

S. I. .No. 19 of 2019

THE CONSTITUTION OF THE FEDERAL REPUBLIC  
OF NIGERIA, 1999

FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES, 2019  
[10<sup>th</sup> Day of May, 2019]

Commencement

In exercise of the powers conferred on me by section 254 of the Constitution of the Federal Republic of Nigeria 1999 and of all other powers enabling me in that behalf, I, ADAMU ABDU-KAFARATI, Chief Judge, Federal High Court, hereby make the following Rules—

ORDER I—REVOCATION, CITATION, SAVINGS. ETC.

1.—(1) The Federal High Court (Civil Procedure) Rules 2009 is hereby revoked.

Revocation of  
Civil Procedure  
Rules 2009

2. These Rules may be cited as the Federal High Court (Civil Procedure) Rules 2019.

Citation

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

Savings: Part heard  
matters

(2) Where an action is filed and no further step is taken other than the filing, other subsequent procedure shall be under this rule.

(3) In any other case where a cause or matter is pending, the Court shall give such direction as may be necessary or expedient to ensure conformity with the requirement of these rules.

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

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

4. The objective of these Rules is for the just and expeditious disposition of any case.

Objectives

5. In these Rules—

Interpretation

“Act” means the Federal High Court Act;  
“Attorney—General” means the Attorney-General of the Federation

*"Chief Judge"* means the Chief Judge of the Federal High Court

*"Concurrent Writ"* has the same meaning, as provided, in order 3, rules 19 and 20 of these Rules

*"Court"* means the Federal High Court;

*"Court Process"* or *"Process"* includes writ of summons, originating summons, originating motions, originating process, notice, petition, pleading, order, motion, summons, warrant and all document or written communication of which service is required

*"Defendant"* includes a defendant to a counter claim;

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

*"Judge"* means a Judge of the Federal High Court

*"Legal Practitioner"* means a law officer, state counsel or legal practitioner entitled to practice before the Court

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

*"Plaintiff"* includes a claimant in a counter-claims

*"Pleading"* does not include a petition, summons or preliminary act

*"Process Server"* includes Sheriff, Deputy Sheriff, Bailiff, Special Marshal and any other person appointed to serve a Court process

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

*"Registry"* means the registry of the Federal High Court at its headquarters or other division

*"Return Date"* means the day endorsed on a court process for the appearance of the parties before the Court or any other day the court may appoint or direct and in the case of order 12 of these Rules where a writ is marked and

*"Undefended List"* means the day fixed for hearing.

Meaning of other words

6. Words other than those defined in order I rule 5 of these Rules shall have the same meaning as in the Act.

## ORDER 2—PLACE OF INSTITUTING AND TRIAL OF SUITS

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1. — (1) Subject to the provisions of any law with respect to the transfer of any suit or to a specific subject matter, the place for the trial of any suit or matter shall be as provided in this order.

Place for  
trial of  
suits

(2) Any suit relating to—

(a) taxation of a company and of any other body established or carrying on business in Nigeria and of any other person subject to Federal taxation shall be commenced and determined—

Suits  
relating to  
taxation,  
penalties,  
contracts,  
customs,  
etc.

(i) in the judicial division of the Court in which the headquarters or the principal office of the company or body is situate, and

(ii) where a person resides or carries on substantial part of his business, in the case of a person subject to Federal taxation;

(b) recovery of revenue, penalty and for forfeiture, and also any action against a public officer, shall be commenced and tried in the judicial division of the Court in which the cause of action arose

(c) specific performance or the breach of any contract shall be commenced and determined in the judicial division of the Court in which the contract is supposed to have been performed or in which the defendant resides or carries on substantial part of his business;

(d) customs, excise, tariff, etc. shall be commenced and determined in the jurisdiction of the judicial division in which the breach of the law, or contract took place or the port or border where the breach took place;

(e) diplomatic, consular or foreign trade representation shall be commenced and determined in the judicial division in which the diplomatic, consular or foreign trade is carried out

(f) citizenship naturalisation and aliens, repatriation of a person who is not a citizen of Nigeria, the passport and visa shall be commenced and determined in the judicial division in which the person reside; and

(g) copyright, patent, design, trademark and merchandise mark shall be commenced and determined in the judicial division in which the defendant resides or where the alleged infringement takes place.

(3) Any other suit shall be commenced and determined in the judicial division in which the defendant resides or carries on Substantial part of his business or in which the cause of action arose

Judicial Division of Court in which suit may commence

2. Where there is more than one defendant resident in different judicial divisions, the suit may be commenced in any of the judicial divisions, subject, however, to any order which the Court may, upon the application of any of the parties, or on its own motion, deem fit to make with a view to the most convenient arrangement for the trial of the suit

Suits commenced in wrong Judicial Division

3. Where a suit is commenced in any other judicial division of the Court than that in which it ought to have been commenced, it may, notwithstanding, be tried in the judicial division in which it has been commenced, unless the Court otherwise directs or the defendant pleads specially in objection to the jurisdiction before or at the time when he is required to state his answer or to plead in the cause.

Transfer of proceedings

4. A proceeding which has been taken before the plea in objection shall not in any way be affected thereby, but the judge may order that the cause be transferred to the judicial division to which it is proved to his satisfaction, to belong or, failing such proof, order that it be retained and proceeded with within the Court in which it had been commenced.

ORDER 3—FORM AND COMMENCEMENT OF ACTION

Forms of Commencement of action

1. Subject to the provisions of any enactment, a civil proceeding may be begun by writ, originating summons, originating motion or petition or by any other method required by other rules of Court governing a particular subject matter.

Proceedings which must be begun by writ

2. Subject to the provisions of these Rules or any applicable law requiring any proceeding to be begun otherwise than by writ, a writ of summons shall be the form of commencing any other proceeding where—

- (a) a plaintiff claims—
  - (i) any relief or remedy for any civil wrong,
  - (ii) damages for a breach of duty whether contractual, statutory or otherwise, or
  - (iii) damages for a personal injury 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.

3.—(1) Any civil proceeding commenced by a writ of summons shall be accompanied by—

(a) a statement of claim ;

(b) copies of every document to be relied on at the trial;

(c) list of non-documentary exhibit ;

(d) list of the witness to be called at the trial ;

(e) written statement on oath of the witness ; and

(f) an affidavit of non-multiplicity of action on the same subject matter.

Mode of  
beginning civil  
proceedings  
commenced by  
writ or  
summons

(2) Where a statement on oath of the witness requires a subpoena from the Court, it need not be filed at the commencement of the suit.

(3) A witness who requires a subpoena or summons shall, at the instance of the party calling them, be served with Civil Form 1(a) in Appendix 6 to these Rules before the filing of the statement of such witness.

Civil Form  
1(a)

(4) Notwithstanding the provisions of sub -rule (1) (b) of this rule, a dispute survey plan need not be filed at the commencement of the suit, but shall be filed within such time as may be ordered by the Court upon any application made under sub-rule (4) of this rule

(5) Where a plaintiff fails to comply with sub-rule (1) of this rule, and rules 3 and 9 of this order, his originating process shall not be accepted for filing by the registry.

(6) In any land matter a plaintiff may file a motion on notice with the originating process for leave to enter the land in dispute for the purpose of making a dispute survey plan for the suit.

4. The writ of summons shall be as specified in Form I of Appendix 6 to these Rules with such modifications or variations as circumstances may require, except in a case in which a different form is provided for in these Rules.

Form of writ:  
Civil Form 1.

5. A writ of summons to be served out of Nigeria shall be as specified in Form 2 of Appendix 6 to these Rules with such modifications or variations as circumstances may require.

Form of writ  
for civil service  
out of Nigeria  
Form 2.

Proceedings which may be begun by originating summons.

6. A person who claims to be interested under a deed, will, enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the right of the person interested.

Where right depends on construction of enactment.

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

Discretion of the Judge.

8. A judge shall not be bound to determine any question of construction referred to in rule 7 of this order where in the judge's opinion it ought not to be determined on originating summons but may make such order as the judge deems fit.

Forms of originating summons. Civil Forms 3,4,5.

9. —(1) An originating summons shall be as specified in the **Forms 3, 4, or 5 in Appendix 6** to these Rules, with such variations as circumstances may require.

(2) An originating summons shall be accompanied by

- (a) an affidavit setting out the fact relied upon ;
- (b) copies of the exhibit to be relied upon ;
- (c) a written address ; and
- (d) an affidavit of non-multiplicity of action on the same subject matter.

Originating process to be tested by its date.

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

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

Preparing originating process.

11. —(1) An originating process shall be prepared by a plaintiff or the plaintiffs legal practitioners and shall be clearly printed in black ink on white opaque A4 paper of high quality.

(2) The person filing the originating summons shall submit at the registry a sufficient number of copies with the documents in rule 9 (2) of this order for service on the respondent.

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

Sealing of  
originating  
process

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

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

13. The Registrar shall —

(1) after sealing an originating process, file it and note on it the date of filing and the number of copies supplied by a plaintiff or his legal practitioner for service on the defendants ; and

What is to  
be done after  
sealing

(2) make an entry of the filing in the cause book and identify the action with a suit number that may comprise an abbreviation of the judicial division, a chronological number and the year of filing.

14. 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 in this order.

Copies to be  
served

15.—(1) For the purpose of service a —

(a) writ other than a concurrent writ is valid in the first instance for twelve months commencing from the date of its issue ; and

(b) concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

Duration of  
and renewal

(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for a period not exceeding six months at anyone time, commencing from the day next following that on which it would otherwise expire, as may be specified in the order where an application for extension is made to the Court before that day or such later day, if any, as the Court may allow.

(3) Before a writ, the validity of which has been extended under this rule, is served, it shall be marked with an official stamp showing the period for which the validity of the writ has been so extended.

(4) Where the validity of a writ is extended by an order made under this rule, the order shall operate in relation to any other writ, whether original or concurrent issued in the same action which has not been served, so as to extend the validity of that other writ until the expiration of the period specified in the order.

Validity and renewal of originating summons

16. For the purpose of service —
- (1) an originating summons other than a concurrent one shall be valid in the first instance for (12) months beginning with the date of its issue ; and
  - (2) a concurrent originating summons shall be valid in the first instance for the period of validity of the original summons which is unexpired at the date of issue of the concurrent summons.

Indorsement of renewal Civil Forms 6

17. 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 two years and the Registrar shall state the fact, date and duration of renewal on every renewed originating process.

Loss of originating process

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

Concurrent originating process

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

Concurrent originating process for service within and out of jurisdiction

20. An originating process for service—

- (a) within jurisdiction may be issued and marked as a concurrent originating process with one for service out of jurisdiction ; and
- (b) out of the jurisdiction may be issued, and marked as a concurrent originating process with one for service within jurisdiction.

## ORDER 4—INDORSEMENT OF CLAIM AND OF ADDRESSES

- |  |  |
|--|--|
| 1. An originating process shall contain the claim, the relief or remedy sought and the full name and address of the plaintiff.   | Indorsement  |
| 2. Where a plaintiff sues, or a defendant issued in a representative capacity, the originating process shall state that capacity.  | Indorsement as to representative capacity.                   |
| 3. Where the claim is for a debt or liquidated demand, the originating process shall state—  | What is endorsed where claim is liquidated                   |
| (a) the amount claimed for in respect of the demand with cost ; and  |  |
| (b) that the defendant may pay the amount with cost to the plaintiff's legal practitioner within the time allowed for appearance and that upon such payment the proceedings shall terminate.             |  |
| 4. In any case where a plaintiff in the first instance desires to have an account taken, the originating process shall state it.   | Ordinary account   |
| 5.—(1) Where a plaintiff is suing in person the originating process shall state—   | Indorsement of address by plaintiff or by legal practitioner |
| (a) the plaintiff's residential or business address as the plaintiff's address for service   |  |
| (b) the plaintiff's mobile telephone number and e-mail address where available ; and   |  |
| (c) an address within the jurisdiction of the Court, supplied by the plaintiff as his address for service, where the plaintiff lives and carries on business outside the judicial division of the Court. |  |
| (2) Where a plaintiff sues through a Legal practitioner, the legal practitioner shall state on the originating process—  |  |
| (a) his chambers' address as the address for service ;   |  |
| (b) his mobile telephone number and e-mail address where available ; and   |  |
| (c) a chambers address within the jurisdiction of the Court as his address for service where he is based outside the Judicial Division of the Court.   |  |
| 6. Where the originating process does not state an address for service, it shall not be accepted.  | Originating process with no address                          |

Address for services unidentifiable or vague

7. Where the address for service is unidentifiable or vague, the party filing the process shall act as a pointer to the process server.

**ORDER 5—PETITION GENERAL PROVISIONS**

Application

1. This order shall apply to any petition by which civil proceedings in the Court is begun, subject, in the case of a petition of any particular class, to special provisions relating to a petition of that class made under any law.

Contents of petition

2—(1) A petition shall include—

(a) a concise statement of the nature of the claim made, relief or remedy required in the proceedings begun thereby ; and

(b) at its end, a statement of the name of the person, if any, required to be served or, if no person is required to be served a statement to that effect.

(2) Where a person brings a petition in person, the petition shall be endorsed with—

(a) the address of the person's place of residence and if such person's place of residence is not within jurisdiction or if such person has no place of residence, the address of a place within the jurisdiction at or to which the document for such person may be delivered ;

(b) the person's occupation ;

(c) an address for service, mobile telephone number and e- mail address where available ; and

(d) an affidavit of non-multiplicity of action on the same subject-matter.

Presentation of petition

3. A petition shall be presented in the Court Registry.

Fixing time for hearing etc of petition

4. A day and time for the hearing of a petition shall be fixed by the Judge.

Time for Service

5. Unless the Court otherwise directs, a petition which is required to be served on any person shall be served on him not less than 7 days before the day fixed for the hearing of the petition.

6. An application in any pending cause or matter shall not be made by petition

Certain application not to be made by petition

## ORDER 6—SERVICE OF PROCESS A—SERVICE WITHIN JURISDICTION

1. Service of a writ of summons, notice, petition, pleading, order, summons, warrant and any other proceeding, document or written communication of which service is required, shall be made by—

By whom service is to be effected

- (a) the sheriff or a deputy sheriff, bailiff, officer of the court ;
- (b) a person appointed either by the Court or by a Judge in chambers, unless another mode of service is prescribed by these Rules ;
- (c) a solicitor, who shall give a written undertaking at the time of filing the document to the Registrar that his law firm shall—
  - (i) serve the document on the other party or his solicitor, and
  - (ii) file with the registry a proof of the service signed by the other party or his solicitor ; or
- (d) the Court or a Judge in chambers by any other method of service as the Court or Judge in chambers may otherwise direct.

2. Save as otherwise prescribed by any of these Rules, an originating process shall be served personally by delivering to the person to be served a copy of the document, duly certified by the Registrar as being a true copy of the original process filed, without exhibiting the original.

Service of process: how effected

3. Service of a writ of summons or other process on the defendant shall not be necessary where the defendant undertakes in writing to accept service by his legal practitioner.

When process need not be served

4.—(1) The Court may in any civil case, for any reason which seems sufficient, appoint any process to be executed by a special bailiff, who for the time being shall have the privileges and liabilities of an officer of Court.

Special Bailiff

(2) The expenses of the special bailiff shall be defrayed by the party on whose application the bailiff is appointed unless the Court in any case sees any reason on vary this rule.

Substituted  
service

5. Where it appears to the Court either after or without an attempt at personal service that for any reason personal service cannot be conveniently service effected, the Court may order that service be effected either—

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

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

(c) by advertisement in the Federal Government Official *Gazette*, or in a newspaper circulating within the jurisdiction ;

(d) by notice put up at—

(i) the principal Court -House of, or some other place of public resort in the judicial division wherein the proceeding in respect of which the service is made is instituted, or

(ii) at the usual or last known place of abode, or of business, of the person to be served ; or

(e) by service where a party is represented by a legal practitioner, of notice, pleading, petition, order, summons, warrant and any other proceeding, document or written communication on the legal practitioner or his clerk.

Service on  
employee  
of  
government

6. Where service is to be effected on —

(a) party in the service of any Ministry or non-Ministerial Department of Government or of a Local Government, the Court may transmit the document to be served and a copy to the most Senior Officer of the Department of Government in the judicial division or place where the party to be served works or resides or to the Local Government in whose service the party to be served is, and such Officer or Local Government shall cause the same to be served on the appropriate party ; or

(b) any of the armed forces, the Nigeria Police Force and any Paramilitary Service or any of their officers, it shall be sufficient if served on the legal unit of such a service which shall cause same to be served on the appropriate party.

Service on  
partners

7. Where partners are sued in the name of the partnership, the writ or other document shall be served upon any of the partners, or at the principal place within the judicial division of

the business of the partnership, upon any person in that place having at the time of the service the control or management of the business and the service shall be deemed good service upon the partnership.

8. Where the suit is against a corporation or a company authorized to sue and be sued in its name or in the name of an officer or trustee, the writ or any other document may be served, subject to the enactment establishing that corporation or company or under which the company is registered, as the case may be, by giving the writ or document to any director, secretary, or other principal officer, or by leaving it at the office of the corporation or company.

Service on  
corporation or  
company

9. Where the person on whom service is to be effected lives or serves on board a ship, it shall be sufficient to deliver the writ or other document to the person on board who is at the time of the service apparently in charge of that ship.

Service on  
board ship

10. Where the person on whom service is to be effected is a prisoner in a prison or a lunatic in an asylum, it shall be sufficient service to deliver the writ or other document to the superintendent or person appearing to be the officer in charge of the prison or asylum.

Service on  
prisoners and  
lunatics

11.—(1) Where an infant is a party to an action, it shall be deemed good personal service on the infant where the process is served on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, unless the Court or a Judge in chambers orders otherwise.

Service on an  
infant

(2) The Court or Judge may order that service made or to be made on an infant personally shall be deemed good service.

12. Where service is to be made upon a person residing out of, but carrying on business within the jurisdiction in his own name or under the name of a firm through an authorised agent, and the proceeding is limited to a cause of action which arose within the jurisdiction, the writ or other document may be served by giving it to the agent, and the service shall be equivalent to personal service.

Service on  
local agent of  
principal who  
is out of  
jurisdiction

### B—SERVICE OUT OF JURISDICTION

13. Service out of jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge in chambers where —

Service of  
writ out of  
jurisdiction

(a) the whole subject of the action is land situate within the jurisdiction with or without rent or profit ;

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

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

(d) the action is one brought against the defendant to enforce, rescind, dissolve, annul or otherwise effect a contract or to recover damages or other relief for or in respect of a breach of a contract—

(i) made within the jurisdiction,

(ii) made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction, or

(iii) by its terms or by implication to be governed by the law in force in the jurisdiction or is brought against the defendant in respect of a breach committed within the jurisdiction of a contract wherever made, even though the breach was preceded or accompanied by a breach out of the jurisdiction which rendered impossible the performance of the part of the contract which ought to have been performed within the jurisdiction ;

(e) the action is founded on tort or other civil wrong committed within the jurisdiction ;

(f) an injunction is sought as to anything to be done within the jurisdiction or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages is or is not also sought in respect of it ;

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

(h) the action is by a mortgagee or mortgagor in relation to a mortgage of property situate within the jurisdiction and seeks any of the following reliefs —

(i) sale,

(ii) foreclosure,

(iii) delivery of possession by the mortgagor,

(iv) redemption,

- (v) reconveyance, or
- (iv) delivery of possession by the mortgagee, but does not seek, unless and except so far as permissible under paragraph (d) of this rule, any personal judgement or order for payment of any money due under the mortgage ; or
- (i) the action is one brought under the Civil Aviation Act or any regulation made in pursuance of the Act or any law relating to carriage by air.

14.—(1) An application for leave to serve a writ or notice on a defendant out of the jurisdiction shall be supported by—

Order in fix time for appearance

- (a) an affidavit and a written address ; or
- (b) any other evidence stating—
  - (i) that in the belief of the deponent, the plaintiff has a good cause of action,
  - (ii) the place or country the defendant is or probably may be found, and
  - (iii) the grounds upon which the application is made.

(2) An application for leave to serve a notice or writ out of jurisdiction shall not be granted unless it is made sufficiently to appear to the Court or a Judge in chambers that the cause is a proper one for service out of jurisdiction under these Rules.

15. An order granting leave to effect service or give notice shall limit a time after such service or notice within which the defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given, and on whether the air mail is available to the defendant.

