a) to collect and get in the estate of the deceased 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 required, to render an account of the estate; or

(c) when so required by the Court, to deliver up the grant to the Court

2. The giving of time to the administrator(s) or any other forbearance or indulgence shall not in
any way affect my/our liability under this guarantee.

3. The liability under this guarantee shall be continuing and shall be for the whole amount of the
loss mentioned in paragraph 1 above, but (my) (our) (aggregate) total liability shall not in any
event exceed the sum of N.....

Dated this.....day of.....20.....

Signed, sealed and delivered by the above name:.....

..... a
Commissioner for Oaths, (or other person authorized by law to administer an oath).

The Common Seal of.....was hereunto affixed:

In the presence of.....)

..... day of.....
..... day of.....
..... day of.....

.....

I, ... of.....
..... hereby (jointly and severally) guarantee that I/WE will, when lawfully required
to do so, make good any loss which may be incurred in the administration of the estate of the
deceased in the State and which may be suffered in consequence of the administration of
the estate of the deceased.

(a) to collect and get in the estate of the deceased which is situated in the State and administer it
according to law;

(b) when required to do so by the Court, to exhibit an oath in the Court a full inventory of the
estate which is situated in the State and when required, to render an account of the estate

(c) when so required by the Court, to deliver up the estate to the Court.

2. The giving of name to the administrator or any other person or persons shall not in
any way affect my/our liability under this guarantee.

3. The liability under this guarantee shall be unlimited 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 ₦.....

PROBATE FORM 2

**Surety's Guarantee on Application for resealing
(0.67, r.69(3) (c))**

In the High Court of.....State

Probate Registry Suit No.....

In the Estate of.....deceased

Whereas.....died on the.....day of.....20..... and letters
administration of his estate were on the.....day of.....20..... and letters granted
by.....the.....to (and.....) and are about to be sealed in the State under the
Succession Law;

Now therefore-

1. I/WE of.....and 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 administration(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;

(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 required, to render an account of the estate

(c) when so required by the Court, to deliver up the grant to the Court

2. The giving of time to the administrator(s) or any other forbearance or indulgence shall not in
any way affect my/our liability under this guarantee.

The liability under this guarantee shall be continuing and shall be for the whole amount of the
loss mentioned in paragraph 1 above, but (my) (our) (aggregate) total liability shall not in any
event exceed the sum of N.....

Dated this.....day of.....20.....

Signed, sealed and delivered by the above named in the presence of..... a Commissioner for Oaths (or other person authorized by law to administer an oath).

(Signature)

The Common Seal of.....was hereunto affixed:

In the presence of.....(.....)

(Signature)

PROBATE FORM 3

Notice of Prohibit Grant

(0.67, r.71(3))

IN THE MATTER OF.....**DECEASED**

LET NOTHING be done in the matter of.....late of.....deceased, who died on the.....day of.....20.....at.....and had at the time of his death his fixed place of abode at.....within the jurisdiction of this Court, without being given to.....of.....

DATED this.....day of.....20.....

Signature

PROBATE FORM 4

Caveat

(0.67, r.71(4))

In the High Court of.....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

PROBATE FORM 5

Warning to Caveator

(0.67, r.71(8))

In the High Court of.....State

The Probate Registry Suit No.....

TO:.....

of.....a party who has entered a caveat in
estate of.....deceased.

You are hereby warned **within 8 days** after service hereof upon you, inclusive of the d
of such service.

1. To enter an appearance either in person or by your Legal Practitioner at the Prob
Registry.....setting forth what interest you have in the estate of the above nam
.....late of.....deceased, contrary to that of the party at whose instance this warni
is issued; or

2. If you have no contrary interest but wish to show cause against the sealing of a grant
such party to issue 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
grant of probate or administration in the said estate notwithstanding your caveat.

DATED this.....day of.....20.....

.....

Registrar

Issues at the instance of (Here set out the name and interest including the date of the Will. If ar
under which the interest arose) the party warning, the name of his Legal Practitioners and th
address for service. If the party warning is acting in person, this must be stated.

PROBATE FORM 6

Appearance of Warning/Citation

(0.67, r.71(9))

In the High Court of.....The Probate Registry Caveat No.....
dated the.....day.....of.....20.....

Full name and address of person warning (or Citor):.....

.....

.....

Full name and address of Caveator (or person Cited):.....

Dated 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)
.....
Legal Practitioner or ("In person")

PROBATE FORM 7

Notice of Election to redeem Life Interest

(0.67, r.82(1))

In the High Court of.....State

Probate Registry Suit No.....