Service of originating summons etc

16. Where leave is given under the foregoing provisions to serve notice of the writ of summons out of jurisdiction, the notice shall be served in the manner in which a writ of summons is served.

Order to fix time for appearance

17—(1) A service out of the jurisdiction may be allowed by the Court or a Judge in Chambers where it relates to the following processes or notices—

Service of originating summon etc.

- (a) an originating summons, where the proceedings begun by an originating summons might have been begun by a writ of summons under these Rules.

(a) an originating summons, petition, notice of motion or other originating proceedings —

(i) in relation to an infant, a lunatic or a person of unsound mind,

(ii) under any law or enactment under which the proceeding can be commenced otherwise than by writ of summons, or

(iii) under any rule of Court where the proceeding can be commenced otherwise than by a writ of summons ;

(c) without prejudice to the generality of paragraph (b) of this sub-rule, any summons, order or notice in any interpleader proceeding or for the appointment of an Arbitrator or umpire or to remit, set aside, or enforce an award in an arbitration held or to be held within the jurisdiction ;

(d) any summons, order or notice in any proceeding duly instituted whether by a writ of summons or any other originating process as aforesaid.

(2) The provisions of rules 14, 15 and 16 of this order shall apply *mutatis mutandis* to service under this rule.

Service  
aboard by  
letter of  
request

18.—(1) Where leave is granted to serve a writ of summons or a notice of writ of summons in any foreign country other than a country with which a Convention in that behalf has been made, the following procedure may be adopted

(a) the document to be served shall be—

(i) sealed with the seal of the Court for use out of the jurisdiction,

(ii) translated into the language of the country in which service is to be effected where applicable and the translated copy shall be attached to the original copy, and

(iii) transmitted to the Permanent Secretary of the Federal Ministry of Justice by the Chief Registrar on the direction of the Chief Judge, with a request for transmission to the Minister responsible for foreign affairs for further transmission of the same to the Government of the country in which leave to serve the document has been given ;

(b) the request referred in paragraph (a) (iii) of this sub-rule shall be as specified in Form 7 in *Appendix 6* to these Rules with such variations as circumstances may require ;

(c) the party requesting a copy of a document for service under this rule shall, at the time of requesting the same, file a praecipe as specified in Form 8 in *Appendix 6* to these Rules ;

(d) an official certificate, or declaration upon oath or otherwise, transmitted through the diplomatic channel by the Government or Court of a foreign country to which this provision applies, to the Court, shall, provided that it certifies or declares the document to have been personally served, or to have been duly served upon the defendant in accordance with the law of that foreign country, or words to that effect, be deemed to be sufficient proof of service, and shall be filed on record as, and be equivalent to an affidavit of service within the requirements of these Rules in that behalf ; and

(e) where an official certificate or declaration transmitted to the Court in the manner provided in paragraph (d) of this sub-rule certifies or declares that efforts to serve a document have been without effect, the Court or a Judge may, upon the *ex parte* application of the plaintiff, order substituted service of the document, and the document and a copy of it and the order shall be sealed and transmitted to the Permanent Secretary to the Ministry of Justice in manner aforesaid together with a request as specified in Form 9 of *Appendix 6* to these Rules, with such variations as circumstances may require.

(2) Nothing herein contained shall in any way prejudice or affect any practice or power of the Court under which when lands, funds, choses in action, rights or property within the jurisdiction are sought to be dealt with or affected, the Court may, without affecting the exercise of 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.

19—(1) The provisions of this order shall apply where, for the purpose of an action under the Civil Aviation Act and the Convention therein set out, leave is given to serve a notice of writ of summons upon a high contracting party to the Convention other than Nigeria.

Service out of  
the  
jurisdiction  
under the  
Civil Aviation  
Act

(2) The notice shall—

(a) specify the time for entering an appearance as specified in rule 15 of this order ; and

(b) be sealed with the seal of the Court for service out of jurisdiction;

(c) be translated into the language of the country of the defendant where v applicable and the translated copy shall be attached to the original document, should be ; and

(b) be transmitted to the Federal Ministry of Justice with a request for transmission to the Minister responsible for matters relating to foreign affairs for further transmission of the same to the Government of that country.

(3) The request shall be as specified in Form 10 in appendix 6 to these Rules, with such variations as circumstances may require.

(4) The party bespeaking a copy of a document for service under this rule shall at that time of bespeaking the document file a praecipe as specified in Form 9 in *Appendix 6* to these Rules.

(5) An official certificate from the Minister responsible for matters relating to foreign affairs transmitted by the Federal Ministry of Justice or otherwise to the Court certifying that the notice was delivered on a specific date to the Government of the country of the defendant shall be deemed to be sufficient proof of service and shall be filed as record of, and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf.

(6) After entry of appearance by the defendant, or, where no appearance is entered after expiry of the time limited for appearance, the action may proceed to judgement in all respects as if the defendant had for the purposes of the action waived all privileges and submitted to the jurisdiction of the Court.

(7) Where a summons, an order or a notice in the proceedings is to be served or delivered on the defendant out of the jurisdiction, the provisions of this rule shall apply with such variation as circumstances may require.

Service of  
documents  
abroad

20. Where leave is given in a civil cause or matter or where leave is not required, and any writ of summons, originating summons, notice, or other document is to be served in any foreign country with which a Convention in that behalf has been or shall be made, the following procedure shall, subject to any special provision contained in the Convention, be adopted—

(a) the party bespeaking the service shall file in the registry a request as specified in Form 8 or Form 37 in *Appendix 6* to these Rules which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used ;

(b) the request referred to in paragraph (a) of this rule shall state the medium through which the service shall be effected, either—

(i) directly through the diplomatic channels, or

(ii) through the foreign judicial authority,

and shall be accompanied by the original document and a translation in the language of the country in which service is to be effected, certified by or on behalf of the person making the request and a copy of each for every person to be served and any convention may require unless the service is required to be made on a Nigerian citizen directly through the diplomatic channels in which case the translation and copies need not accompany the request unless the Convention expressly requires that they should do so ;

(c) the document to be served shall be sealed with the seal of the Court for use out of the jurisdiction and shall be forwarded by the Registrar to the Permanent Secretary for Foreign Affairs for transmission to the foreign country ; and

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

21. Rule 20 of this order shall not apply to or render invalid or insufficient any mode of service in any foreign country with which a Convention has been or shall be made which is otherwise valid or sufficient according to the procedure of the Court and which is not expressly excluded by the Convention made with that foreign country.

Saving for  
other modes  
of services

22. The Court or Judge, in granting leave to serve a document out of the jurisdiction under these Rules, may in an appropriate case direct that the airmail service be used by the party effecting service.

Airmail

23. Where, in any civil cause or matter pending before a court or tribunal in any foreign country with which a Convention in that behalf has been or shall be made, a request for service of any document on a person within the jurisdiction is received by the Chief Judge from the consular or other authority of the

Service for  
foreign  
tribunals

country, the following procedure shall, subject to any special provision contained in the Convention, be adopted —

(a) the service shall be effected by the delivery of the original or a copy of the document, as indicated in the request and the copy of the translation, to the party or person to be served in person by an officer of the court, unless the Court or a Judge in chambers thinks fit otherwise to direct;

(b) there shall be no court fees charged in respect of the service but the particulars of charges of the officer employed to effect service shall be submitted to the Chief Registrar of the Court who shall certify the amount properly payable in respect of it ;

(c) the Chief Judge shall—

(i) transmit to the consular or other authority making the request, a certificate establishing the fact and the date of the service in person, or indicating the reason for which it has not been possible to effect it, and

(ii) notify the consular or any other authority the amount of the charges certified under paragraph (b) of this rule.

24. Upon the application of the Attorney-General of the Federation, the Court or a Judge in chambers may make any other order for substituted service or otherwise as may be necessary to give effect to rules 13 to 22 of this order.

Substituted service.

25.— (1) An order granting leave to effect service out of the jurisdiction shall prescribe the mode of service, and shall limit a time after the service within which the defendant is to enter an appearance.

Order thereon.

(2) The time limit referred to in sub -rule (1) of this rule shall depend on the place or country where the writ is to be served, and the Court may receive an affidavit or statutory declaration of the service having been effected as *prima facie* evidence of service.

C—GENERAL PROVISIONS

26. Where the Officer of Court or any person charged with the service of any Court process or document on any person is prevented by violence or threat of violence by such person or it is made impossible by such person or any other person in concert with him from physically serving the process or document, it shall be sufficient to —

Where violence is threatened

- (a) inform the person to be served of the nature of the process or document from as near as practicable to that person ; or
- (b) throw or leave same within the reach of the person to be served.

Affidavit of  
service

27. In any other case where service of any writ or document has been effected by a bailiff or other officer of Court, an affidavit of service sworn to by the bailiff or other officer shall, on production, without proof of signature, be *prima facie* evidence of service.

Expenses of  
service

28. The cost of and incidental to the execution of any process in a suit shall be paid in the first place by the party requiring the execution, and the sheriff shall not except by order of the Court be bound to serve or execute any process unless the fees and reasonable expenses shall have been previously paid or tendered to him.

Service on  
Sunday or  
public holiday

29. Service shall not be made on a Sunday or public holiday, unless the Court directs otherwise by order endorsed on the document to be served.

Recording of  
Service

30.—(1) A book shall be kept at every Court for recording service or process, in such form as the Chief Judge may direct and the officer serving the process or the Registrar shall enter into the book the—

- (a) names of the plaintiff or complainant and the defendant,
- (b) particular Court issuing the process ;
- (c) method of the service, whether personal or otherwise, and the manner in which the person serving ascertained that he served the process on the right person ; and
- (d) reason why service failed where any process is not duly served.

(2) An entry in the book or an office copy of any entry shall be *prima facie* evidence of the several matters therein stated.

Interpretation

31.—(1) In these Rules "*out of jurisdiction*" means out of the Federal Republic of Nigeria in accordance with the provisions of the Federal High Court Act.

(2) An originating process or Court process filed by any party before the Court shall be served on any other party in any part of the Federation without leave of Court.

ORDER 7 —APPEARANCE

1.—(1) A defendant served with an originating process shall within (30) days file in the Registry, along with the processes mentioned in order 13 rule 2 (1) of these Rules, the original and copy of a duly completed and signed memorandum of appearance as specified in Form 11 of *Appendix 6* to these Rules with such modifications or variations as circumstances may require.

Mode of entry of appearance

(2) On receipt of the memorandum of appearance, the Registrar shall—

(a) make an entry of it and stamp the copy with the seal showing the date he received it ; and

(b) return the sealed copy to the person making the appearance.

(3) Where a defendant files a memorandum of appearance after the time prescribed in the originating process, he shall pay to the Court, an additional fee as specified in *Appendix 2* to these Rules for each day of default.

2—(1)A defendant appearing in person shall state in the memorandum of appearance—

Defendant appearance in person or represented by legal practitioner

(a) an address for service which shall be within the judicial division of the Court ;

(b)a mobile telephone number ; and

(c) an e-mail address where available represented by legal practitioner.

(2) Where a defendant appears by a legal practitioner, the legal practitioner shall state in the memorandum of appearance—

(a) his place of business and an address for service which shall be within the judicial division of the Court ;

(b)a mobile telephone number ;

(c) an e-mail address where available ; and

(d) the name and place of business of the principal legal practitioner he is representing where he is only the agent of another legal practitioner.

3. The Registrar shall not accept any memorandum of appearance which Memorandum does not contain an address for service.

Memorandum of Appearance with no address for service.

Defendants appearing through same legal practitioner

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

Person under legal disability appearing

5. A person under legal disability shall enter appearance through his guardian.

ORDER 8—DEFAULT OF APPEARANCE

Default of appearance generally

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

Liquidated demand

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

Liquidated demand several defendants

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

Several defendants

4. Where the claim in the originating process is as specified in rule 7 of this order and there are several defendants one or some of whom appear while another or others do not appear, a plaintiff may apply for Judgement against the defendant failing to appear and the value of the goods and or the damages only as the case may be, shall be ascertained in such manner and subject to the filing of such particulars as a Judge may direct before Judgement in respect of that part of the claim.

Default of appearance by person under Legal disability

5. Where no appearance has been entered for a person under legal disability, a plaintiff shall apply to a Judge for an order that a person be appointed guardian for such defendant and when appointed the person may appear and defend such person.

Judgement default of appearance

6. The application to appoint a guardian shall be made after service of the originating process and notice of the application shall be served on the person intended to be appointed the guardian of the defendant.

<p>7.—(1) Where the claim in the originating process is for pecuniary damages or detention of goods with or without a claim of pecuniary damages, and the defendant or all of several defendants fail to appear, a plaintiff may apply to a Judge for judgment.</p>	<p>Detention of goods and damages</p>
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(2) The value of the goods and damages or the damages only as the case may be shall be ascertained in such manner and subject to the filing of such particulars as a Judge may direct before judgment in respect of that part of the claim.

<p>8.—(1) Where the claim in the originating process is for pecuniary damages, 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 plaintiff may apply to a Judge for judgment.</p>	<p>Detention of goods damages and liquidated demands</p>
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(2) The value of the goods and damages or the damages as the case may be shall be ascertained in such manner and subject to the filing of such particulars as a Judge may direct before Judgement in respect of that part of the claim.

<p>9. In any case to which rules 2, 3, 4, 6, 7 and 8 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 plaintiff to proceed, he may apply to a Judge for Judgement for cost : Provided that such application shall be filed and served in the manner in which service of the originating process was effected or in such manner as a Judge shall direct.</p>	<p>Judgement for costs upon payment satisfaction etc.</p>
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<p>10. Where Judgement is entered pursuant to any of the preceding rules of this order, a Judge may set aside or vary such Judgement on just terms upon an application on notice by the defendant; the application shall be made within 14 days and shall be accompanied with treasury receipt showing payment of penalty for the period of default, and show a good defence to the claim and a just cause for the default.</p>	<p>Setting aside judgement</p>
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<p>11. In any other claim 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 plaintiff may proceed as if appearance had been entered.</p>	<p>Default of appearance in actions not otherwise specifically provided for.</p>
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ORDER 9 — PARTIES

A—GENERAL

1. Any person may be joined in one action as plaintiff in whom any right to relief is alleged to exist whether jointly or severally and judgement may be given for such plaintiff as may be found to be entitled to relief and for such relief as the plaintiff may be entitled to without any amendment. Person claiming jointly or severally

2. A Judge may order the substitution or addition of any other party as plaintiff on such terms as may be just where— Action in the name of a wrong plaintiff  
 (a) an action has been commenced in the name of the wrong party as plaintiff; or  
 (b) it is doubtful whether it has been commenced in the name of the right plaintiff.

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

4. —(1) Where in any class action concerning trademarks, copyright or patents and designs, a Judge is satisfied that— Class action  
 (a) a person, the class, or some members of the class interested cannot be ascertained or cannot rightly be ascertained ;  
 (b) a person, a class, or some members of the class interested cannot be ascertained or cannot rightly be ascertained ;  
 (c) a person, a class or some members of the class interested if ascertained, cannot be found ; or  
 (d) a person, a class and the members cannot be ascertained and be found,

it is expedient for the purpose of efficient procedure that one or more persons be appointed by the Judge to represent that person or class or members 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) In any class proceedings a person, class or member of the class may apply to the Court or a Judge in chambers to opt in or opt out of the class.

(4) A Court or Judge in chambers may on good and justifiable cause permit any person, class or members of the class represented in a class action to opt in or opt out.

Any person may be joined as defendant 5. 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 and Judgement may be given against one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

Action in the name of a wrong defendant 6. 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 an application order a —  
(a) substitution or addition of any person as defendant; or  
(a) correction of such name on any term as may be just.

Defendant needs not be interested in all the relief sought 7.—(1) It shall not be necessary that every defendant shall be interested in all the reliefs prayed for, or as to every cause of action included in any proceeding against him.  
(2) A Judge upon considering the defence filed by any defendant may on application by that defendant make such order as may appear just to prevent him from being embarrassed or put to expense by being required to attend any proceeding in which he may have no interest.

Joinder of persons severally or jointly and severally liable 8. Any plaintiff may, at his option, join as parties to the same action any person severally, or jointly and severally, liable on any contract, including the party to bills of exchange and promissory notes.

Plaintiff in doubt as to person from whom he seeks redress 9. Where a plaintiff is in doubt as to the party from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, with the intent that the question as to which, if any, of the defendant is liable and to that extent, may be determined as between all parties,

Persons under legal disability 10. A person under legal disability may sue or defend by the guardian appointed for that purpose.

Next friend 11. Before the name of a person is used in any action as next friend of an infant or other party, or as relator, that person shall sign a written authority for that purpose, and the authority shall be filed in the registry.

Numerous persons 12. —(1) Where there is more than one person 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 the persons so interested.

(2) Where there is more than one person 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 the persons so interested.

13.—(1) Where in any proceeding it appears to a Judge that any deceased person who was interested in the proceedings has no legal personal representative, the Judge may—

Where there is no personal representative

(a) proceed in the absence of any person representing the estate of the deceased person ; or

(b) appoint a person to represent the deceased person's estate for the purpose of the proceeding on such notice to such persons, if any, as the Judge shall deem fit either specifically or generally by public advertisement.

(2) The order made pursuant to the provisions of sub-rule (1) of this rule and any order consequent thereon shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the proceedings.

(3) Where a sole or sole surviving plaintiff or defendant in a proceeding dies and the cause of action survives but the person entitled to proceed fails to proceed, a Judge may on the application of either the deceased person's legal practitioner or the opposing party order any person to take the place of the deceased and proceed with the suit.

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

14.—(1) A proceeding shall not be defeated by reason of misjoinder or non-joinder of a party, and a Judge may deal with the matter in controversy so far as regards the right and interest of the parties actually before him.

Proceedings not defeated by misjoinder or non-joinder

(2) A Judge may—

(a) at any stage of the proceeding either upon or without the application of either party and on such terms as may appear to the Judge to be just, order that the name of any party improperly joined be struck out; and

(b) order that the name 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 question involved in the proceedings be added.

(3) A person under legal disability shall not be added as a plaintiff suing without a guardian and a person shall not be added as the guardian of a plaintiff under legal disability without his own consent in writing.

(4) A party whose name is added as defendant shall be served with the originating process 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 process or notice.

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Application to add or strike out. 15 —(1) An application to add, strike out, substitute or vary the name of a plaintiff or defendant may be made to a Judge by motion.

(2) Where the application is for the purpose of adding a plaintiff or a defendant, the application shall be accompanied by the statement of claim or defence as the case may be, the exhibit intended to be used and the deposition of all the witness.

(3) Where the application is to substitute a deceased party with another person the application may not be accompanied by the documents specified in sub-rule (2) of this rule.

Where defendant is added

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

Third Party Notice

17.—(1) The Court or a Judge in chambers may give leave to the defendant to issue and serve a third party notice where in an action a defendant claims as against any person not already a party to the action, in this section called the third party", that—

(a) he is entitled to contribution or indemnity ;

(b) he is entitled to any relief or remedy relating to, or connected with the original subject matter of the action and substantially the same as one relief or remedy claimed by the plaintiff; or

(c) any question or issue relating to or connected with the said subject matter is substantially the same as a question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but also as between the plaintiff and the defendant and the third party or between any or either of them.

How leave obtained

(2) The Court or a Judge in chambers may give leave to issue and serve a third party notice on *ex parte* application supported by affidavit and a written address or, where the Court or Judge in chambers directs a summons to the plaintiff to be issued, upon the hearing of the summons.

Form and issuance of notice

18. —(1) The notice shall— state the nature and grounds of the claim, the nature of the question or issue sought to be determined and the nature and extent of any relief or remedy claimed :

(a) be in accordance with Form 12 or Form 13 in *Appendix 6* to these Rules with such variations as circumstances may require; and

(b) be sealed and served on the third party in the same manner as a writ of summons is sealed and served.

(2) The notice shall, unless otherwise ordered by the Court or by a Judge in Chambers, be served within the time allowed for delivering the defence, or, where the notice is served by a defendant to a counter-claim, the reply and with it also shall be served a copy of the writ of summons or originating summons and of any pleadings filed in the action.

19. The third party shall, as from the time of the service upon him of the notice, be a party to the action with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant.

Effect of  
notice

20.—(1) The third party may enter an appearance in the action within—  
(a) 8 days of service ; or  
(b) such further time as may be directed by the Court or Judge in Chambers as specified in the notice.

Appearance

(2) Where the third party is served outside the jurisdiction of the Court, the period for entering appearance shall be at least 30 days.

(3) Where the third party fails to appear within the time specified, he may apply to the Court or Judge in chambers for leave to appear, and the leave may be given upon such terms, if any, as the Court or Judge in Chambers thinks fit.

21. Where a third party duly served with a third party notice does not enter an appearance or defaults in filing any pleading which he has been ordered to file, he shall be deemed to admit—

Default by  
third party

(a) any claim stated in the third party notice and shall be bound by any Judgement given in the action, whether by consent or otherwise, and by any decision therein or any question specified in the action ; and

(b) his liability in respect of a contribution or indemnity or other relief or remedy when contribution or indemnity or other relief for remedy is claimed against him in the notice.

22. Where a third party defaults in entering an appearance or filing any pleading which he had been ordered to file and the defendant giving the notice suffers Judgement by default, the defendant shall be entitled at any time, after satisfaction of the Judgement against himself, or before the satisfaction by leave of the Court or a Judge in chambers to enter —

Procedure  
after  
default

(a) Judgement against the third party to the extent of any contribution or indemnity claimed in the third party notice, or by leave of the Court or a Judge in chambers ; or

(b) such Judgement in respect of any other relief or remedy claimed as the Court or a Judge in chambers shall direct.

(2) The Court or a Judge in chambers may set aside or vary the Judgement against the third party upon such terms as may seem just.

Third party directions

23.—(1) Where the third party enters an appearance, the defendant giving notice may, after notice of the intended application has been served upon the plaintiff, the third party and any other defendant, apply to the Court or a Judge in Chambers for directions.

(2) Pursuant to sub -rule (1) of this rule, the Court or Judge in Chambers may—

(a) where the liability of the third party to the defendant giving the notice is established on the hearing of the application, order such Judgement as the nature of the case may require to be entered against the third party in favour of the defendant giving the notice ;

(b) if satisfied that there is a question or issue properly to be tried as between the plaintiff and the defendant and the third party or between any or either of them as to the liability of the defendant to the plaintiff or as the liability of the third party to make any contribution or indemnity claimed, in whole or in part, or as to any other relief or remedy claimed on the notice by the defendant or that a question or issue stated in the notice shall be determined not only as between the plaintiff and the defendant but as between the plaintiff, the defendant and the third party or any or either of them, order that question or issue to be tried in such manner as the Court or Judge in chambers may direct; or

(c) dismiss the application.

(3) Any direction given pursuant to this rule may be —

(a) given either before or after any Judgement has been entered in favour of the plaintiff against the defendant in the action ; and

(b) varied from time to time or rescinded.

(4) The Court or a Judge in chambers may, at any time, set aside the third party proceedings.

Leave to defend

24. The Court or a Judge in Chambers upon the hearing of the application for directions may, where it appears desirable to do so, give the third party liberty to defend the action either alone or jointly with the original defendant upon such terms as may be just, or to appear at the trial and take such part as may be just and generally may order such proceedings to be taken, pleading or document to be filed, or amendment to be made, and give such directions as to the Court or Judge in chambers may appear proper for having the question and the rights and the liabilities of the parties most conveniently determined and enforced, and as to the mode and extent in or to which the third party shall be bound or made liable by the decision or Judgement in the action.

25.—(1) Where the action is tried, the Judge who tries the action may, at or after the trial, enter such Judgement as the nature of the case may require for or against the defendant giving the notice or against or for the third party, and may grant to the defendant or to the third party, any relief or remedy which might properly have been granted if the third party had been made a defendant to an action duly instituted against him by the defendant but execution shall not be issued without leave of the Court or of a Judge in chambers until after satisfaction by the defendant of the Judgement against him. At trial or after

(2) Where the action is decided otherwise than by trial, the Court or a Judge in Chambers may—

(a) on application by motion or summons, make such order as the nature of the case may require ; and

(b) where the plaintiff has recovered Judgement, cause such Judgement as may be just to be entered for or against the defendant giving notice against or for the third party.

#### B—ACTIONS AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN

26.—(1) Any two or more persons claiming or alleged to be liable as partners and doing business within the jurisdiction may sue or be sued in the name of the firm, if any, of which they were partners when the cause of action arose. Action by and against firms

(2) Pursuant to sub -rule (1) of this rule, any party to an action may in such case apply to the Judge for a statement of the name and address of the persons who were partners in the firm when the cause of action arose, to be furnished in such manner, and verified on oath or otherwise as the Judge may direct.

27.—(1) Where an originating process is issued by partners in the name of their firm, the plaintiffs or their legal practitioners shall, on demand in writing by or on behalf of any defendant declare in writing the name and residential address of all the persons constituting the firm on whose behalf the action is brought. Disclosure of partners names

(2) Where the plaintiff or their legal practitioners fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as a Judge may direct.

(3) Where the names of the partners are so declared, the suit shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as plaintiffs in the originating process; provided that the proceedings may continue in the name of the firm.

Appearance  
of Partners

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

(2) Where an originating process is served upon a person having the control or management of the partnership business, an appearance by him shall not be necessary unless he is a partner of the firm sued.

Application of  
rules to actions  
between co  
partners

29. The provisions of rules 26 to 28 of 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 firm carry on business within the jurisdiction.

Persons  
trading as  
firms

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

**C — ALTERATION OF PARTIES**

Where changes  
of interest.  
Court may  
make order  
enabling suit  
to proceed

31.—(1) Where after the institution of a suit a change or transmission of interest or liability occurs in relation to any party to the suit, or any party to the suit dies or becomes incapable of carrying on the suit, or the suit in any other way becomes defective or incapable of being carried on, any person interested may obtain from the Court an order for curing the defect, or enabling or compelling proper parties to carry on the proceedings.

(2) A person served with an order made pursuant to sub-rule (1) of this rule may, within such time as the Court in the order directs, apply to the Court to discharge or vary the order.

Application to  
discharge  
order by  
person under  
disability  
having a  
guardian.

32. Where any person who is under no legal disability or being under any legal disability but having a guardian in the proceedings, is served with an order under rule 31 of this order, such person may apply to a Judge to discharge or vary such order at any time within 14 days from the service of the order.

Application to  
discharge  
order to person's  
under  
disability  
having no  
guardian.

33. Where any person under any legal disability and not having a guardian in the proceedings is served with an order under rule 32 of this order, the person may apply to a Judge to discharge or vary such order at any time within 14 days from the appointment of a guardian for such party, and until the 14 day period has expired, the order shall have no force or effect as against the person under legal disability.

**D — Legal Practitioners or Agents**

Acts may be  
done by legal  
practitioner

34. Where by these Rules any act may be done by any party in a proceeding, the act may be done either by the party in person, his legal practitioner, or his agent unless an agent is expressly barred under these Rules.

35.—(1) A party to any cause or matter who sues or defends by a counsel, may change his legal practitioner without an order for that purpose, and until notice of the change is filed and served on every other party to the cause or matter and on the former legal practitioner, the former legal representative shall remain the legal practitioner of the party for the duration of the action.

Party may change legal representative

(2) A copy of the notice referred to in sub-rule (1) of this rule accompanied by an affidavit stating that the notice has been duly filed in the registry shall also be filed.

(3) The party giving the notice referred to in sub-rule (1) of this rule may perform the duty prescribed by this order in person or by his new legal representative.

36.—(1) Where a legal practitioner who has acted for a party in a cause or matter ceases to act and the party has not given notice of the change in accordance with rule 35 (1) of this order, the legal practitioner may apply to the Court for an order declaring that the legal representative has ceased to be the one acting for the party in the cause or matter and the Court may make an order accordingly.

Where legal representative cease to act

(2) An order under sub -rule (1) of this rule shall not be made until the legal practitioner serves on every party to the cause or matter a copy of the notice otherwise he shall be considered the legal practitioner of the party for the remaining duration of the cause or matter.

(3) An application for an order under this rule shall be made by originating motion supported by an affidavit and a written address stating the grounds of the application.

(4) An order made under this rule shall not affect the right of the legal representative and the party for whom he acted as between them.

37. After an order is made under rules 35 or 36 of this order, the address of the party shall be his last known address or where the party is a body corporate, its registered or principal office for the purpose of the service on the party of any document not required to be served personally.

Address of Party

### ORDER 10—JOINDER OF CAUSES OF ACTION

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

All causes of action may be joined

2. A claim by the plaintiff jointly may be joined with claims by them or any of them separately against the same defendant.

Claim by joint plaintiffs

Counter  
Claim  
against  
plaintiff

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

(2) The provisions of sub-rule (1) of this rule shall apply in relation to a counter claim as if the counter claim were a separate action and as if the person making the counter claim were a plaintiff and the person against whom it is made, the defendant.

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

Court may  
order separate  
trials etc.

4.—(1) Where a claim in respect of two or more causes of action is included by a plaintiff in the same action or by a defendant in a counter claim or where two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of such causes of action or of parties as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

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

#### ORDER 11—CONSOLIDATION

Consolidation

1.—(1) The Court may order that the causes or matters be consolidated on such terms as it thinks just where two or more matters are pending in the Court and it appears to the Court or any of parties that the—

- (a) same question of law or fact arises in both or all of the suit;
- (b) rights to relief claimed is in respect of or arise out of the same or-similar transaction or series of transactions ; or
- (c) interest of justice of the trial so demands.

(2) The Court shall give such directions as may be necessary with respect to the hearing of the causes or matters that have been consolidated.

(3) An order to consolidate may be made where two or more causes or matters are pending between—

- (a) the same plaintiffs and the same defendants ;
- (b) the same plaintiffs and different defendants ; or
- (c) different plaintiffs and different defendants.

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

(5) An application for consolidation may be made by summons or notice for directions in chambers or it may be made in Court by motion on notice.

**ORDER 12—THE UNDEFENDED LIST**

1.—(1) Where an application is made to a Court for the issuance of a writ of summons in respect of a claim to recover a debt or liquidated money demand and the application is supported by an affidavit setting forth the grounds upon which the claim is based and stating that in the deponent's belief there is no defence to it, the Court shall, if satisfied that there is good ground for believing that there is no defence to it, enter the suit for hearing in what shall be called the "Undefended List".

Undefended list: affidavit

(2) In pursuance to sub-rule (1) of this rule, the Court shall mark the writ of summons accordingly and enter a date for hearing suitable to the circumstances of the particular case.

2. The plaintiff shall deliver as many copies of the affidavit referred to in rule 1 of this order as there are parties against whom relief is sought, to the Registrar for the issuance of the writ of summons and the Registrar shall annex the affidavit to each copy of the writ of summons for service.

Copies of affidavit to be served

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

Notice of intention to defend

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

(3) The provisions of order 13 rule 3 of these Rules shall apply where pleading is ordered.

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

Judgment in undefended suit

5. Nothing herein shall preclude the Court from hearing or requiring oral evidence, if it so thinks fit, at any stage of the proceedings under rule 4 of this order.

Oral evidence

ORDER 13 — PLEADINGS  
A — GENERAL

Service of statement of claim

1. Unless the Court gives leave to the contrary the plaintiff shall serve a statement of claim in the manner prescribed in order 3 rule 3 (1) of these Rules with copies of documentary evidence therein mentioned on the defendant, or, if there are two or more defendants, on each defendant, and shall do so either when the writ, or notice of the writ, is served on the defendant unless the Court or Judge in Chambers otherwise orders.

Service of statement of defence

2 —(1) Subject to sub -rule (2) of this rule, a defendant who enters an appearance and intends to defend the action shall, unless the Court gives leave to the contrary, serve—

- ( a ) a statement of defence which may include any preliminary objection he wishes to raise to the plaintiff's action ;
- ( b ) a list of witnesses to be called at the trial ;
- ( c ) a written statement on oath of the witnesses ;
- ( d ) copies of every document to be relied on at the trial ; and
- ( e ) a list of non-documentary exhibits at the time he files his memorandum of appearance.

(2) If a summons under order 12 rule 1 of these Rules is served on a defendant, sub-rule (1) of this rule shall not have effect in relation to him unless by the order of Court made on a motion on notice he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within fourteen days after the making of the order or within such other period as may be specified in the order.

Service of reply and defence to counter claim

3.—(1) A plaintiff on whom a defendant serves a defence shall serve a reply on that defendant within fourteen days of service of the defence on him if it is needed for compliance with rule 6 of this order and, if no reply is served, rule 10 of this order shall apply.

(2) A plaintiff on whom a defendant serves a counter -claim as in Form 14 in Appendix 6 to these Rules, shall, if he intends to defend it, serve on that defendant within fourteen days a defence to counter-claim.

(3) Where a plaintiff intends to file both a reply and a defence to counter - claim, he shall include them in the same document.

Civil Form 14

(4) A reply to any defence shall be served by the plaintiff before the expiration of fourteen days after the service on him of that defence, and a defence to a counter-claim shall be served by the plaintiff before the expiration of fourteen days after the service on him of the counter-claim to which it relates.

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

Pleading to state material facts and not evidence

(2) Any date, sum and number shall be expressed in figures but may also be expressed in words.

(3) Pleadings shall be signed by a legal practitioner or by the party if he sues or defends in person.

How facts are to be stated

(4) The facts shall be alleged positively, precisely and distinctly, and as briefly as is consistent with a clear statement.

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

Particulars to be given where necessary

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

Matters which must be specifically pleaded

(2) Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or the defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or the defendant shall be implied in his pleading.

(3) Without prejudice to sub-rule (1) of this rule, a defendant in an action for the recovery of land shall plead specifically every ground of defence on which he relies and a plea that he is in possession of the land by himself or his tenant is not sufficient.

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

Further and better statement or particulars

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

Letter for particulars

(3) Particulars of a claim shall not be ordered under this rule to be filed before defence unless the Court or Judge in Chambers is of the opinion that they are necessary or desirable to enable the defendant to plead or not for any other special reason to be so delivered.

Particulars before defence

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Order for particulars not a stay

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

(2) Except as provided in this rule, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings or give any extension of time:

Specific denial

9. An allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted, in the pleading of the opposite party, shall be taken to be admitted, except as against persons under legal disabilities.

Denial by joinder of issue

10.—(1) Where there is no reply to a defence, there shall be an implied joinder of issues on that defence.

(2) Subject to sub-rule (3) of this rule—

(a) there is at the close of the pleadings an implied joinder of issues on the pleadings last served ; or

(b) a party may in his pleadings expressly join issues on the last preceding pleading.

(3) There shall be no joinder of issues, implied or expressed, on a statement of claim or counter-claim.

(4) A joinder of issues operates as a denial of any material allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, where in the case of an express joinder of issue, an allegation is exempted from the joinder and is stated to be admitted, in which case, the express joinder of issue operates as a denial of every other allegation.

Pleading to be consistent

11. A pleading, not being a petition or summons, shall not, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Grounds of claim founded on separate fact to be separate stated

12.—(1) Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, the relief shall be stated, as far as may be, separately and distinctly.

The relief claimed to be stated

(2) The same rule shall apply where the defendant relies upon several distinct grounds of set-off or counter-claim founded upon separate and distinct facts.

(3) A statement of claim shall state specifically the relief, which the plaintiff claims, either simply or in the alternative, and may also ask for general

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relief and the same rule shall apply to any counter-claim made or relief claimed by the defendant in his defence.

13. It shall not be sufficient to deny generally the facts alleged by the statement of claim, but the defendant shall deal specifically with them, either admitting or denying the truth of each allegation of fact seriatim, as the truth or falsehood of each is within his knowledge, or as the case may be stating that he does not know whether any given allegation is true or otherwise.

Allegation shall not be made generally but specially

14. —(1)Where a party denies any allegation of fact he shall not do so evasively, but shall answer the point of substance.

Denial of fact must answer point of substance

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

15. The defence shall admit such material allegations in the statement of claim as the defendant knows to be true, or desires to be taken as established without proof.

Admissions

16. Where any defendant seeks to rely upon any fact as supporting a right of set-off or counter-claim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counter-claim as the case may be, and the particulars of such set-off or counter-claim and the written statements of witnesses shall be given.

Set off or counter plan to be pleaded

17. The defence of a defendant shall not debar him at the hearing from disproving any allegation of the plaintiff not admitted by the defence, or from giving evidence in support of a defence not expressly set up by the defence, except where the defence, in the opinion of the Court, ought to have been expressly set up by the defence, or is inconsistent with the statements thereof, or is, in the opinion of the Court, likely to take the plaintiff by surprise or to raise new issues not fairly arising out of the pleadings, as they stand, and such as the plaintiff ought not to be then called upon to meet.

Evidence in denial of allegation or support of defence not set up in pleadings

18. The Court, where it considers that the statement of claim and the defence filed in any suit insufficiently disclose and fix the real issues between the parties, may order further pleadings to be filed as it may deem necessary for the purpose of bringing the parties to an issue.

Further pleadings

19. Where the Court is of the opinion that any allegation of fact, denied or not admitted by any pleading, ought to have been admitted, the Court shall make such order as may be just with respect to costs.

Costs in certain cases

20. —(1)The Court may at any time, on the application of either party, strike out any pleading or part of it, on the grounds that it—

(a) discloses no cause of action, or no defence to the action, as the case may be ; or

Striking not pleading

(b) is embarrassing, scandalous or vexatious and an abuse of the process of the Court.

(2) The Court may -

(c) give leave to amend the pleading, or proceed to give Judgement for the plaintiff or the defendant, as the case may be; or

(d) make any other order, and upon such terms and conditions, as may seem just.

Denial of contract

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

Effect of document to be stated

22. Where the contents of a document is material, it shall be sufficient in any pleading to state the effect as briefly as possible, without setting out the whole or any part of it, unless the precise words of the document or any part of it is material.

Malice, knowledge or other condition of mind

23. Where it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege it as a fact without setting out the circumstances from which it is inferred.

Notice

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

Implied contract or relation

25.—(1) Where any contract or any relation between persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to—

(a) allege the contract or relation as a fact; and

(b) refer generally to the letters, conversations, or circumstances without setting them out in detail.

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

Presumption of law

26. A party need not allege in his pleading a matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied, such as consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.

27. A technical objection shall not be raised in any pleading on the ground of an alleged want of form.

Technical  
objection

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

Stated or  
settled account

29. Where in any action a defence of tender before action is pleaded, the defendant shall pay into Court in accordance with order 15 rule 1 of these Rules the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into Court has been made.

Defence of  
tender

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

Defence of  
set off

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

Judgment for  
balance

(2) The provisions of sub-rule (1) of this rule shall apply *mutatis mutandis* where the balance is in favour of the plaintiff.

32.—(1) The pleadings in an action is deemed to be closed—  
(a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counter-claim, after service of the defence to counter-claim; or  
(b) where neither a reply nor a defence to counter-claim is served, at the expiration of fourteen days after service of the defence.

Close of  
pleadings.

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

#### B—STATEMENT OF CLAIM

33.—(1) A statement of claim or counter-claim shall state specifically the relief claimed either simply or in the alternative, and it shall include any general or other relief, which may be given as a Judge may think just as if it had been asked for.

Statement of  
claim

(2) Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, the claims or causes shall be stated separately and distinctly.

(3) The provisions of sub-rule (2) shall apply where the defendant relies upon several distinct grounds of defence, set-off or counter-claim founded upon separate and distinct facts.

Claim beyond indorsement

34. Where a statement of claim is filed, the plaintiff may alter, modify or extend his claim without any amendment of the indorsement of the writ, endorsed on the writ without amending the writ, provided that the plaintiff may not completely change his cause of action.

Statement of defence

**C—STATEMENT OF DEFENCE AND COUNTER-CLAIM**

35. The statement of defence shall be —

- (a) a statement in summary form ; and
- (b) supported by copies of documentary evidence, list of witnesses and the written statements on oath of witnesses.

Evasive denial

36. Where a party in a pleading denies an allegation of fact in the previous pleading of the opposite party, he shall not do so evasively, but answer the point of substance and where an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

Denial generally

37.—(1) In an action for debt or liquidated money demand, a mere denial of the debt shall not be sufficient defence.

(2) In an action for money had and received, a defence in denial shall deny the receipt of the money or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff.

(3) In an action for goods sold and delivered, the defence shall 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 shall deny the matter of fact e.g. the drawing, making, endorsing, accepting, presenting or notice of dishonour of the bill or note.