In the Estate of.....deceased

Whereas.....of.....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.....)

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)

"FIRST SCHEDULE"**FEES PAYABLE AND ALLOWANCES TO WITNESS
AT THE HIGH COURT**

		₦	:	K
1.	Filing of action (for file)	500		00
2.	For the recovery of a specified sum:			
	(a) not exceeding ₦100,000	3,500		00
	(b) exceeding ₦100,000 but not above ₦500,000	5,000		00
	(c) exceeding ₦500,000 but not above ₦1,000,000	7,000		00
	(d) exceeding ₦1,000,000 per ₦100,000 or part thereof	500		00
	(e) 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)			
3.	For recovery of an unspecified sum:			
	(a) Each Declaration	1000		00
	(b) Each Order	500		00
4.	For an account to be taken and payment of the sum found due:			
	(a) Initial fee	1000		00
	(b) Second fee (payable before setting down for Judgment) per ₦1,000 or part thereof found due in excess of ₦2,000	100		00
5.	For possession of property as between landlord and tenant:			
	(a) Where the annual rent or value does not exceed ₦500,000	5000		00

- | | | | |
|-----|------------------------------|------|----|
| (b) | Where it exceeds ₦500,000.00 | 7500 | 00 |
|-----|------------------------------|------|----|
6. For a declaration of title to land and for possession of land other than between landlord and tenant:
- | | | | |
|-----|------------------|------|----|
| (a) | Each Declaration | 1000 | 00 |
| (b) | Each Order | 500 | 00 |
7. For possession of property (other than as between landlord and tenant and other than land) as under item 1 in the sum claimed in lieu of the property
- | | | | |
|-----|---------------------------|------|----|
| (a) | not exceeding ₦500,000.00 | 5000 | 00 |
| (b) | exceeding ₦500,000.00 | 7500 | 00 |
8. For the administration of the property of a deceased person where there is no dispute regarding succession or distribution
- (a) Where the estate comprises money only not exceeding ₦3,000,000.00
- 5% of the value
- (b) Exceeding ₦3,000,000 (subject to application for letter of administration or probate.
9. For the administration of the property of a person of unsound mind; same as under item 8
- (a) Where the estate comprises money only not exceeding ₦3,000,000.00
- 5% of the value
- (b) Exceeding ₦3,000,000 (subject to application for letter of administration or probate)
10. 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 Estate does not exceed		
	₦1,000,000.00	10,000	00
(b)	Exceeding ₦1,000,000.00 per ₦100,000.00	500	00
(c)	Where no value can be specified	25,000	00
11.	For any other relief or assistance not specially provided for	5000	00

Probate and Administration
(Order 67)

12.	Request for Forms	1000	00
13.	Filing of Letters of Administration 1st and 2nd Set of forms	4000	00
14.	Letter of Administration (Publication)	10,000	00
15.	Filing of Probate Forms	5,000	00
16.	Filing of Oaths of Executors Form (each)	1,000	00
17.	Filing of Affidavit of handwriting	1,000	00
18.	Filing of renunciation form	3,000	00
19.	Filing of Oaths of Additional Asset	3,000	00
20.	Filing of resealing Form	5,000	00
21.	Search	5,000	00
22.	Certified True Copy	2,000	00
23.	Subsequent Certified True Copy	1,500	00
24.	Lodging of Will	5,000	00
25.	Estate Duty - 10% of the value of declared Estate		
26.	Default Fee for Delay Lodgment of Will	20,000	00
27.	Failure to File Annual Returns on Estate (per day)	500	00
28.	Order	2,000	00
29.	On entering a caveat	2,000	00
30.	On every warning to caveat	500	00
31.	On inventory taken by a court officer		
	(a) for the first three hours or part thereof	250	00
	(b) for every subsequent hour or part thereof	100	00

Applications, Affidavits, Judgments, Orders, Security Bonds

Warrants, Writs e.t.c.