Persons in representative capacity

38. Where either party wishes to deny the right of any other party to claim as an executor or a trustee, in any representative or other alleged capacity or the alleged constitution of any partnership firm, he shall deny the same specifically.

Pleading to damages

39. A denial or defence shall not be necessary as to damages claimed or the amount that is deemed to be in issue in any case, unless expressly admitted.

Set-off and counter claim

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

41. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person, he shall add to the title of his defence a further title similar to the title in a statement of claim setting out the names of all persons who, if such counter claim were to be enforced by cross -action, would be defendants to such cross action and shall deliver his defence to those that are parties to the action within the period which he is required to deliver it to the plaintiff.
42. Where a person in rule 41 of this order is not a party to the action he shall be summoned to appear by being served with a copy of the defence and counter-claim, and such service shall be regulated by the same rules as those governing the service of the originating process, and every defence and counter claim so served shall be endorsed as specified in Form 14 in the Schedule to these Rules with such modifications or variations as the circumstances may require.
43. A person not a party to the action, who is served with a defence and counter -claim according to the provisions of rule 42 of this order, shall appear in an action as if he had been served with an originating process to appear in the action.
44. A person not 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 the person.
45. Where in an action, a set off or counter -claim is established as a defence against the plaintiff's claim, the Judge may, if the balance is in favour of the defendant, give Judgement for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.
- 46.—(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 with other grounds of defence.
- (2) Where after a defence has been delivered along with a set-off or counter-claim, a basis for answer or ground of defence arises to such set-off or counter-claim respectively, it may be raised by the plaintiff in his reply in the case of a set-off or defence to counter-claim, either along or together with any other ground of reply or defence to counterclaim.
47. Where a ground of defence arises—
- (a) after the defendant has delivered a defence, or after the time limited for his doing so has expired the defendant may; or

Title of  
counter claimClaim against  
persons not  
partiesAppearance by  
added partiesReply of  
counter claimJudgement for  
balanceGrounds of  
defence after  
action broughtFurther  
defence or  
reply

(b) to any set-off or counter-claim arises after reply, or after the time limited for delivery of a reply has expired, the plaintiff may, within 8 days after such ground of defence has arisen or at any subsequent time by leave of a Judge deliver a further defence or further reply, as the case may be setting forth the same.

Concession to demand

48. Whenever any defendant in his defence or in any further defence pursuant to rules 46 or 47 of this order alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may concede to such defence, which concession may be as specified in Form 15 in the Schedule to these Rules with such modification as circumstances may require and may thereupon obtain Judgement up to the time of the pleading of such defence, unless the Judge either before or after the delivery of such concession otherwise orders.

Defense in originating summons.

49. A defendant to an originating summons shall file a counter-affidavit with all the exhibits he intends to rely upon and a written address within 30 days after service of the originating summons.

#### D—REPLY

Filing of reply

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

Reply to counter claim

51. Where a counter-claim is pleaded, the reply shall be called a defence to counter-claim and shall be subject to the rules applicable to defence in these Rules.

#### ORDER 14—DEFAULT OF PLEADINGS

Claim for debt or liquidated demand

1. Where the plaintiff's claim is only for a debt or liquidated demand and the defendant does not, within the time allowed by these Rules or as ordered by Court or Judge in Chambers for that purpose, file a defence, the plaintiff may at the expiration of the time, apply for final Judgement for the amount claimed, with costs.

Several defendants: default of one

2. Where in an action for a debt or liquidated demand there are several defendants, and one of them defaults as mentioned in rule 1 of this order the plaintiff may have final Judgement entered against the defendant so defaulting, and issue execution upon that Judgement without prejudice to his right to proceed with his action against the other defendant.

Damages and detention of goods

3. —(1) Where the Claimant's claim is only for pecuniary damages or for detention of goods with or without a claim for pecuniary damages, and the Defendant or all the Defendants, if more than one, make default as mentioned in Rule 1 of this Order, the Claimant may apply to a Judge for an interlocutory judgment against the Defendant or Defendants and the value of the goods and the damages, or the damages only as the case may be, shall be ascertained in any way which the judge may order.

(2) Where damages are to be ascertained and in any case where declaratory relief is sought, the Judge shall set down the matter for trial.

4. Where in an action under rule 3 of this order there are several defendants and one or more of them defaults as mentioned in rule 1 of this order, the plaintiff may apply to a Judge for an interlocutory Judgement against any of the defendants so defaulting and proceed with his action against the others ; in such case the value and amount of damages against the defendant in default shall be assessed at the trial of the action or issues against the other defendants unless the Judge shall otherwise order.

Default of one or more defendants

5. Where the defendant is in default as mentioned in rule 1 of this order in a claim for—

(a) debt or liquidated demand and also for pecuniary damages ; or

(b) for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand, the plaintiff may apply to a Judge for final Judgement for the debt or liquidated demand, and may also apply for interlocutory Judgement for the value of the goods and damages or the damages only as the case may be and proceed as mentioned in rules 4 and 5 of this order.

Debt or damages and detention of goods or damages

6. Where the plaintiff's claim is for—

(a) a debt or liquidated demand or for pecuniary damages only ;

(b) detention of goods with or without a claim for pecuniary damages; or

(c) any other matter,

and the defendant files a defence which purports to offer an answer to part only of the plaintiff's alleged cause of action the plaintiff may apply for Judgement, formal or interlocutory, as the case may be, for the part unanswered:

Provided that the unanswered part consists of a separate cause of action or is severable from the rest, as in the case of part of a debt or liquidated demand.

where a defence is filed to part of claim only.

And provided also that where there is a counter claim, execution of any such Judgement as above mentioned in respect of the plaintiff's claim shall not be issued without leave of the Judge.

7. In any other action other than those in the preceding rules of this order, where the defendant makes default in filing a defence, the plaintiff may apply to a Judge for Judgement, and the Judgement shall be given upon the statement of claim as the Judge shall consider the plaintiff to be entitled to.

Defendant in default

One of several defendants in default

8. Where in any action as mentioned in rule 7 of this order, there are several defendants, if one of such defendants is in default as aforesaid, the plaintiff may apply for Judgement against the defendant so defaulting, and proceed against the other defendants.

Default of third party

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

Setting aside judgement by default

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

Interpretation

11. In this order a defendant makes default in pleading where he fails to file and serve his statement of defence on the plaintiff within the time fixed for doing so by these Rules or by the Court.

ORDER 15—ADMISSIONS

Notice of admission of facts

1. A party to a proceeding may give notice by his pleading or otherwise in writing that he admits the truth of the whole or of part of the case of any other party and the Court may receive such notice in evidence as an admission without further proof.

Notice to admit document

2. —(1) Where a party wishes to challenge the authenticity of a document, he shall, not later than seven days of service of that document give notice that he does not admit the document and requires it to be proved at the trial.

(2) Where a party gives notice of non-admission and the document is proved at the trial, the cost of proving the document, which shall not be less than a sum of N5,000, shall be paid by the party who has challenged it unless at the trial or hearing the Judge certifies that there is reasonable grounds for not admitting the authenticity of the document.

Notice to admit facts

3.—(1) A party may after close of pleadings, by notice in writing, filed and served, require any other party to admit any specific fact mentioned in the notice, and the party so served shall not later than fourteen 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 otherwise orders.

(2) Any admission made pursuant to such notice shall be deemed to be made only for the purpose of that particular proceeding and not as an admission to be used against the party or any other party than the party giving the notice.

(3) Where there is a refusal or neglect to admit the same within 14 days after service of such notice or within such further time as may be allowed by the Judge, the cost of proving such fact which shall not be less than the sum of five thousand naira, shall be paid by the party so refusing or neglecting whatever the result of the proceedings; unless the Judge certifies that the refusal to admit was reasonable or unless the Judge at any time otherwise orders or directs.

4. The Judge may, on application at any stage of the proceedings where admissions of facts have been made either on the pleadings or otherwise, make such orders or give such Judgement as upon such admissions a party may be entitled to, without waiting for the determination of any other question between the parties.

Judgment or order upon admission of facts

5. Where a notice to admit or produce comprises any document that is not necessary, the costs occasioned thereby, which shall not be less than five thousand naira, shall be borne by the party giving such notice.

Costs where documents unnecessary

ORDER 16—PROCEEDINGS IN LIEU OF DEMURRER

1. There shall be no demurrer allowed.

Demurrer abolished

2. —(1) A party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial.

Points of law may be raised by pleading

(2) A point of law so raised may, by consent of the parties, or by order of the Court or a Judge in Chambers on the application of either party, be set down for hearing and disposed of at any time before the trial.

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

Dismissal of action

4. The Court or a Judge in Chambers may order any pleading to be struck out on the grounds that it discloses no cause of action or defence being shown by the pleadings to be frivolous or vexatious, and may also order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.

Striking out pleading where no reasonable cause of action is disclosed

5. An action or proceeding shall not be open to objection on the ground that a merely declaratory Judgement or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not.

Declaratory judgement

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Amending of original process and pleadings

1. A party may amend his originating process and pleadings at any time before Judgement but not more than three times.

Application

2. An application to amend may be made to a Judge and such application shall be supported by an affidavit exhibiting the proposed amendment with a written address and may be allowed upon such terms as to costs or otherwise as may be just.

Amendment of originating process: additional witnesses

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

Failure to amend after order

4.—(1) Where a party who has obtained an order to amend does not amend accordingly within the time limited for that purpose by the order, or where no time is limited, then within seven days from the date of the order, the party shall forfeit the right to amend or shall pay an additional fee as specified in Appendix 2 to these Rules for each day of default.

(2) Where the party pays an additional fee for the default, it shall file an application for regularization exhibiting evidence of payment of the penalty up to the date of filing the amendment.

Filling and service of amended process

5. Where any originating process or pleading is amended, a copy of the document as amended shall be filed in the Registry and additional copies served on all the parties to the action.

Date of order and amendment to be displayed

6. Where an indorsement or pleading is amended it shall be marked in the following manner—

“Amended the .....Day of..... Pursuant to order of (name of Judge) dated the.....day of.....”

Correction of clerical error or mistake

7. A Judge may at any time correct a judgment, order or proceeding of clerical mistake or error arising therein from any accidental slip or omission.

**ORDER 18—SETTLEMENT OUT OF COURT AND SETTLEMENT OF ISSUES**

Period for settlement

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

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

Formulation of issues for determination.

2.—(1) Where a matter is to proceed to trial, the parties shall file respectively, issues for determination at the trial and the issue may state any

question of law or admitted fact or question of disputed fact or question partly of law of the one part and partly of fact of the other.

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

3. Notwithstanding the provision of rule 2 of this order where a party believes that the issues for determination shall be determined by a hearing in open Court, the party may do so by application on notice stating the question or issue sought to be tried.

Party may apply for issue to be tried

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

Formulation of issues by court

ORDER 19—PROCEEDINGS AT TRIAL

1. Where a case has been listed for hearing and none of the parties appear, the Judge shall, unless he sees any good reason to the contrary, strike the case out.

Non-appearance of parties

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

Default of appearance by defendant at trail.

3. —(1) where a case is struck out under rule 1 of this order either party may apply that the case be relisted on such terms as the Judge may deem fit.

Default of appearance by plaintiff

(2) A Judgement obtained where any party does not appear at the trial may be set aside by the Judge upon such terms as he may deem fit.

(3) An application to re -list a case struck out or to set aside a Judgement shall be made within six days after the order or Judgement or such other longer period as the Judge may allow.

4. 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

provided that a party shall not be entitled to more than three adjournments during the course of trial.

5. The Registrar or other proper officer present at any trial or hearing shall make a note of the times at which the trial or hearing commences and terminates respectively and the time it actually occupies on each day it goes on for the purpose of the effective management of Court business.

Time of commencement and termination of trial

**B 316**

Order of proceedings

6. The order of proceedings at the trial of a case shall be as prescribed in rules 8 to 15 of this order.

Burden of proof by party to begin

7. The party on whom the burden of proof lies by the nature of the issue or question between the parties shall begin.

Documentary evidence

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

Additional witness

9.—(1) In exceptional circumstance, to be determined by the Judge, a party who desires to call any witness not being a witness whose deposition on oath accompanied his pleading shall apply to the Judge for leave to call such witness.

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

Close of case of parties

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

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

Exhibits during trial.

11.—(1) The Registrar shall take charge of every document or object put in as exhibit during the trial of an action and shall mark or label every exhibit with a letter indicating the party by whom the exhibit is put in ; or where more convenient the witness by whom the exhibit is proved and with a number, so that all the exhibits put in by a party or proved by a witness are numbered in one consecutive series.

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

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

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

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

Custody of exhibit after trial

12.—(1) An exhibit shall not be released until after the trial to any party.  
(2) Unless otherwise ordered by the Court, an exhibit shall not be released to the party who has put it in unless the period during which the notice of

appeal may be given has lapsed and only if the trial Judge or in his absence, another Judge grants leave to release such exhibit on being satisfied that the—

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

(b) release of the exhibit will not in any way prejudice any other party.

(3) An exhibit produced at the trial shall not be released by the Court after a notice of appeal has been filed, unless leave to release such exhibit is granted by the Court of Appeal.

13.—(1) A person may apply for and on payment of the prescribed fees, obtain an office copy of the list of exhibits.

Office copy of list of exhibition

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

14. A Judge may, on his own motion or upon an application by a party, strike out any proceeding for lack of diligent prosecution.

Diligent prosecution

ORDER 20—EVIDENCE GENERALLY

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

Facts how proved

(2) Any agreed document or other exhibits shall be tendered from the bar or by the party where he is not represented by a legal practitioner.

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

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

2.—(1) A Judge may, at or before the trial of an action, order or direct that evidence of any particular fact be given at the trial in such manner as may be specified by the order or direction.

Particulars of facts.

(2) The power conferred by sub-rule (1) of this rule extends to ordering or directing that evidence of any particular fact be given at the trial by—

(a) a statement on oath of information or belief;

(b) the production of documents or entries in books ;

(c) copies of documents or entries in books ; or

(d) the production of a specified newspaper which contains a statement of that fact, in the case of a fact which is or was a matter of common knowledge either generally or in a particular locality.

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Limitation on use of documentary evidence      3. A document, plan, photograph or model shall not be receivable in evidence at the trial of an action unless it has been filed along with the pleadings of the parties under these Rules, except the Judge in the interest of justice otherwise orders or directs.

Revocation and variation      4. Any order or direction under this order may on sufficient cause being shown, be revoked or varied by a subsequent order or direction of a Judge or given at or before the trial.

Certified true copies in admissible evidence      5. Certified true copies of a writ, process, record, pleading, and document filed in any Court shall be admissible in evidence in any matter to the same extent as the original would be admissible.

Examination of witnesses abroad      6. Where an order is made for the issue of a request to examine a witness in any foreign country with which a Convention in that behalf has been or shall be made, the following procedure shall be adopted—

(a) the party obtaining such order shall file in the registry an undertaking as specified in Form 17 in *Appendix 6* to these Rules which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used ;

(b) such undertaking shall be accompanied by—

Civil Form 17      (i) a request in Form 18 with such modifications or variations as may be directed in the order for its issuance, with a translation in the language of the country in which it is to be executed if not English,

Civil Form 18      (ii) a copy of the interrogatories, if any, to accompany the requests, with a translation, where necessary, and

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

Form of order for examination of witnesses aboard Civil form 19      7. Where an order is made for the examination of a witness or witnesses before the Nigerian Diplomatic Agent in any foreign country with which a Convention in that behalf has been made the order shall be as specified in Form 19 in *Appendix 6* to these Rules, the form may be modified or varied as may be necessary to meet the circumstances of the particular case in which it is used.

Order for attendance of person to produce document      8. The Judge may at any stage of any proceeding order the attendance of any person for the purpose of producing any writing or other document named in the order:

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

Disobedience to order for attendance      9. Any person willfully disobeying any order requiring his attendance for the purpose of being examined or producing any document shall be in contempt of Court, and may be dealt with accordingly,

10. Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to payment for expenses and loss of time occasioned by attendance and the party at whose instance such person is summoned shall make the payment.

Expenses of his persons ordered to attend

11.—(1) A person shall be in contempt of Court where he is duly summoned by subpoena to attend for examination but refuses to attend or where he attends, he refuses to

Contempt of Court by witness

(a) be sworn ;

(b) affirm ; or

(c) answer any lawful question.

(2) Where a person is in contempt, he shall be dealt with by the judge.

12. Where the examination of any witness before any examiner under Rule 7 of this order shall have been conducted, the original depositions authenticated by the signature of the examiner, shall be transmitted by the examiner to the Registry and filed.

Examination of witnesses

13. Except where by this order otherwise provided or directed by a Judge, a deposition shall not be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the Judge is satisfied that the deponent is dead, beyond the jurisdiction of the Court or unable to due to sickness or other infirmity to attend the hearing or trial, in any of which case the deposition certified under the hand of the person taking the examination shall be admissible in evidence, saving all just exception, without proof of the signature to such certificate.

Depositions not to be given in evidence without consent or by leave of a judge

14. An officer of the Court or any other person directed to examine any witness or person or any person nominated or appointed to examine any witness or person pursuant to the provisions of any Convention made or which may later be made with any foreign country, may administer oath.

Oaths

15. A party may, by subpoena *adtestificandum* or *ducestecum* request a subpoena for the attendance of any witness before an officer of the Court or any other person appointed to examine, for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial and any party or witness having made an affidavit to be used in any proceeding in the cause or matter shall be bound on being so subpoenaed to attend before such officer or person for cross-examination.

Attendance of witness under subpoena for examination or to produce docume

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

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

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(2) The Judge shall have control over the duration for cross - examination of witness in any matter.

Special directions as to taking of evidence

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

Evidence in proceedings subsequent to trial

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

Form of praecipe of a subpoena Civil Form 20

19.—(1) Where the Court intends to issue a subpoena, a praecipe for that purpose as specified in Form 20 in Appendix 6 to these Rules shall be filed.

(2) A subpoena shall not be issued unless all the Court fees have been paid including the fee for service and sufficient money on the prescribed scale is deposited to cover the witness's first day's attendance.

Form of subpoena: Civil form 21, 22 and 23

20. A subpoena shall be in either Form 21, 22 or 23 with such variations as circumstances may require.

Subpoena for attendance of witness in Chambers

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

Correction of error in Subpoena

22. In the interval between the issue and service of any subpoena the legal practitioner issuing it may correct any error in the names of any party or witness, and may 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.

Personal service of subpoena service and proof of service

23. A subpoena shall be served personally unless a Judge has ordered substituted service in a case where a person persistently evades service.

24. The provisions of order 6 of these Rules shall so far as possible apply to service and proof of service of a subpoena.

Duration of subpoena

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

Action to perpetuate testimony

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

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|--|---|
| <p>27. A witness shall not be examined to perpetuate his testimony unless an action has been commenced for that purpose.</p>   | <p>Examination of witness to perpetuate testimony</p>       |
| <p>28. An action to perpetuate the testimony of a witness shall not be set down for trial.</p>   | <p>Such action not to be set down for trial</p>             |
| <p>29. Where a party to a suit desires any other party to the suit to produce in Court at the trial, a document or any other thing, which he believes to be in the possession or power of that other party, the party desirous of the production shall give "Notice to Produce" to that other party.</p>   | <p>Notice to produce to other party</p>                     |
| <p>30. A notice to produce may be included in the pleadings of the party seeking the production of the document or thing, or be in a separate notice delivered to the other party or his counsel.</p>  | <p>Notice to produce in pleadings or in separate notice</p> |
| <p>31. A notice to produce shall specify sufficient particulars so as to enable the other party identify the exact document or thing required.</p>   | <p>Sufficient particulars</p>                               |
| <p>32. The fees for a notice to produce shall be paid as prescribed by these Rules and where more than one is included in the pleadings payment shall be made for only one notice.</p>   | <p>Fees</p>   |
| <p>33. Where a party to whom notice to produce is given, fails to produce the document or thing required to be produced, the party that gave the notice, shall be at liberty to lead secondary evidence of the matter contained in the document or thing that was not produced.</p>  | <p>Failure to produce document</p>                          |
| <p>34. On the application of any party to a legal proceeding, the Court may order that such party be at liberty to inspect and take copies of any entry in a banker's book for any of the purpose of such proceeding.</p>  | <p>Court may order inspection etc</p>                       |
| <p>35. An order under rule 34 of this order may be made either with or without summoning the bank or any other party and shall be served on the bank three days before the same is to be obeyed, unless the Court otherwise directs.</p>   | <p>Order made with or without summoning party</p>           |
| <p>36. The costs of any such application, and the costs of anything done or to be done under an order of the Court made under or for the purposes of the foregoing rule, or under the provisions of section 97 of the Evidence Act relating to the proof of an entry in a banker's book, shall be at the discretion of the Court, which may order the same or any part of it to be paid to any party by the bank, where the same have been occasioned by any default or delay on the part of the bank.</p> | <p>Coast</p>  |
| <p>37. The order against a bank in rule 36 of this order may be enforced as if the bank were a party to the cause or matter.</p>   | <p>Enforcement of order against bank</p>                    |

Expressions relating to banker's book 38. An expression relating to a banker's book includes a ledger, daybook, cashbook, an account book and any other book used in the ordinary business of the bank.