32.	On application for warrant to detain a ship or aircraft	5,000	00
33.	On application for a writ of Habeas Corpus	1000	00
34.	On filing any other application:		
	(a) If alone	500	00
	(b) If accompanied by other papers	500	00
35.	Oath or affidavit other than Written Statement on Oaths	1000	00
36.	Written Statement on Oaths (each)	250	00
37.	On filing a security bond	500	00
38.	On filing any other process	500	00
39.	On justification of sureties: for each surety	500	00
40.	For the issues of warrant to detain an absconding Defendant or a ship	5000	00
41.	For the issue of a Writ of Habeas Corpus	500	00
42.	For the drawing up of any order of Judgment	500	00
43.	For a special interpreter of a language not in common use: per day or part thereof, as the Court may order but not exceeding	2500	00
44.	For an inquiry by a Court Officer where so ordered; for each sitting	1000	00
45.	For an account taken by a Court Officer where so ordered: per ₦1000 or part thereof found to have been received	100	00
46.	For taking down a person's statement where so ordered as the Court may direct but not exceeding	500	00
47.	For searching the archives	1000	00

48.	For drawing up a bill of costs where so directed: per folio	100	00
49.	For taking costs where so ordered: per N100 or part thereof	50	00
50.	For preparing a copy where authorized: per folio	200	00
51.	For every <i>Subpoena</i>	500	00
52.	On warrant for inmate to give evidence	1000	00
53.	On commission to take evidence		
	(a) Out of jurisdiction	5000	00
	(b) within the jurisdiction	2500	00
54.	For attesting the execution or signature of an instrument (other than instrument regarding payment of pension by Government) not otherwise provided for	1000	00
55.	For swearing an affidavit or making a declaration (other than under section 20 of the Sales by Auction Law (or the Marriage Act or one required by the regulations of a Government Department) per deponent	1000	00
56.	For marking any paper attached to an affidavit or declaration	250	00
57.	For sealing any document not in proceeding	500	00
58.	For certifying a copy as a true copy per folio	100	00
59.	For payment into Court (except when ordered by the Court of proceeds of execution		
	(a) Not exceeding N1000 per N200 part thereof		50
	00		
	(b) exceeding N1000 per N1000 or part thereof	200	00
60.	On appointment of Commissioner to administer Oaths and take declaration (not being a Government Officer)	500	00
61.	For sealing a letter or request	500	00

62.	On transfer of a foreign Judgment	10000	00
63.	For certificate of foreign process (where not disallowed by convention)	10000	00
64.	On every petition to the Chief Judge or a Judge or a Registrar (not being an application otherwise provided for) unless waived by a Judge or the Chief Registrar	1000	00
65.	For the service of any document or process (each service):		
	(i) Service within Ibadan Judicial Division	2000	00
	(ii) Service within Ibadan less city	3000	00
	(iii) Service in other Judicial Divisions	1500	00
	(iv) Service outside Jurisdiction	To be determined by the Registrar	

All fees for service shall be paid into the Judiciary's designated account and receipt shall be issued in respect thereof.

The fees for service to be determined shall be so determined by the Deputy Chief Registrar or any officer of Court in charge of Sheriff/Bailiff and same shall be based on distance assessment subject to approval by the Chief Judge.

Transfer of Cases

66.	On an application to transfer a civil case before the High Court from one Judge to another or to a Magistrate, or to a Customary Court, save where the application is allowed to be made orally at the hearing of the case	1000	00
67.	On an order transferring a civil case before the High Court from one Judge to another or to a Magistrate's Court or to a Customary Court, where the order is made on the application of a party	1000	00

68. On application to the Chief Judge to transfer a civil case from one Magistrate's Court to another within the same district or to the High Court. 1000 00
69. On an order transferring a civil case from one Magistrate's Court to another or to a Magistrate's Court to the High Court or the High Court or from one Magistrate's Court to another within the same district where the order is made on the application of a party 1000 00
70. On setting down for hearing a civil case transferred from a Magistrate's Court to the High Court, whether or not the transfer was made on the application of a party, the difference between the fee for instituting the case in the Magistrate's Court and the fee which would have been charged had the case been instituted in the High Court in the first instance, To be determined by the Registrar

Fees for Registration of Judgments

71. Registration of Certificate of a Judgment of High Court 5000 00
72. Registration of Certificate of a Judgment of any other Court 5000 00

Motion on Notice

73. Motion on Notice
- (a) Motion on Notice 500 00
- (b) Each Order 250 00
- (c) Each Oath 250 00
- (d) Each Exhibit 250 00
- (e) Filing 500 00
- (f) Service – as in item 63 above

74. Motion Ex Parte		
(a) Motion Ex Parte	500	00
(b) Each Order	250	00
(c) Each Oath	250	00
(d) Each Exhibit	250	00
(e) Filing	500	00
75. Interpleader Summons	1000	00
76. Fieri facias (fifa)	1000	00
77. Terms of Settlement	1000	00
78. Summons for Bail		
(a) Summons for Bail	500	00
(b) Each Order	250	00
(c) Each Oath	250	00
(d) Each Exhibit	250	00
79. Letter (Filing)	1000	00
80. Affidavit of Urgency		
(a) Filing	1000	00
(b) Oath	250	00
(c) Each Exhibit	250	00
81. Enrolment of Order or Judgment	2000	00
82. Statement of Claim	500	00
83. Memorandum of Appearance	500	00
84. Statement of Defence, Reply et al	500	00
85. Originating Summons	2500	00