ORDER 21—NON-SUIT

Power of Court to non suit 1.—(1) The Judge may on his own motion or upon application non-suit the plaintiff where satisfactory evidence is not given entitling the plaintiff or the defendant to the judgment of the Court:

(2) A party or his counsel may make submissions on the propriety or otherwise of making the order referred to in sub-rule (1) of this rule.

ORDER 22—FILING OF WRITTEN ADDRESSES

Power to order for written addresses

1. The Court shall have the power to—

(a) order for the filing of written addresses in any case ; and

(b) dispense with the filing of written addresses where the interest of justice so demands.

Court to order written address

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

Written address by the other party

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

Written address by party beginning

4. The party who files the first address shall—

(a) have a right of reply on points of law only ; and

(b) shall file the reply within seven days after service of the other party's address.

Right of reply

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

(a) the claim or application on which the address is based ;

(b) a brief statement of the facts with reference to the exhibit attached to the application or tendered at the trial ;

(c) the issues arising from the evidence for determination ; and

(d) a succinct statement or argument on each issue incorporating the purport of the authorities referred to with full citation of each authority.

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

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

Content of  
written address

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

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

7. An oral argument of not more than twenty minutes shall be allowed for each party.

Oral argument

8. Where a final written address or written address in respect of any application under these rules has been filed and it comes up for adoption and either of the parties is absent, the Court shall either on its own motion or upon oral application by the counsel for the party present, order that the address be deemed adopted if it is satisfied that the parties had notice of the date for adoption.

Summary of  
address

9. The Court shall be satisfied that, that party had notice of the date for adoption if on the previous date last given the party or his counsel was present in Court.

Address to be  
deemed  
adopted where  
party absent

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

Copies of  
written address

#### ORDER 23—JUDGEMENT, ENTRY OF JUDGEMENT

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

Delivery of  
judgment

2. Where a Judge has written and signed a Judgement pursuant to rule 1 of this order but was unable to deliver it due to ill health, death or any other reason, the judgement may be read by another Judge of the Court as the Chief Judge may direct.

Judge unable  
to deliver  
judgement

3. Where any Judgement is pronounced by a Judge, the Judgement shall be dated as of the day on which the Judgement is pronounced and shall take effect from that date unless the Judge orders otherwise.

Date of  
judgement  
pronounced in  
court

4.—(1) Where any Judgement is directed to be entered by an order made on application for Judgement, the Judgement 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

(2) The order referred to in sub-rule (1) of this rule may direct that the Judgement shall not be entered until a given date, in which case it shall take effect from that date.

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Judge may direct time for payment or performance and interest

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

Payment by installment

6.—(1) Where any Judgement or order directs the payment of money, the Court may, upon sufficient reason, order that the amount shall be paid by installments with or without interest.

(2) The order may be made at the time of giving Judgement or at anytime afterwards and may be rescinded upon sufficient cause at any time.

Time to be stated for doing any act

7. A Judgement 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 Judgement or order, within which the act is to be done.

Judgement by consent where defendant appears by a legal practitioner

8. In any cause or matter where the defendant has appeared by a legal practitioner, an order for entering Judgement shall not be made by consent unless the consent of the defendant is given in writing and counter-signed by the defendant's legal practitioner.

Judgement by consent where defendant has no legal practitioner

9. Where the defendant has no legal practitioner, the order referred to in rule 8 of this order shall not be made unless the defendant gives consent in person in open Court.

Notice when judgement reserved

10. Where the Court reserves Judgement at the hearing, parties to the suit shall be served with notice to attend and hear Judgement, unless the Court at the hearing states the day on which Judgement will be delivered, in which case there shall be no further notice.

When parties deemed to have had notice

11. Any party shall be deemed to have notice of the decision or Judgement if pronounced at the hearing, and any party served with notice to attend and hear Judgement shall be deemed to have notice of the Judgement when pronounced.

**ORDER 24—DRAWING UP OF ORDERS**

Signing of orders

1. An order shall be signed by the Judge who delivered the decision but where the Judge dies, retires, is elevated or for any other reason is unable to sign the drawn up order, the order shall be signed by the Chief Judge or the Judge seized of the matter.

Date of order when drawn

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

3. Where an order has been made and it does not contain any special term or direction, but simply enlarging time for taking any proceeding or doing any act or giving leave for—

What orders 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) 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.

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

Form of order

ORDER 25—COSTS

1. —(1) The Court may, if it thinks it just to do so, order the plaintiff or the defendant to give such security for the plaintiff's or defendant's costs of the action or other proceedings, where on the application of the plaintiff or defendant, as the case may be, it appears to the Court either at commencement or at any stage of the proceedings—

Security for costs by plaintiff or defendant.

(a) that the plaintiff or defendant is ordinarily resident out of jurisdiction ;

(b) that the plaintiff not being a plaintiff who is suing in a representative capacity is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so ;

(c) subject to sub-rule (2) of this rule, that the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated ; or

(d) that the plaintiff or the defendant has changed his address during the course of the proceedings with a view to evading the consequence of the litigation.

(2) Where the Court is convinced that the Plaintiff's failure to state his address or a mis-statement was made innocently and without intention to deceive, the plaintiff shall not give security by reason of sub-rule (1) (c) of this rule.

(3) The reference to a plaintiff and a defendant in rule 1 of this order shall be construed as references to the person, howsoever described on the record, who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counter-claim.

2.—(1) In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he

Principle to be observed in fixing costs

has been unnecessarily put in the proceedings, as well as compensated for his time and effort in coming to Court and the Judge may take into account all the circumstances of the case.

(2) Where the Court orders for cost to be paid, the judge shall summarily determine the amount of such costs, if practicable, at the time of delivering the Judgement or making the order.

(3) Where the Judge deems it to be impracticable to determine summarily the amount of any cost, which he has ordered to be paid, the Judge shall refer any question relating to it to a taxing officer for taxation.

Security for costs

3. In any cause or matter in which security for costs is required, the security shall be of such amount and be given at such time and in such manner and form as the Judge shall direct.

Security for costs by plaintiff temporarily within jurisdiction

4. A plaintiff ordinarily resident out of jurisdiction may be ordered to give security for cost though he may be temporarily resident within the jurisdiction.

Action founded on Judgement or bill of exchange

5. In an action brought by a person resident out of the jurisdiction where the plaintiffs claim is founded on Judgement or order or on a bill of exchange or other negotiable instrument the power to require the plaintiff to give security for cost shall be exercised at the Judges discretion.

Bond as security for cost

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.

Costs at discretion of Court

7. Subject to the provisions of any applicable law and these Rules, the cost of and incidental to any proceeding in the Court, including the administration of estate and trusts, shall be at the discretion of the Judge, and the Judge shall have full power to determine by whom and to what extent the costs are to be paid.

Costs out of fund or property

8. The Judge may order any costs to be paid-out of any fund or property to which a suit or proceedings relate.

Stay of proceedings until costs paid

9. Where the Judge orders cost to be paid or security to be given for cost by any party, the Judge may order any proceeding by or on behalf of that party in the same suit or proceeding or connected with it to be stayed until the cost is paid or security given accordingly and such order shall not supersede the use of any other lawful method of enforcing payment.

Stage of proceeding at which costs to be dealt with

10. —(1)The issue as to cost may be dealt with by the Judge at any stage of proceedings.

(2) Cost where ordered becomes payable immediately and shall be paid within seven 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 cost of and occasioned by any application to extend the time fixed by the rules or any direction or order thereunder for delivering or filing any document or doing other act, including the cost of any order made on the application shall be borne by the party making the application unless the Judge otherwise orders.

When costs to follow the event

12. The Judge in exercising his discretion as to cost shall take into account any offer or contribution made by any of the parties and any payment into Court and the amount of such payment.

Matters to be taken into account in exercising discretion

13.—(1) Where in any cause or matter anything is done or an omission is made improperly or unnecessarily by or on behalf of a party, the Judge may direct that any cost to that party in respect of it shall not be allowed and any cost occasioned by it to any other party shall be paid by him to them.

Cost arising from misconduct of neglect

(2) Without prejudice to the generality of sub-rule (1) of this rule, the Judge shall, for the purpose of that sub-rule, have regard in particular to the following matters

(a) the omission to do anything, the doing of which would have been calculated to save cost;

(b) the doing of anything calculated to occasion or in a manner or at a time calculated to occasion unnecessary cost; and

(c) any unnecessary delay in the proceeding.

(3) The Judge may instead of giving direction under sub-rule (1) of this rule in relation to anything done or any omission made, direct the taxing officer to inquire into it and if it appears to him that such direction as aforesaid should have been given in relation to it, to act as if the appropriate direction had been given.

14.—(1) Subject to the following provisions of this rule, where in any proceeding cost is incurred improperly or without reasonable cause or is wasted by undue delay or by any other misconduct or default, the Judge may make against any legal practitioner whom the Judge considers to be responsible whether personally or through a servant or agent, an order—

Personal liability of legal practitioner for costs.

(a) disallowing the cost as between the legal practitioner and the legal practitioner's client and directing the legal practitioner to pay to the client cost which the client has been ordered to pay to other parties to the proceeding; or

(c) directing the legal practitioner personally to indemnify such other parties against cost payable by them.

(2) The provisions of rule 13 sub-rule (1) of this order shall apply where any proceeding in Court cannot conveniently proceed, fail or is 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 or 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) Where, on the taxation of cost to be paid out of a fund, one-sixth or more of the amount of the bill for the cost is taxed off, the legal practitioner whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.

(4) The Judge may direct that notice of any proceeding or order against a legal practitioner under this rule shall be given to the legal practitioner's client in such manner as may be specified in the direction.

ORDER 26 —INTERLOCUTORY APPLICATIONS  
A —MOTIONS GENERALLY

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

Application by motion 2.—(1) Where by these Rules an application is authorized to be made to the Court or to a Judge in Chambers, the application shall be made by motion which may set out the grounds on which the party intends to rely.

Motion list (2) The Registrar shall make up, for each day on which there is a motion to be heard, a motion list, on which he shall enter the names of each cause in which a motion is made, the party moving and the terms of the order sought by him.

Affidavit and written address 3. The party moving a motion shall support the motion with an affidavit setting out the facts on which the party intends to rely and the motion shall be filed along with a written address.

Affidavit to be served with motion and written address 4. A party on whom a motion has been served in accordance with the rules of this order and who intends to reply, may do so by filing his counter affidavit along with a written address not later than 7 days from the date of service on him;

Counter affidavit to motion 5.—(1) A motion shall not be made without previous notice to any party affected by it.

Motion to be on notice except in emergency (2) Notwithstanding the provisions of sub-rule (1) of this rule, the Court may, if satisfied that to delay the motion till after notice is given to any party affected would entail irreparable damage or serious mischief to the party

moving, make an order *ex parte* upon such terms as to costs or otherwise and subject to rule 12 of this order, and upon such undertaking, as the justice of the case demands.

(3) An applicant shall not make an application for an injunction *ex parte* unless he files with it a motion on notice in respect of the application.

Motion  
*ex parte* for  
induction shall  
be  
accompanied  
by motion  
on notice

## B—EX-PARTE MOTIONS

6.—(1) A motion *ex parte* shall be supported by an affidavit which in addition to the requirements in rule 3 of this Order, shall state sufficient facts why a delay in granting the Order sought may lead to irreparable damage, loss, injury or serious mischief to the party moving.

Affidavit in  
support of  
*ex parte*  
motion

(2) In an application for Anton Piller Order, the applicant shall in addition show that—

- (a) he has a strong *prima facie* case ;
- (b) he may suffer serious damages ; and
- (c) the defendant has an incriminating document and there is a real possibility that the defendant may destroy the material before the discovery process.

7. Any party moving the Court *ex parte* may support his motion by an argument addressed to the Court on the facts entered into evidence, and any other party to the suit or proceeding, although present, other than the party moving, shall not be entitled to be heard.

Arguments on  
motion

8. Where a motion is made *ex parte*, the Court may—

- (a) make or refuse to make the order sought ;
- (b) direct the motion to be made on notice to the party to be affected ; or
- (c) grant an order to show cause why the order sought should not be made.

Orders on  
*ex parte*  
motions

9.—(1) Where an order is made on a motion *ex parte*, any person affected by it may, within 7 days after service of it or within such further time as the Court may allow, apply to the Court by motion to vary or discharge it.

Court may  
vary or  
discha  
order

(2) The Court may, on notice to the party obtaining the order—

- (a) refuse to vary or discharge it ; or
- (b) vary or discharge it with or without imposing any term as to cost or security, or otherwise, as seems just.

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Duration of  
*ex parte* order

10.—(1) An Order made on motion *ex parte* may not, unless the Court otherwise directs in the interest of justice, last for—

(a) more than 14 days after the party or person affected by the Order has applied for the Order to be varied or discharged : or

(b) another 14 days after application to vary or discharge it has been argued.

(2) An application to vary or discharge an order made *ex parte* may be made by the party or person affected within 14 days after service and shall not last for more than 14 days after the application has been argued unless the Court otherwise directs.

(3) Where a motion to vary or discharge an *ex parte* order is not taken within 14 days of its being filed, the *ex parte* order shall lapse unless the court otherwise directs in the interest of justice.

## C —ORDER TO SHOW CAUSE

Return day to  
be specified

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

Counter  
evidence

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

Further service  
in certain cases

13. Where the person served does not appear on the return day and it appears to the Court that the service on any proper party has not been duly effected, the Court may—

(a) enlarge the time ; and

(b) direct further service or make such further order as seems just.

Appearance or  
proof of  
service

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

General  
powers as to  
order

15. The Court may either discharge the order or make the same absolute, adjourn the consideration, or permit further evidence to be produced in support of or against the order, and may modify the terms of the order so as to meet the merits of the case.

## D —NOTICE OF MOTION

Notice of  
motion

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

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

Services or notice.

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

Service on solicitor.

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

Copy of affidavit to be served with notice.

20. Where at the hearing of any motion, the Court is of the opinion that any person, to whom notice has not been given, ought to have had such notice, the Court may adjourn the hearing and direct that notice be served on the affected person upon such terms as the court may deem fit.

Order of service.

E—EVIDENCE IN INTERLOCUTORY PROCEEDINGS

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

Evidence in addition to or in lieu of affidavits.

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

23. Such notice as the Court in each case according to the circumstances, considers reasonable, shall be given to the person summoned, and to such person (parties to the cause or matter or otherwise interested) as the Court considers is entitled to inspect the document to be produced, or to examine the person summoned, or to be present at his examination, as the case may be.

Notice to parties and interested parties.

24. Upon the hearing of any motion the Court may, on such terms as to cost and adjournment as it may deem fit, allow any additional affidavit to be used, after the affidavit has been duly filed and served on the opposing party.

Affidavit not filled with motion paper.

ORDER 27 — AFFIDAVITS

1. Upon any motion, petition, summons or other application, evidence may be given by affidavit, but the Judge may on his own motion or on application, order the attendance for cross-examination of the deponent and where, after such an order has been made the person in question does not attend, the person's affidavit shall not be used as evidence except by special leave.

Evidence on motion etc.

2. An affidavit shall bear the title in the proceedings in which it is sworn but in any case in which there is more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively and that there are other plaintiffs or defendants, as the case may be.

Title of affidavit.

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Use of defective affidavit

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

Special time for filing affidavits

4.—(1) Where a special time is limited for filing an affidavit, an affidavit filed after that time, shall not be used, unless by leave of the Judge.

(2) An affidavit shall not be filed after the hearing of an application has begun except by leave of the Court.

Affidavit in support of ex parte application

5. Except by leave of the Judge, an order made *ex parte* in Court founded on any affidavit shall not be of any force unless the affidavit on which the application was based was made before the order was applied for, and produced or filed at the time of making the application.

Notice of intention to sue affidavit

6. The party intending to use an affidavit previously filed in a proceeding in support of any application by him shall give notice to the other party.

Alterations in accounts to be initialled

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

Exhibit

8. Any account, extract from a register, particulars of any creditor debt and any other document referred to by affidavit, shall not be *annexed* to the affidavit or referred to as annexed but shall be referred to as an *exhibit*.

Certificate of exhibit

9. A certificate on any 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 proceedings.

Affidavit taken in common wealth country admissible without proof of seal etc.

10. A document purporting to have affixed or impressed on it, or subscribed to it the seal or signature of a Court, Judge, notary public or person having authority to administer oath in any part of the Commonwealth outside Nigeria in testimony of an affidavit being taken before it or such person in that part shall be admitted in evidence without proof of the seal or signature of that Court, Judge, notary public or person.

**ORDER 28 —INTERLOCUTORY INJUNCTIONS AND INTERIM PRESERVATION OF PROPERTY**

Application for injunction

1.—(1) A party to an action may apply for the grant of an injunction before, during or after the trial of the action, whether or not a claim for injunction was included in that party's action.

(2) Where the applicant is the plaintiff and the case is urgent the application may be made *ex parte* on affidavit, except as aforesaid, the application shall be made by motion on notice or summons.

(3) The plaintiff may not make the application referred to in this rule before the issue of the process by which the action is to be begun, except where the case is urgent, and in that case the injunction applied for may be granted on terms providing for the issuance of the process and service of the process with the *ex parte* order obtained on the defendant and such other terms, as the Court thinks fit.

2.—(1) On the application of any party to an action, the Court may make an order for the detention, custody or preservation of any property, which is the subject matter of the action or as to which any question may arise or for the inspection of such property in the possession of a party to the action.

Determination  
preservation  
etc of subject  
matter of  
action

(2) For the purpose of enabling any order under sub-rule (1) of this rule to be carried out, the Court may, by order, authorise any person to enter upon any land or building in the possession of a party to the action.

(3) Where the right of any party to a specific fund is in dispute in an action, the Court may on the application of the party, order the fund to be paid into Court or otherwise secured.

(4) An order under this rule may be made on such terms, as the Court may think just.

(5) An application for an order under this rule shall be made by summon or motion on notice.

(6) Unless the Court otherwise directs, an application by the defendant for an order under this rule may not be made before he enters an appearance.

3.—(1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any action, the Court may, on the application of a party and on such terms as it thinks just, by order—

Power to order  
samples to be  
taken

(a) authorize or require any sample to be taken of any property which is the subject matter of the action or as to which any question may arise ;

(b) any observation to be made on the property ; or

(c) any experiment to be tried on or with the property.

(2) For the purpose of enabling any order under sub-rule (1) of this rule to be carried out, the Court may by the order authorise any person to enter any land or building in the possession of any party.

(3) Rule 2 (5) and (6) of this order shall apply in relation to an application for an order under this rule.

4.—(1) The Court may, on the application of any party, make an order for the sale by such person, in such manner and on such terms as may be specified in the order, of any property other than land which is the subject matter of the action or as to which any question arises and which is of a

Sale of  
perishable  
property etc.

perishable nature or likely to deteriorate if kept or which for any other reason it is desirable to sell forthwith and the proceed paid to Court.

(2) Rule 2 (5) and (6) of this order shall apply in relation to an application for an order under this rule.

Order for early trial

5.—(1) Where on the hearing of an application made before the trial of a cause or matter, for an injunction or appointment of a receiver or an order under rules 2, 3, or 4 of this order, or it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merit thereof for the purposes of the application, the Court may make an order accordingly or may make such order with regard to the period before trial as the justice of the case requires.

(2) Where the Court makes an order for early trial, it shall by the order determine the place and mode of the trial.

Recovery of personal property subject to lien etc.

6. Where the plaintiff or the defendant through a counter-claim, claims the recovery of a specific property other than land and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears, from the pleadings or by affidavit or otherwise to its satisfaction, may order that—

(a) the party seeking to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the security is claimed: and

(b) such further sum if any for interest and cost as the Court may direct and that, upon the payment being made, the property claimed be given up to the party claiming it, but subject to the provisions of any law relating to exchange control.

Directions

7. Where an application is made under any of the foregoing provisions of this order, the Court may give directions as to the further proceedings in the action.

Allowance of income of property pendent lite

8.—(1) Where any real or personal property forms the subject matter of any proceeding, and the Court is satisfied that it will be more than sufficient to answer the claim for which provision ought to be made in the proceedings, the Court may—

(a) at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest; or

(b) direct that any part of the personal property be transferred or delivered to any or all such parties.

ORDER 29 — DISPUTING THE COURT'S JURISDICTION

- 1. Where a defendant wishes to —
  - (a) dispute the Court's jurisdiction to try the claim ; or
  - (b) argue that the Court should not exercise its jurisdiction,

Disputing the Court's jurisdiction

he may apply to the Court for an order declaring that it lacks the jurisdiction or should not exercise any jurisdiction which it may have, and the Court may take the application with the Plaintiff's substantive suit in so far as the substantive suit does not involve the taking of oral evidence.

2.A defendant making the application shall file along with the application a memorandum of appearance stating that he is appearing conditionally.

Defendant disputing must file memorandum of appearance

3. A defendant who files a memorandum of appearance shall not lose any right that he may have to dispute the court's jurisdiction.

Defendant not to lose right to dispute jurisdiction

4. An application under this order shall be—

- (a) made within 30 days after service on the defendant of the originating process ; and
- (b) supported by an affidavit and a written address where it is not based on ground of law alone.

Time and mode of application

5. Where the defendant files an acknowledgment of service and does not make such application within the period specified in rule 4 of this order, the application can only be taken at the conclusion of the trial.

Failure to apply within time

ORDER 30 — INTERIM ATTACHMENT OF PROPERTY

1. Where—

- (a) the defendant in any suit with intent to obstruct or delay the execution of any law that may be passed against him, is about to dispose of his property, or any part of his property, or remove the property from jurisdiction ; or
- (b) in any suit founded on contract or for detinue in which the cause of action arose within the jurisdiction the defendant is—
  - (i) absent from the jurisdiction, or there is a probable cause to believe that he is concealing himself to evade service, and
  - (ii) beneficially entitled to any property in the jurisdiction in the custody or under the control of any other person in the jurisdiction, or such person is indebted to the defendant,

Interim attachment of property where ordered

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the plaintiff may apply to the Court either at the time of the institution of the suit or at any time thereafter until final Judgement, to call upon the defendant to furnish sufficient security to fulfill any law that may be made against him in the suit, and on his failing to give the security, or pending the giving of such security, to direct that any property movable or immovable belonging to the defendant shall be attached until the further order of the Court.

Application for attachment

2.—(1) The application for attachment shall contain a specification of the property required to be attached and the estimated value so far as the plaintiff can reasonably ascertain the same.

(2) The plaintiff shall, at the time of making the application referred to in sub-rule (1) of this rule, declare that to the best of his knowledge and belief, the defendant is about to dispose of or remove his property with the intent referred to in rule 1 (a) of this order.

Form of order

3.—(1) Where the Court after conducting investigations as it may consider necessary is satisfied that the defendant is about to dispose of or remove his property with intent to obstruct or delay the execution of the law, it shall be lawful for the Court to order the defendant, within a time to be fixed by the Court, to—

(a) furnish security in such sum as may be specified in the order ;

(b) produce and place at the disposal of the Court when required the property, value of the property or a portion of the property as may be sufficient to fulfil the law; or

(c) appear and show cause why he should not furnish security.

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

Where defendant fails to show causes or give security

4.—(1) Where the defendant fails to show such cause, or to furnish the required security within the time fixed by the Court, the Court may direct that the property specified in the application if not already attached, or such portion as shall be sufficient to fulfill the law, shall be attached until further order.

(2) Where the defendant shows such cause, or furnishes the required security, and the property specified in the application or any portion of it shall have been attached, the Court shall order the attachment to be withdrawn.

Rights of third parties not to be affected

5. The attachment shall not affect the right of any person not a party to the suit, and in the event of any claim being preferred to the property attached before Judgement, the claim shall be investigated in the manner prescribed for the investigation of any claim to property attached in execution of a law.

Removal of attachment

6. In any case of attachment before Judgement, the Court shall at any time remove the attachment, on the defendant furnishing security as required

in these rules with security for the cost of the attachment, or upon an order for a non -suit or striking out the matter.

7.—(1) The application may be made to the Court in the judicial division where the defendant resides or where it is urgent, where the property proposed to be attached is situate and the Court may make the order as the Court shall deem just.

In which court proceeding may be taken

(2) Where a different Court from that in which the suit is pending issues an order for the attachment of property, the Court that issues the order shall, on the request of either of the parties —

(a) transmit the application and evidence to the Court in which the suit is pending; and

(b) retain the property under attachment or take sufficient security for its value.

(3) The Court in which the suit is pending shall inquire to and proceed with the application in accordance with the foregoing provisions, in such manner as shall seem just.

ORDER 31—NEEDLESS DETENTION OF CHATTELS AND REPARATION FOR IT

1. Where a Court on an application of a party, makes an order to hold to bail, of sale, of injunction, of attachment or any warrant to stop the clearance of, or to arrest any chattel upon any condition and—

Damages for needless detention etc.

(a) it later appears to the Court that an order made by it was applied for on insufficient grounds ; or

(b) the suit in which the application was made is struck out or dismissed or Judgement is given against the applicant by default or otherwise and it appears to the Court that there was no probable ground for instituting such a suit, the Court may on application of the defendant made at any time before the expiration of 3 months from the termination of the suit, award the defendant an amount of compensation not more than what could be awarded for damages in any suit.

ORDER 32—STAY OF PROCEEDINGS OR EXECUTION PENDING APPEAL

1. Where any application is made to the Court for a stay of execution, or of a proceeding under any Judgement or decision appealed from, the application shall be made by notice of motion supported by affidavit setting forth the grounds upon which a stay of execution or of a proceeding is sought and a written address.

Stay for proceeding or execution pending appeal

2. The Court shall have the power to make or refuse an order for stay of execution or of a proceeding subject to such condition as shall appear just including the deposit in Court of any money adjudged due to any party in the Judgement appealed to or from.

Court may grant or refuse order for stay

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Compilation of records

3.—(1) An applicant for stay of proceeding or execution of a Judgement shall cause to be compiled the record of appeal within 90 days from the date of filing a notice of appeal.

(2) Where the record referred to in sub-rule 1 of this rule is not compiled, the respondent may apply to strike out the application or discharge the order if already granted.

Application for stay to be treated as urgent

4.—(1) An application for stay of proceeding or execution shall be regarded as an urgent matter.

(2) Where the Court has refused an application for stay, no application for stay of proceedings or execution shall be made to it on the same matter.

Formal order to be drawn up.

5. Where any application is made to the Court under this order, a formal order shall be drawn up embodying the terms of the decision of the Court and bearing the date upon which the order is made.

**ORDER 33—INTERPLEADER PROCEEDINGS**

Entitlement to relief by way of interpleader

1.—(1) Where a—

(a) person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be sued for or in respect of that debt or money or the goods or chattels by two or more persons making adverse claims to it; or

(b) claim is made to any money, goods or chattels taken or intended to be taken by a sheriff in execution under any process, or to the proceed or value of any of such goods or chattels by a person other than the person against whom the process is issued,

the person under liability as mentioned in sub -rule (1) (a) of this rule or, as the case may be, the sheriff, may apply to the Court for relief by way of interpleader.

(2) Any reference in this order to sheriff shall be construed as including reference to any other officer charged with the execution of process by or under the authority of the Court.

Claims to goods etc. taken in execution

2.—(1) A person making a claim to or in respect of any money, taken in goods, or chattels taken or intended to be taken under the process of the Court or to the proceeds or value of any of such goods or chattels, shall give notice of his claim to the sheriff charged with the execution of the process and shall include in his notice a statement of his address, and that address shall be his address for service.

(2) On receipt of a claim made under this rule, the sheriff shall give notice to the execution creditor and the execution creditor shall, within 7 days after receiving the notice, give notice to the sheriff informing him whether he admits or disputes the claim.

(3) An execution creditor who gives notice in accordance with this provision admitting the claim shall only be liable to the sheriff or any fees and expenses incurred by the sheriff before the receipt of that notice.

(4) Where —

(a) the sheriff receives a notice from an execution creditor under sub-rule 2 of this rule, disputing a claim, or the execution creditor fails, within the period mentioned in sub rule 2 of this rule to give the required notice ; and

(b) the claim made under this rule is not withdrawn, the sheriff may apply to the Court under this order.

(5) A sheriff who receives a notice from an execution creditor under sub rule (2) of this rule admitting a claim made under this provision, shall withdraw from possession of the money, goods or chattels claimed and may apply to the Court for relief under this provision; for an order restraining the bringing of an action against him for or in respect of his having taken possession of that money or the goods or chattels.

3.—(1) An application for relief under this order shall be made by originating summons unless made in a pending action in which case it shall be made by motion in the action.

Mode of application

(2) Where the applicant is a sheriff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2 (5) of this order, the summons shall be served on any person who made a claim under rule 2 (1) of this order, to or in respect of that money, or those goods or chattels, and that person may attend the hearing of the application.

(3) An appearance need not be entered to an originating summons under this provision.

4. The applicant shall satisfy the Court or a Judge in chambers by affidavit or otherwise that the applicant

Matters to be proved

(a) claims no interest in the subject matter in dispute, other than for charges or costs; and

(b) did 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 Court or a Judge in chambers may direct.

5. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.

When application to be made by defendant

6. Where the application is made by a defendant in an action, the Court or a Judge in chambers may stay any further proceeding in the action.

Stay of action

Order upon summons 7. Where the claimant appears in pursuance of the summons, the Court or a Judge in chambers 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 plaintiff, and which the defendant.

Failure of claimant to appear: or neglect to obey summons 8. Where a claimant, having been duly served with a summons calling on him to appear and maintain, or relinquish his claim, does not appear in pursuance of the summons, or having appeared, neglects or refuses to comply with any order made after his appearance, the Court or Judge in chambers may make an order declaring him, and any person claiming under him, forever barred against the applicant and any person claiming under him ; but the order shall not affect the right of the claimants as between themselves.

Costs etc. 9. The Court or a Judge in chambers may, in or for the purposes of any interpleader proceeding, make any other order as to cost and any other matter as may be just and reasonable.

ORDER 34—APPLICATION FOR JUDICIAL REVIEW

Cases appropriate for application for judicial review

1.—(1) An application for—  
 (a) an order of mandamus, prohibition or certiorari; or  
 (b) an injunction restraining a person from acting in any office in which he is not entitled to act, shall be made by an application for judicial review in accordance with the provision of this order.

(2) An application for a declaration or an injunction not being an injunction in sub-rule (1) ( b) of this rule may be made by way of an application for judicial review, and the Court may grant the application if it deems it just and convenient having regard 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) an affidavit verifying the statement relied on ; and
- (c) an affidavit and written address in support of the application for leave.

Joinder of claims for relief

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

Grant of leave to apply for judicial review

3.—(1) An application for judicial review shall not be made unless the leave of the Court has been obtained in accordance with this order.

(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 relief sought and the ground on which it is sought;

(b) an affidavit verifying the facts relied on ; and

(c) a written address in support of the application for leave.

(3) The Judge hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise in such terms, if any, as he deems 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 any other proceeding, which, is subject to appeal and a time is limited for the bringing of the appeal, the Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

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

(a) in a case where the relief sought is an order of prohibition or *certiorari* and the Judge 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) in a case where any other relief is sought, the Judge may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ; or

(c) the Judge may impose such terms as to cost and giving security as he deems fit.

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

Time within which to bring application

5. —(1) Where leave has been granted, the application shall be made by motion or by originating summons which shall be accompanied by a written address.

Mode of applying for judicial review

(2) The notice of motion or summons shall be served on any person directly affected, and where it relates to any proceeding before a Judge and the object of the application is either to compel the Judge or an officer of the Court to do any act in relation to the proceedings, or to quash them or any order made therein, the notice or summons shall also be served on the —

- (a) clerk or registrar of the Court; or
- (b) Judge, where any objection to the conduct of the Judge is to be made on the Judge.

(3) Unless the Judge granting leave has otherwise directed, there shall be at least 7 days between the service of the notice of motion or summons and the day named for the hearing.

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

(5) An affidavit giving the names and addresses of, and the places and days of service on the persons, who have been served with the notice of motion or summons shall be filed before the motion or summons is entered for hearing and if any person who ought to be served under this rule has not been served, the affidavit shall state that fact and the reason for it and the affidavit shall be before the Judge on the hearing of the motion or summons.

(6) Where on the hearing of the motion or summons the Judge is of the opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Judge may adjourn the hearing on such terms if any, as he may direct in order that the notice of summons be served on that person.

Statement and affidavits

6—(1) The Copy of the statement in support of an application for leave under rule 3 of this rule shall be served with the notice of motion or summons and subject to sub-rule (2) of this rule, no ground shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Judge may on the hearing of the motion or summons allow the applicant to amend his statement by specifying different or additional ground of relief or otherwise, on such terms, if any, as he deems fit and may allow further affidavit to be used if it deals with any new matter arising out of an affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavit, he shall give notice of his intention and of any proposed amendment to every other party.

(4) A party to the application shall supply to every other party a copy of every affidavit which he proposes to use at the hearing including, in the case of the applicant the affidavit in support of the application for leave under rule 3 of this order.

Claim for damages

7.—(1) On an application for judicial review, the Judge may, subject to rule 2 of this order, award damages to the applicant if—

(a) he has included in the statement in support of his application for leave under rule 3 of this order, a claim for damages arising from any matter to which the application relates: and

(b) the Judge is satisfied that if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

(2) In opposing the grant of an application—

(a) a person wishing to oppose the granting of the application shall within 7 working days after the receipt of the originating process, file a counter affidavit with a written address ; and

(b) the applicant may file a further affidavit with a reply address on point of law within 5 days after the receipt of the counter affidavit of the respondent.

8. Any interlocutory application in a proceeding on an application for judicial review may be made to the Judge.

Interlocutory applications

9.—(1) On the hearing of any motion or summons under rule 5 of this order, 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 proceeding for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has filed a copy of it verified by affidavit or account 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 of the case referred to in sub -rule (2) of this rule, the Judge shall direct that the proceedings shall be quashed on their removal into Court.

(4) Where the relief sought is an order of certiorari and the Judge is satisfied that there is a ground 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 finding 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 may have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Judge may instead of refusing the application, order the proceeding to continue as if it had been begun by writ.

10. An action or proceeding shall not 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

Consolidation  
of application

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

ORDER 35—COMMITTAL FOR CONTEMPT OF COURT

Committal  
for contempt  
of Court

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

(2) An order of committal may be made by the Court where contempt of Court is committed—

(a) in connection with any—

(i) proceeding before the Court, or

(iii) a criminal proceeding;

(b) in the face of the Court, or consist of disobedience to an order of the Court or a breach of an undertaking to the Court ; or

(c) otherwise than in connection with any proceeding.

Application to  
Court

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

(a) a statement setting out the name, description and address of the person sought to be committed ; and

(b) an affidavit with the exhibit if any and a written address.

(2) Notice of motion, affidavit, grounds and a written shall be served personally on the person sought to be committed except where upon leave of court, personal service may be dispensed with by substituted service.

Saying for  
power to  
commit  
without  
application for  
the purpose

3. Nothing in the foregoing provisions of this order shall be taken as affecting the power of the Court to make an order of committal of its own motion against a person guilty of contempt of Court.

Provision as to  
hearing

4.—(1) Subject to the provision of sub-rule (2) of this rule, the Court hearing an application for an order of committal may sit in private in any of the following case, where —

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

(b) the application arises out of any proceeding in which a secret process, discovery or invention was in issue ; or

(c) it appears to the Court that in the interest of the administration of justice or for any reason of national security the application shall be heard in private,

but except as aforesaid, the application shall be heard in open Court.

(2) Where the Court hearing an application in private by virtue of sub-rule (1) of this rule decides to make an order of committal against the person sought to be committed, it shall in open Court state—

- (a) the name of that person ;
- (b) in general terms the nature of the contempt of Court in respect of which the order of committal is being made ; and
- (c) if he is being committed for a fixed period, the length of that period.

(3) Except with the leave of the Court hearing an application for an order of committal, no ground shall be relied upon at the hearing except the grounds set out in the statement under rule 2 of this order.

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

5. The foregoing provision is without prejudice to the power of the Court to commit for contempt committed in the face of the Court.

Contempt in face of Court: saving for

6.—(1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or condition as it may specify.

Power to suspend execution of committal order

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

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

Discharge of person committed

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

8.—(1) Nothing in the foregoing provisions of this order shall be taken as affecting the power of the Court to make an order requiring a person—

Saving for order powers

- (a) guilty of contempt of Court; or

(b) punishable by virtue of any law in like manner as if he had been guilty of contempt of Court, to pay a fine or to give security for his good behaviour, and the provisions, so far as applicable, and with necessary modifications, shall apply in relation to an application for such an order as it shall apply in relation to an application for an order of committal

Return

9.—(1) A writ of attachment issued in a case to which this order applies shall be made returnable before the Court.

(2) Where a return of non est inventus is made, one or more writ may be issued on the return of the previous writ.

ORDER 36 — WRIT OF EXECUTION  
GENERAL

Definition

1. In this order, "writ of execution" includes a writ of *fierifacias*, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writ.

When leave to issue any writ of execution is necessary

2.—(1) A writ of execution to enforce a Judgement or order may not be issued without the leave of the Court in any of the following cases, where —

(a) 6 years or more have elapsed since the date of the Judgement order; or

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

(b) the Judgement or order is against the asset of a deceased person coming to the hands of his executors or administrators after the date of the Judgement or order, and it is sought to issue execution against the asset;

(d) under the Judgement or order any person is entitled to relief subject to the fulfilment of any condition which it is alleged to have been fulfilled ; or

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

(2) The provisions of sub-rule (1) of this rule is without prejudice to any enactment or rule by virtue of which a person is required to obtain the leave of the Court for the issuance of a writ of execution or to proceed to execution on or otherwise to the enforcement of a Judgement or order.

(3) Where the Court grants leave, whether under this rule or otherwise, for the issuance of a writ of execution and the writ is not issued within 1 year after the date of the order granting the leave, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

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

Leave required  
for issuance or  
writ in aid of  
other writ

4.—(1) An application for leave to issue a writ of execution may be made *ex parte* unless the Court directs it to be made by summons

Application for  
leave to issue  
writ

(2) The application shall be supported by an affidavit—

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

(b) stating, where the case falls within rule 2 (1) (a) of this order, the reasons for the delay in enforcing the Judgement or order ;

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

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

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

(3) The Court hearing the application may grant leave in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the right of a party, be tried in any manner in which any question of fact or law arising in an action may be tried and, in either case, may impose any term as to cost or otherwise as it thinks just.

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

Application for  
leave to issue  
writ of  
sequestration

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

(3) The Judge hearing an application for leave to issue a writ of sequestration may sit in private in any case in which there is an application to the Judge to sit in private, if the application were for an order.

6.—(1) The issuance of a writ of execution takes place on its being sealed by an officer of the appropriate office.

Issuance of  
writ of  
execution

(2) A praecipe for the issuance of a writ shall be filed before the writ is issued.

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

(4) The writ shall not be sealed unless at the time of the tender for sealing—

(a) the person tendering it produces—

(i) the Judgement or order on which the writ is to be issued, or an office copy of it, or

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

(b) the officer authorized to seal it is satisfied that the period, if any, specified in the Judgement or order for the payment of any money or the doing of any other act has expired.

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

(6) In this rule "the appropriate office" means

(a) where the cause or matter in which execution is to be issued is proceeding in a division registry, that registry ;

(b) where that cause or matter is an admiralty cause or matter which is not proceeding in a registry, the admiralty registry ;

(c) in any other case, the Court registry.

Duration of  
and renewal of  
writ of  
execution

7.—(1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months commencing from the date of its issuance.