86.	Each process at Case Management stage	1000	00
87.	Written Address	500	00
88.	Certificate of Judgment	5000	00
89.	Notice of Appeal to Court of Appeal	5000	00
90.	Bond of Appeal	1000	00

FEES PAYABLE IN CIVIL APPEALS FROM THE MAGISTRATE' COURT

(Order 65)

90. (1) On an application under section 41 of the Magistrates' Court Law or on filing a notice of appeal: 10,000 00
- (2) In respect of any other matter or service the following fees shall be paid:
- (a) where the matter or service is to be done or rendered in the Magistrate's Court, the same fees as would be payable if the case were still pending before the Court.
 - (b) where the matter or service is to be done or rendered in the High Court, the same fees as are payable in a case pending before the Court subject to this qualification, namely that where various fees are provided for the same matter or service, the lowest rate shall be charged.
- (3) First copy of Records of Appeal/Proceedings at ₦50 per folio. Two copies of Records of Appeals/Proceedings for the use of the Applicant and the Respondent at ₦50 per folio.

SECOND SCHEDULE

Allowances to Witnesses

	N	K
Professional men, mercantile agents, bank managers, chiefs surveyors and any officer of the public service whose salary is not less than ₦1,000,000.00 a year	10,000	00
Merchants, Captains of ships mercantile assistants and officers in the public service whose salary is not less than ₦750,000.00 annually	7500	00
Salary of ₦100,000.00 annually but less than ₦750,000.00	5000	00

Women, as in the above scale

If not gainfully employed according to husband status – 50% of above scale or if living with parents and relatives and not gainfully employed	5000	00
---	------	----

Transport Allowances

(a) By private car per kilometer	1000	00
(b) by private motorcycle per kilometer	500	00

Note:

The traveling expenses of witnesses shall be allowed according to the sums reasonably and actually paid.

No allowance is made to an officer of the public service who is summoned as a witness by the government or by any department of the government.

In all other cases he is allowed costs and traveling expenses as if he were not in the public service. Fees, costs, expenses payable to an officer in the public service shall be paid into revenue unless otherwise ordered.

When a service is rendered by a person who is an Officer of the Court or in the service of the Government of a Local Government or Tribunal, the Court may direct that the fee paid for such service be paid out of revenue to the person who has rendered the service.

In addition to the above fees, the party on whose behalf such services are to be performed shall be liable to pay such expenses of transport as the Court may think reasonable.

For the performance of any other duty not herein expressly provided for, the officer may receive such fee as the Court may allow.

REGULATIONS REGARDING FEES**(Order 68)**

1. No summons, warrant, writ of *subpoena* shall, except by special order of the court be issued until:
 - (a) All fees payable thereon as contained in the appropriate Schedule of fees shall have been paid; and
 - (b) An account thereof initialed as received shall have been set forth by the Officer issuing the process both in the margin and in the counterfoil thereof specified. If the annual rent or value was understated, the Court may order the balance of the fee chargeable to be paid, and if it was understated knowingly, or negligently, the Court may also order a sum equal to such balance to be paid as penalty. In either case the Court may direct that the proceedings shall not continue until the balance and penalty, if any, are paid.
 - (c) Where two or more claims are joined, the highest fee under any relevant items shall be charged.
 - (d) A set-off or counter-claim shall be charged as if an action thereof were taken.
2. All such fees shall be carried to designated 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 indorsement initialed by the Registrar or other Officer showing the amount of the fee or fees so paid and the receipt referring to the payment. Provided that when any form of process specifies 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 originating or other process whatsoever for signature by a Judge shall at the same time produce the stamp 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 proceedings, unless it shall have been initialed as aforesaid by the Registrar or other Officer or unless the Court shall at the same time order to be produced the stamp of the receipt given for the fees of such process.

6. All fees for files, service, execution, default, distance in kilometres and other fees as the Chief Judge may from time to time advise shall be paid into designated account(s) of the Oyo State Judiciary which monies or funds shall be audited periodically.
7. No hearing fee or other fees shall be returned, except upon a voucher, payable at the Treasury, 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.

Made at Ibadan, this 23rd day of December, 2022.



.....
HON. JUSTICE MUNTA LADIPO ABIMBOLA
CHIEF JUDGE OF OYO STATE
OYO STATE OF NIGERIA