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

(3) Before a writ, the validity of which had been extended under this rule is executed, either the writ shall be sealed with the seal of the office out of which it was issued showing the date on which the order extending its validity was made or the applicant for the order shall serve a notice sealed as aforesaid, on the sheriff to whom the writ is directed informing him of the making of the order and the date.

(4) The production of a writ of execution , or of the notice as is mentioned in sub-rule (3) of this rule purporting in either case can be sealed as mentioned in

that sub-rule, shall be evidence that the validity of that writ, or, as the case may be of the writ referred to in that notice, has been extended under this rule.

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

Return of writ  
of execution

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

### ORDER 37— GARNISHEE PROCEEDINGS

1—(1) Where a person, in this order referred to as 'the judgment creditor', has obtained a judgement or order for the payment by another person, in this order referred to as the 'judgement debtor', of a sum of at least ₦100,000.00 not being a judgement or order for the payment of money into Court, and any other person within the jurisdiction, in this order referred to as the "garnishee", is indebted to the judgement debtor, the Court may, subject to the provisions of this order and of any law, order the garnishee to pay the judgement creditor the amount of any debt due or accruing due to the judgement debtor from the garnishee, or as much as is sufficient to satisfy that judgment or order and the cost of the garnishee proceedings.

Attachment  
judgement  
debtor

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

(3) An order under this rule shall not require a payment which would reduce below ₦5,000 the amount standing in the name of the Judgement debtor in an account with a building society or a credit union.

2. An application for an order under rule 1 of this order shall be made *ex parte* supported by an affidavit and a written address—

Application  
for order

(a) stating the name and last known address of the Judgement debtor ;  
(b) identifying the Judgement or order to be enforced and stating the amount of the Judgement or order and the amount remaining unpaid under it as at the time of the application ;

(c) stating, that to the best of the information or belief of the deponent the garnishee naming him is within the jurisdiction and is indebted to the Judgement debtor and stating the source of the deponent's information or the ground for his belief; and

(d) stating, where the garnishee is a deposit -taking institution having more than one place of business, the name and address of the branch at

**B 350**

which the Judgement debtor's account is believed to be held and the number of that account or, if it be the case, that all or part of this information is not known to the deponent.

Service and effect of order to show cause

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

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

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

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

Non appearance of dispute of liability by garnishee

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

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

Dispute of liability by garnishee

5. Where on the further consideration of the matter, the garnishee disputes liability to pay the debt due or claimed to be due from him to the Judgement debtor, the Court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried, without, if it orders trial before a matter, the need for any consent by the party.

Claims of third persons.

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

Discharge of garnishee

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

**ORDER38 —PROCEEDINGS INFORMA PAUPERIS**

Duration of provision

1. The provision of this order shall remain in force until a statutory provision is made for legal aid in connection with a civil proceeding before the Court and thereupon shall cease to have effect.

2. The Judge may admit a person to sue or defend in forma pauperis, except in a bankruptcy proceeding, if satisfied that—

Who may sue  
to defend in  
forma pauperis

(a) his means do not permit him to employ legal aid in the prosecution of his case; and

(b) he has reasonable grounds for suing or defending as the case may be.

3.—(1) The application shall, if the Judge so directs, be accompanied by an affidavit signed and sworn by the applicant himself stating that the applicant satisfied the requirements of rule 2 of this order as to his means, and setting forth the material fact on which he relies in his desire to sue or defend, distinguishing between the fact which is within his personal knowledge and the fact he bases on information and belief, and in the latter case, setting forth the sources of his information and belief.

Conditions to  
be fulfilled

(2) Where the application is in the opinion of the Judge, worthy of consideration it shall be referred to a legal practitioner willing to act, and unless the legal practitioner certifies that in his opinion the applicant has good cause of action or good ground of defence, as the case may be, the application shall be refused.

4. Any Court fee 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 right, and a person so admitted to sue or defend shall not, unless the Court otherwise orders, be liable to pay or be entitled to receive any cost.

Fees and  
costs

5. On granting the application, a Judge may assign to the applicant any legal practitioner willing to be so assigned, and the applicant shall not discharge the assigned legal practitioner except with leave of the Court or of a Judge in chambers.

Assignment  
of legal  
practitioner

6.—(1) Neither the legal practitioner whose opinion is sought nor the legal practitioner assigned to the applicant or any other person shall, except by leave of the Court or of a Judge in chambers, take or agree to take or seek to obtain any payment from the applicant or any other person in connection with the application or the action taken or defended.

Procedure to  
be followed

(2) Where the applicant pays or agrees to pay money to any person in connection with his application or the action taken or defended, his application shall be refused or, if already granted, the order granting it shall be rescinded.

(3) Where the legal practitioner assigned to the applicant discovers that the applicant is possessed of means beyond those stated in the affidavit, if any, he shall at once report the matter in writing to the Registrar.

7.—(1) The Judge may at any time revoke the order granting the application and the applicant shall not be entitled to the benefit of this provision in any proceeding to which the application relates unless otherwise ordered

Revocation of  
order: dis-  
continuance  
etc.

(2) The applicant and the legal practitioner assigned to him shall not discontinue, settle or compromise the action without the leave of the Court or of a Judge in chambers.

Payment to legal practitioner

8. The Court may order payment to be made to the legal practitioner assigned out of any money recovered by the applicant or may charge in favour of the legal practitioner assigned, upon any property recovered by the applicant, a sum which in the circumstances may seem fit.

Duty of legal practitioner

9. A writ, 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.

Leave to appeal

10. A person shall not be permitted to appeal in forma pauperis, except by leave of the trial or the appellate Court, and shall be on ground of law.

ORDER 39 —ASSESSOR

Assessor sitting in Court

1. Where an assessor sits with a Judge during a trial, he shall only discuss with or advise the Judge on the issue he was assigned for.

Assessor not to writ judgment

2. The assessor shall not write any opinion in form of Judgement or order and shall not dissent or concur with the Judgement or order the Judge has given.

Assessor to give advice only on his subject

3. An assessor shall in advising the Court, limit himself to the issue in which he is an expert on, and on which account he was appointed to sit with the Court.

Judge not bound to accept Assessor's advice

4. The Judge is not bound to accept and act on the opinion or advice of the assessor.

Assessor shall take oath of secretary

5. The assessor shall subscribe to a judicial oath of secrecy before the Judge or another Judge before resuming his duty.

ORDER 40 —RECEIVER

Application for appointment of Receiver and injunction

1.—(1). An application for the appointment of a receiver may be made by motion on notice.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for the order.

(3) Where the applicant intends to apply for the immediate grant of such an injunction, he may do so *ex parte* on affidavit in an appropriate case.

(4) The Court hearing an application under sub-rule (3) of this rule may grant an injunction restraining the party beneficially entitled to any interest in

the property of which a receiver is sought from assigning, charging or otherwise dealing that property pending the hearing of a summons for the appointment of a receiver and may require such a summons, returnable on such date as the Court may direct, to be issued,

2.—(1) Where a judgment is given, or an order is made directing the appointment of a receiver, then, unless the judgment or order otherwise directs, a person shall not be appointed a receiver in accordance with the judgement or order until he has given security as specified in Form 24 in *Appendix 6* to these Rules.

Giving of  
security by  
Receiver Civil  
Form 24

(2) Where, by virtue of sub-rule (1) of this rule, or any Judgement or order appointing a person named to be a receiver, a person is required to give security in accordance with this rule, he shall give security as specified in Form 25 in *Appendix 6* to these Rules, as may be approved by the Court duly to account for what he receives as a receiver and to deal with it as the Court directs.

Civil Form  
25

(3) Unless the Court otherwise directs, the security shall be by guarantee or, if the amount for which the security is to be given does not exceed twenty thousand naira, by an undertaking.

(4) The guarantee or undertaking shall be filed in the Court registry.

3. A person appointed a receiver shall be allowed such proper remuneration if any, as may be fixed by the Court.

Remuneration  
of Receiver

4.—(1) A receiver shall submit accounts as specified in Form 26 in *Appendix 6* to these Rules to the Court at such interval or on such date as the Court may direct in order that they may be passed.

Receiver's  
account Civil  
Form 26.

(2) Unless the Court otherwise directs, every account submitted by a receiver shall be accompanied by an affidavit as specified in Form 26 in *Appendix 6* to these Rules verifying it.

(3) The receiver's account and affidavit, if any, shall be left at the Registrar's office, and the claimant or party having the conduct of the proceeding shall obtain an appointment for the purpose of passing the account.

(4) The Registrar shall certify the passing of a receiver's account

5. The Court shall fix the day on which a receiver shall pay into Court the amount shown by the receiver's account as due from him or such part of it as the Court may certify as proper to be paid in by the receiver.

Payment of  
balance etc. by  
Receiver

6. —(1) Where a receiver fails to attend for the passing of any account of his, or fails to submit any account, make any affidavit or do any other thing which he is required to submit, make or done and any of the party to the proceedings in which he was appointed may be requested to attend in chamber to show cause for the failure and the Court may either in chambers or after

Default by  
Receiver

adjournment into Court, give such directions as it thinks proper including where necessary, directions for the discharge of the receiver and the appointment of another and the payment of cost.

(2) Without prejudice to the provisions of sub-rule (1) of this rule, where a receiver fails to attend for the passing of any account or fails to pay into Court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay such sum into Court, charge him with interest at the rate of (10) *percent* per annum on that sum while in his possession as a receiver.

ORDER 41 — REFERENCE TO REFEREE

Instructions to  
reference

1.—(1) In any case in which a matter is referred to a referee under the provisions of the Federal High Court Act, the Court shall give the referee detailed instructions and inform him of the part of the proceeding that may appear necessary for his guidance, and shall direct the party, where necessary to attend upon the referee during the inquiry.

(2) The instruction shall specify whether the referee is to—  
(a) transit the proceedings which he may hold on the inquiry ; or  
(b) report his own opinion on the point referred for his investigation.

Interim  
inquiries or  
accounts

2. The Court may at any stage of the proceeding direct any necessary inquiry or account to be made or taken notwithstanding that it appears that there is some special or further relief sought for, or any special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

General  
powers of the  
Referee

3.—(1) The referee may, subject to the order of the Court—  
(a) hold the inquiry at, or adjourn it to any place which he may deem most expedient; and  
(b) carry out an inspection or viewing which he may deem expedient, for the disposal of the controversy before him.

(2) The referee shall, as far as practicable, proceed with the inquiry from day to day.

Evidence

4.—(1) Subject to any order to be made by the Court ordering the inquiry, evidence shall be taken at any inquiry before a referee, and the attendance of a witness to give evidence before a referee may be enforced by the Court in the manner as the attendance may be enforced before the Court.

(2) The inquiry referred to in sub-rule (1) of this rule shall be conducted in the same manner as nearly as circumstances will admit, as trials before a Judge of the Court, but not so as to make the tribunal of the referee a public Court of Justice

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

Reference's authority in the inquiry

6. Nothing in these provisions authorizes any referee to commit any person to prison, or to enforce any order by attachment or otherwise, but the Court may, in respect of a matter before a referee, make any order of attachment or committal it may consider necessary.

Limitation in certain particulars

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

Reports made in pursuance of reference.

(2) A referee may, in his report—

(a) submit any question arising for the decision of the Court: or

(b) make a special statement of facts from which the Court may draw such inferences as it thinks fit.

Reference may report questions of facts specially

(3) On the receipt of a referee's report, the Court may—

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

(b) vary the report;

(c) require an explanation from the referee ;

(d) remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other referee ; or

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

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

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

#### ORDER 42 — PAYMENT INTO AND OUT OF COURT

1.—(1) Where after service in any proceeding for debt or damages, a defendant envisages an intention to pay money into Court in respect of the proceeding, he shall notify the Chief Registrar who will thereupon direct him

Payment into and out of Court

to pay the money into an interest yielding account in a commercial bank, and he shall file the teller for such payment with the Chief Registrar.

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

(3) Where a defence of tender before action is set up, the sum of money alleged to have been tendered shall be brought into Court.

(4) The defendant may, without leave, give a written notice to the Chief Registrar of an intention to increase the amount of any sum paid into Court.

(5) Where the money is paid into Court to comply with any cause of action, the notice shall specify the cause of action in respect of which payment is made and the sum paid in respect of each cause of action unless a Judge otherwise directs.

(6) The notice shall be as specified in Form 27 in *Appendix 6* to these Rules, with such modifications or variations as circumstances may require and the receipt of the notice shall be acknowledged in writing by the plaintiff within three days.

(7) 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.

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

(9) Where the defendant succeeds in respect of the claim referred to in sub-rule (8) of this rule, the whole amount paid into Court shall be repaid to the defendant on the order of a Judge.

2.—(1) Where money is paid into Court under rule 1 of this order, the plaintiff may —

Plaintiff  
may take  
out money

(a) within (14) days of the receipt of the notice of payment into Court; or

(b) where more than one payment into Court has been made, within (14) days of the receipt of the notice of the last payment into Court.

accept the whole sum or anyone or more of the specific sum in satisfaction of the cause of action to which the specified sums relate by giving notice to the defendant as specified in Form 28 in *Appendix 6* to these Rules with such modifications or variations as circumstances may require, and shall be entitled to receive payment of the accepted sum in satisfaction as aforesaid.

(2) Payment shall be made to the plaintiff or on his written authority to his legal practitioner and the proceeding in the action or in respect of the specified cause of action shall abate.

(3) Where the plaintiff accepts money paid into Court in satisfaction of his claim or if he accepts a sum paid in respect of any specified cause of action, and gives notice that he abandons the other cause of action, he may after (14) days from payment out and unless a Judge of otherwise orders, tax his cost incurred to the time of payment into Court, and 48 hours after taxation may sign judgment for his taxed cost.

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

3. Where the whole of the money in Court is not taken out under rule 2 of this order, the money remaining in Court shall not be paid out except insatisfaction of the claim or specified cause of action in respect of which it was paid in pursuance of an order of a Judge which may be made at any time before, during or after trial. Money remaining in Court

4.—(1) Money may be paid into Court under rule 1 of this order by a defendant sued jointly or in the alternative upon notice to the other defendant. Several defendant

(2) Where the plaintiff elects within 14 days after receipt of notice of payment into Court to accept the sum paid into Court, he shall give notice as specified in Form 29 in Appendix 6 to these Rules with such modifications or variations as circumstances may require to each defendant and any further proceeding in the action or in respect of the specified cause of action shall abate. Civil Form 29

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

(4) In an action for libel or slander against several defendants sued jointly, if any defendant pays money into Court, the plaintiff may within 14 days elect to accept the sum paid into Court in satisfaction of his claim against the defendant making the payment and shall give notice to the defendant as specified in Form 29 in Appendix 6 to these Rules with such modifications or variations as circumstances may require. Civil Form 29

(5) The plaintiff may tax his cost 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.

(6) The plaintiff may continue with the action against any other defendant but the sum paid into Court shall be set off against any damages awarded to the plaintiff against the defendant against whom the action is continued.

Counter  
claim

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

Persons  
under  
legal  
disability

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

(2) Any money which expression for the purpose, of this rule includes damages in any way recovered, adjudged ordered, awarded or agreed to be paid in any proceeding in respect of the claim of a person under legal disability whether by Judgement settlement, compromise, payment into Court or otherwise, before, at or after the trial, shall not be paid to the plaintiff, to the guardian of the plaintiff or to the plaintiffs legal practitioner unless a Judge shall so direct.

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

Payment  
into and  
withdrawal  
of money  
from Court

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

#### ORDER 43 — DISCOVERY AND INSPECTION

Discovery  
by  
interrogator  
ies

1.—(1) In any cause or matter, the plaintiff or defendant may deliver an interrogatory in writing for the examination of the opposite party.

(2) The interrogatory when delivered, shall have a note at the end of it, stating which of the interrogatory each person is required to answer and shall be delivered within 7 days of close of pleadings.

Form of  
interrogator  
ies Civil  
Form 30.

2. An interrogatory shall be as specified in Form 30 in *Appendix 6* to these Rules with such modifications or variations as circumstances may require.

Interrogatori  
es to  
corporation  
or company

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

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4. Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant may be taken in the affidavit in answer.

Objective to interrogatories by answer Affidavit in answer filling of

5. An interrogatory shall be answered by affidavit to be filed within 7 days, or within such other time as the Judge may allow and shall be served a copy delivered to the party that delivered the interrogatory as well as the other parties or as the Court or Judge may direct.

6. An affidavit in answer to an interrogatory shall be as specified in Form 31 in *Appendix 6* to these Rules with such modifications or variations as circumstances may require.

Form of affidavit answer Civil Form 31.

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

Order to answer or answer further

8—(1) A party may, in writing, request any other party to any cause or matter, to make discovery on oath of the document that is or has been in his possession, custody, power or control, relating to any matter in question in the case.

Application for discovery of document

(2) The request for discovery referred to in sub-rule (1) of this rule shall be served within 7 days of close of pleadings or within such period as the Court or Judge may direct and shall form part of the proceeding.

(3) The party on whom such a request is served shall answer on oath completely and truthfully within (7) days of the request or within such other time as the Judge may allow.

(4) An affidavit in answer to a request for discovery of a document shall be accompanied by any other document referred to.

(5) The affidavit to be made by any person in answer to a request for discovery of a document shall specify which, if any, of the listed documents he objects to producing, stating the grounds of his objection, and it shall be as specified in Form 32 in *Appendix 6* of these Rules with such modifications or variations as circumstances may require.

Civil Form 32.

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

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

9.—(1) Any process to be filed after the close of pleadings shall be accompanied by the document referred to in the process.

Process filed other close of pleading

Verification  
Of business  
books

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

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

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

(3) The Judge may upon application whether or not an affidavit has been ordered or filed, make an order requiring any party to state by affidavit whether any document or any class of document is or has at any time been in his possession, custody, power or control, when he parted with the same and what has become of it.

Committal of  
party after  
services on  
legal  
practitioner

11. An order for interrogatory, discovery or inspection made against any party if served on his legal practitioner shall be sufficient service to found an application for committal of a party for disobedience to the order.

Committal of  
legal  
practitioner

12. A legal practitioner upon whom an order against any party for interrogatory, discovery or inspection is served under the last preceding rule, who neglects without reasonable excuse to give notice of it to his client, shall be liable to committal.

Using answer  
to  
interrogatories  
at trial

13. Any party may at the trial of a cause or matter, use in evidence any of the answers or any part of an answer of the opposite party to an interrogatory without putting in the others or the whole of such answer, provided that the Judge may look at the whole of the answer and order that any of it may be put in.

Discovery of  
document in  
marine  
insurance  
policies

14.—(1) Where in any action arising on a marine insurance policy, an application for discovery of a document is made by the insurer, the following provision shall apply—

(a) on hearing of the application, the Court or Judge in chambers may, subject to the provisions of sub-rule (2) of this rule, make any order in accordance with rule 8 of this order ;

(b) where in any case the Court or Judge in chambers is satisfied, either on the original application or on a subsequent application, that it is necessary or expedient, having regard to the circumstances of the case, to make an order, for the production of ship's papers, the Court or Judge in chambers may make the order as specified in Form 33 in *Appendix 6* to these Rules; or

(c) in making an order under this rule the Court or Judge in chambers

Civil Form  
33.

may impose such terms and conditions as staying proceedings or otherwise as the Court or Judge in chambers in its or his discretion thinks just.

(2) The provisions of rule 8 of this order shall not apply to any application made under this rule.

15. The affidavit to be made by any person against whom an order for a document has been made under rule 5 of this order or under rule 14(1) (a) or (b) of this order shall specify which, if any of the document mentioned he objects to produce, and it shall, except in the case of an order made under rule 14 (1) (b) of this order be as specified in Form 33 in *Appendix 6* to these Rules with such variations as circumstances may require.

Affidavit of document

Civil Form 33

16—(1) On the hearing of any application for discovery of a document the Court or Judge in chambers in lieu of ordering an affidavit of a document to be filed may order that the party from whom discovery is sought delivers to the opposite party a list of the documents which are or have been in his possession, custody or power, relating to the matter in question.

Power to order list of document in lieu of affidavit

(2) The list shall, as nearly as may be, follow the form of the affidavit as specified in Civil Form 31 in *Appendix 6* to these Rules.

(3) The ordering of the list shall not preclude the Court or Judge in chambers from afterwards ordering the party to make and file an affidavit of the document.

17. The Court or a Judge in chambers may at any time during the pendency of an action, order the production by any party, upon oath, of the document in his possession or power, relating to any matter in question in the action as the Court or Judge in chambers shall think right, and the Court may deal with the document, when produced, in such manner as appears just.

Production of Documents.

18. —(1) A party to a cause or matter shall be entitled at any time, by notice in writing, to give notice to any other party in whose pleading or affidavit reference is made to any document to produce the document for the inspection of the party giving the notice, or of his legal practitioner, and to permit him or them to take copies of it.

Inspection of documents referred to in pleadings or affidavits

(2) Any party not complying with the notice shall not afterwards be at liberty to put such document in evidence on his behalf in that action, unless he shall satisfy the Court or a Judge in chambers that the document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or Judge in chambers deems sufficient for not complying with the notice, in which case the Court or Judge in chambers may allow the same to be put in evidence on such terms as to cost and otherwise as the Court or Judge in chambers may think fit.

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Notice to  
produce Civil  
Form 34.

19. Notice to any party to produce any document referred to in his pleading or affidavit shall be as specified in Form 34 in *Appendix 6* to these Rules with such variations as circumstances may require.

Time for  
inspection  
when notice  
given under  
rule 19

20.—(1) The party to whom notice is given under rule 19 of this order shall within (2) days from the receipt of the notice, if all the document therein referred to have been set forth by him in such affidavit as is mentioned in sub rule 16 of this order, or if any of the documents referred to in that notice have not been set forth by him in any such affidavit, then within (4) days from the receipt of such notice, deliver to the party giving the same a notice stating a time within (7) days from the delivery thereof at which the document, or such of them as he does not produce, may be inspected at the office of his legal practitioner, or in the case of banker's book or other books of account, or books in constant use for the purpose of any trade or business, at their usual place of custody and stating which (if any) of the document he objects to produce, and on what ground.

Form of notice  
Civil Form  
34.

(2) The notice shall be as specified in Form 34 in *Appendix* to these Rules with such variations as circumstances may require.

Order for  
Inspection

21.—(1) Where the party served with notice under rule 19 of this order omits to notify a time for inspection, objects to give inspection, or offers inspection elsewhere than at the office of his legal practitioner, the Court or a Judge in chambers may, on the application of the party desiring it, make an order for inspection in such place and in such manner as the Court or Judge in chambers may think fit.

(2) The order shall not be made where and so far as the Court or Judge in chambers is of opinion that it is not necessary either for disposing fairly of the action or for saving cost.

Affidavit in  
support of  
application  
when required

(3) Any application to inspect a document, except such as is referred to in the pleading, particulars or affidavit of the party against whom the application is made, or disclosed in his affidavit of document, shall be founded upon an affidavit showing of what document inspection is sought, that the party applying is entitled to inspect them, and that it is in the possession or power of the other party.

Verified copies

22.—(1) Where inspection of any business book is applied for; the Court or a Judge in chambers may, if it or he thinks fit, instead of ordering inspection of the original book, order a copy of any entry to be furnished and verified by the affidavit of some person who has examined the copy with the original entry, and the affidavit shall state whether or not there is in the original book any and what erasure, interlineation, or alteration.

(2) Notwithstanding that such copy has been supplied, the Court or Judge in chambers may order inspection of the book from which the copy was made.

(3) Where, on an application for an order for inspection, privilege is claimed for a document, it shall be lawful for the Court or a Judge in chambers to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(4) The Court or a Judge in chambers may, on the application of any party to an action at any time, and whether an affidavit of the document shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any document or any class of documents, specified or indicated in the application, is, has or have at any time been, in his possession, custody, or power, when he parted with the same and what has become of it.

Power to order discovery of particular document or class of documents

(5) Application for the order shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has or has at some time had in his possession, custody power of the document, or the class of the document specified or indicated in the application and that it relates to a matter in question in the action.

23. Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part of it, the Court or a Judge in chambers may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first and reserve the question as to the discovery or inspection.

Premature discovery

24.—(1) Where any party fails to comply with the order to answer an interrogatory or for discovery or inspection of a document, he shall be liable to committal.

Non-compliance with order for discovery

(2) The party shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a Judge in chambers for an order to that effect and an order may be made accordingly.

25.—(1) Service of an order for interrogatory, discovery or inspection made against any party or legal practitioner shall be sufficient service to found an application for an attachment for disobedience to the order.

Services on legal practitioner of order for discovery

(2) The party against whom the application for attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

Power to order.

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Liability of  
Legal  
practitioner

26.—(1) A legal practitioner upon whom an order against any party for interrogatory, discovery or inspection is served under rule 25 of this order who neglects without reasonable excuse to give notice of it to his client, shall be liable to pay the cost of interrogatory without putting in the others or the whole of such answer.

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

Using answer  
to  
interrogatories  
at trial

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

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

Discovery  
against sheriff

28. In any action against or by a sheriff in respect of any matter connected with the execution of his office, the Court or a Judge in Chambers may, on the application of any party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery shall be made by the officer actually concerned.

Order to apply  
to infants

29. This order shall apply to an infant plaintiff and defendant, and to the next friend and guardian *ad litem*.

Power to  
revoke order  
made

30. Any order made under the provisions of this order including an order made on appeal may, on sufficient cause being shown, may be revoked or varied by a subsequent order or direction of the Court or a Judge in chambers made or given at or before trial.

### ORDER 44—ACCOUNTS AND INQUIRIES

Summary order  
for account

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

(2) An application under this rule shall be made by summons and supported by affidavit or other evidence filed on a plaintiff's behalf, stating concisely the ground of his claim to an account.

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

2.—(1) The Court may, on application made by summons at any stage of proceeding in a cause or matter, direct any necessary account or inquiry to be taken or made.

Count may direct taking of accounts etc.

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

Direction as to manner of taking account

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

(2) Without prejudice to the generality of sub-rule (1) of this rule, the Court may direct that in taking the account, the relevant book of account shall be evidence of the matter contained with liberty to the party interested to take such objections as may deem fit.

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

Account to be made verified etc.

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

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

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

Erroneous account

6.—(1) Where it appears to the Court that there is undue delay in the prosecution of an account, inquiry, or in any other proceeding under any judgment or order, the Court may require an explanation for the delay and may then make such order for staying the proceeding or for expediting them or for conduct and for cost as the circumstances require.

Delay in prosecuting of account etc

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

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

Distribution of fund before all persons entitled are ascertained

**ORDER 45 —ARREST OF ABSCONDING DEFENDANT**

Defendant leaving jurisdiction or removing property

1. Where in any suit the defendant is about to leave Nigeria or has disposed of or removed his property from the country or is about to do so, the plaintiff or applicant may make an application to the Court that security be taken for the appearance of the defendant to answer to satisfy any Judgement that may be passed against him in the suit.

Warrant to arrest

2.—(1) Where the Judge after making such investigation as he may consider necessary is of opinion that there is probable cause for believing that the defendant is about to leave Nigeria or has disposed of or removed his property or any part of it out of the country while the suit is pending and consequently the execution of any Judgement which may be made against him is likely to be obstructed or delayed ; the Judge shall issue a warrant to bring the defendant before him, that he may show cause why he should not give good and sufficient recognizance for his appearance.

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

Bail for appearance or satisfaction

3. Where the defendant fails to show cause, the Judge shall order him to give recognizance for his appearance at any time when called upon while the suit is pending, until execution or satisfaction of any Judgement that may be passed against him in the suit, or to give recognizance for the satisfaction of such Judgement; and 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 cost.

Deposit in lieu of bail

4.—(1) Where a defendant offers to deposit a sum of money in lieu of recognizance for his appearance, sufficient to answer the claim against him, with cost of the suit the Judge may accept such deposit and direct that the deposit be paid into an interest yielding account in a bank.

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

Committal in default of security

5.—(1) Where the defendant fails to furnish security or offer a sufficient deposit the Judge may commit him into custody until the decision of the suit or where Judgement has been given against the defendant until the execution of the Judgement.

(2) A committal to custody under this rule shall not exceed a period of 6 months at a time.

(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.

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

Cost of  
subsistence of  
person arrested

### ORDER 46 — COURT SITTING AND VACATION

1. A Court may at its discretion, appoint any day and place from time to time for the hearing of an action as circumstances require.

Day of sittings

2. The sitting of a Court for the hearing and determination of the rights and obligations of the parties shall be public, but subject to the provisions of the Constitution of the Federal Republic of Nigeria, the Court may, for special reasons, hear any particular action in the presence only of the parties, with their legal practitioners, if any, and the officers of the Court.

Public or  
private sittings  
of court

3. The office 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, the sitting of the Court for the dispatch of a civil matter will be held on every week day except—

Days of sitting:  
long vacation

(a) on any public holiday;

(b) during the week commencing with Easter Monday ;

(c) during the period commencing on 23rd December and ending on the 5th January next following;

(d) during the long vacation, that is the period commencing from any day in July and ending on a date not less than 6 weeks later ending on a Friday as the Chief Judge may by notification in the *Gazette* appoint.

5.—(1) Despite the provisions of rule 4 of this order, an action may be heard by a Judge in Court during any of the periods mentioned in rule 4 (b) or (c)(d) of this order or on a Sunday or public holiday, where the action is urgent or a Judge, at the request of the parties concerned, agrees to hear the action.

Vacation courts

(2) An application for urgent hearing shall be made by summons in chamber.

6. The time for filing and service of a pleading as well as delivery of a ruling and Judgement shall not run during the long vacation, Christmas or Easter vacations or on any public holiday declared by the Federal Government unless otherwise directed by the Chief Judge.

Vacation not  
reckoned in  
computing time  
for pleadings  
etc. Chambers.

Chambers

7. Business shall not be transacted in chambers on Sundays and public holidays.

Vacation judges

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

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

**ORDER 47—CAUSE LISTS**

Weekly cause list

1. The Registrar shall keep a weekly cause list of any action, which is ready for trial or hearing.

Positing of weekly cause lists

2. — (1) The Registrar shall post up every Thursday a weekly cause list which shall set out the arrangement of the cause before each of the sittings in Court, during the following week.

(2) Nothing in this rule shall preclude the Judge from making special arrangements, where necessary or convenient, for the disposal of a cause and matter whether or not included on the list.

Where any Thursday is a public holiday

3. — (1) Where any Thursday is a public holiday, the weekly cause list shall be posted up on the day last preceding which is not a public holiday.

(2) Where a Judge is unable to sit in Court to deal with a cause or matter fixed for hearing, a memorandum recording the parties present and the next adjourned date shall be endorsed in the case file by the Registrar.

Notice Boards

4. The weekly cause list and any other list shall be posted up on one or more notice boards set up in such place within or near the Court premises as the Chief Judge may designate.

Copies of weekly cause list

5. Copies of the weekly cause list shall be made available for purchase upon payment of the prescribed fees.

**ORDER 48—COMPUTATION OF TIME**

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 —

(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 and

(c) where the act is required to be done within a period which does not exceed (6) days, holidays shall be left out in computing the period.

2. In this order "holiday" means a day, which is a Sunday or a public holiday as declared by the Federal Government. Holiday

3—(1) A pleading, summons, motion, order, originating process, document and any other process shall be served before 6.00am or after 6.00pm and service effected after 6.00 pm shall be deemed to have been effected the following day provided that service effected after 6.00pm on Saturday shall be deemed to have been effected on the following Monday. Time of service

(2) Any service before 6.00am shall for the purposes of these Rules be deemed defective service.

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 proceeding: 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 as contained in *Appendix 2* to these Rules for each day of such default.

5. Parties cannot consent to enlarge any of the times fixed by the provisions of these Rules for taking any step, filing any document, or giving any notice. No enlargement of time by consent of parties

#### ORDER 49—TRANSFER AND RE-ASSIGNMENT OF A CASE

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

2. A cause or matter may at any stage of the proceeding be re-assigned to another Judge of the same division or of any other division by the Chief Judge whether or not the cause or matter is being heard before him. Re-assignment of cause or matter

3. Where for reason a Judge hearing cause or matter, and who has taken any step in the proceeding, considers it necessary, either at his own opinion or upon application of any party to the proceeding, to have the cause or matter transferred to another judicial division, the Judge shall refer the cause or matter to the Chief Judge who may direct that the matter be transferred to the appropriate judicial division in accordance with these Rules. Action by the Chief Judge on transfer

4. Where a Judge is elevated, deceased, retires or is transferred to another division, and having part-heard a cause or matter which is being heard *de novo* by another Judge, the evidence already given before the first Judge can be read and adopted at the hearing without the witness who had given it being recalled, but if the witness is dead or cannot be found, the onus of establishing that the witness is dead or cannot be found shall lie on the party that wishes to use the evidence. Evidence of part-heard Cause or matter

Transfer of proceedings from the Court to a High Court.

5. Where a Judge has in the exercise of the powers conferred by Section 22 (2) of the Act directed that any cause or matter be transferred to the National Industrial Court of Nigeria, the High Court of the Federal Capital Territory or the High Court of a State, the Judge shall make an order under his hand to that effect to the President of the National Industrial Court of Nigeria, Chief Judge of The Federal Capital Territory or the Chief Judge of the High Court of the State to which the matter is to be transferred.

Transmission of order and copies of entries to the appropriate High Court

6. The Registrar shall send a copy of the order made under rule 5 of this order duly certified by him to the Registrar of the named Court in the order with certified copies of the entry in the book of the Court relating to the cause or matter in question.

**ORDER 50 —WITHDRAWAL AND DISCONTINUANCE**

Withdrawal of appearance

1. A party who has entered an appearance in an action may withdraw the appearance at any time with leave of the Court.

Dis-continuance of action without leave

2. —(1) The plaintiff in an action may, without the leave of the Court, discontinue the action, or withdraw any claim made by him, as against the defendant at any time not later than 14 days after service of the defence on him or, where there are two or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned.

(2) A defendant may, without leave of Court—

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

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

(3) Where there are two or more defendants to an action not all of whom served a defence on the plaintiff and the period fixed by or under this rule for service by any of those defendants, of his defence expires after the latest date on which any other defendant serves his defence the provisions of sub-rule (1) of this rule shall have effect as if the reference to the service of the defence last served, were a reference to the expiration of that period.

(4) The provisions of sub-rule (3) of this rule shall apply in relation to a counter -claim as it applies in relation to an action, with the substitution for references to a defence, to the plaintiff and to sub-rule (1) of this rule, of references to a defence to counter-claim, to the defendant and to sub-rule (2) of this rule respectively

(5) Where the parties to an action consent, the action may be withdrawn without leave of the Court at any time before trial by filing in the registry a written consent to the action being withdrawn signed by the parties, and the action shall thereafter be struck out by the Court.

3.—(1) Except as provided by rule 2 of this order, a party may not discontinue any action or counter-claim, or withdraw any claim made by him without leave of the Court, and the Court hearing an application for the grant of the leave may order the action or counter-claim to be discontinued or any claim made to be struck out, as against any or all of the parties against whom it is brought or made on such terms as to cost, the bringing of a subsequent action or otherwise as it thinks just.

Dis-  
continuance of  
action etc. with  
leave

(2) An application for the grant of leave under this rule may be made by summons or motion on notice.

4. Subject to any terms imposed by the Court in granting leave under rule 3 of this order, the fact that a party has discontinued an action or counter claim or withdrawn a particular claim made by him shall not be a defence to a subsequent action for the same, or substantially the same cause of action.

Effect of  
discontinuance

5. Where a party has discontinued an action or counter-claim or withdrawn any claim made by him, and he is liable to pay cost to any other party of the action or counter-claim or the cost occasioned to any other party by the claim withdrawn, then if, before payment of the cost, he subsequently brings an action for the same or substantially the same cause of action, the Court may order the proceedings in that action to be stayed until the cost is paid.

Stay of  
subsequent  
action until  
costs paid

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

Withdrawal of  
Summons

#### ORDER 51 — EFFECT OF NON-COMPLIANCE

1.—(1) Where in commencing or purporting to commence any proceeding or at any stage in the course of or in connection with any proceeding, there has by reason of anything done or left undone, been failure to comply with the requirement of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure may be documented, treated as an irregularity and if so treated, will not nullify the proceeding, or any Judgement or order.

Effect of non-  
compliance

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

Application to set aside for irregularity

2.—(1) Any application to set aside for irregularity any proceeding, any step taken in any proceeding or any document, Judgement or order, shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step in the proceeding.

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

ORDER 52—ARBITRATION A —REFERENCE TO ARBITRATOR

Nomination of Arbitrators and appointment

1. Wherein any case a matter is referred to an arbitrator under the provisions of the Arbitration and Conciliation Act, the arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

Court may appoint Arbitrators

2. Where the parties do not agree with respect to the nomination, or if the persons nominated refuse to act, and the parties are desirous that the nomination be made by the Court, the Court shall appoint the arbitrator.

Form or order of reference

3. The Court shall by an order under its seal refer to the arbitrator the matter in difference in the suit which may be required to be determined, and shall fix a time for the delivery of the award, and the time so fixed shall be stated in the order.

Umpire where necessary

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

Attendance of witnesses

5. Where reference to arbitration is made by an order of Court, the same process to the party and witness, whom the arbitrator or umpire may desire to have examined, shall be issued as in ordinary suit and a person not attending in compliance with such process, or making any other default, or refusing to give evidence, or being guilty of any contempt of the arbitrator or umpire during the investigation of the suit, shall be subject to the like disadvantage, penalty and punishment, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the same offence in any suit tried before the Court.

Extension of time for making award

6—(1) Where the arbitrator is not able to complete the award within the period specified in the order for want of the necessary evidence or information, or other good and sufficient cause, the Court may, from time to time, enlarge the period for delivery of the award, if it thinks it proper.

(2) Where in any case an umpire is appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators, if the arbitrators have allowed the time, or the extend time, to expire without making an award or have delivered to the Court, or to the umpire, a notice in writing stating that an agreement is not reached.

(3) An award shall not be liable to be set aside only by reason of its not having been completed within the period allowed by the Court, unless on proof that the delay in completing the award arose from misconduct of the arbitrator or umpire, or unless the award shall have been made after the issuance of an order by the Court superseding the arbitration and recalling the suit.

7.—(1) Where, in any case of reference to arbitration by an order of Court, the arbitrator or umpire dies, refuses or becomes incapable of acting, it shall be lawful for the Court to appoint a new arbitrator or umpire in place of such person.

Power of court in Case of death incapacity or refusal to act.

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

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

8.—(1) The award shall contain a conclusive finding, and may not find on the contingency of any matter of fact being afterwards substantiated or deposed to.

Findings

(2) The award shall comprehend a finding on each of the matters referred.

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

Special case for opinion of the Court

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

Court may modify or correct award

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

Power as to costs.

## B 374

Power of Court  
to remit award  
for  
reconsideration

12. In any of the following case the Court shall have power to remit the award, or any of the matters referred to arbitration, for reconsideration by the arbitrator or umpire, upon such terms as it thinks proper—

(a) if the award has left undetermined any of the matters referred to arbitration;

(b) if it has determined any matter not referred to arbitration ;

(c) if the award is so indefinite as to be incapable of execution ; or

(d) if an objection to the legality of the award is apparent upon the face of the award.

Setting aside  
award

13.—(1) An award shall not be liable to be set aside except on the ground of perverseness or misconduct of the arbitrator or umpire.

(2) Any application to set aside an award shall be made within (3) months after the publication.

Filling award  
effect of

14. Where no application is made to set aside the award, to remit it or any of the matters referred for reconsideration, or where the Court has refused such application, either party may file the award in Court, and the award shall have the same force and effect for all purposes as a Judgement.

## B — ARBITRAL PROCEEDINGS

Applications  
under  
Arbitration and  
Conciliation  
Act

15. An application in this rule to the Court under the Arbitration and Conciliation Act —

(a) to revoke an arbitration agreement under section 2 ;

(b) to appoint an arbitrator under section 7 (3);

(c) to stay proceedings under section 5 ;

(d) to remove an arbitrator or umpire under section 30 ;

(e) to direct an arbitrator or umpire to state the reasons for an award under section 26;

(f) to ask that a case on trial which is the subject of an arbitration agreement be referred to an arbitration under section 4;

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

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

(i) generally to determine any question of law arising in the course of or concerning any arbitration agreement or proceedings referred to the Court ; or

(ii) to subpoena a witness to attend under section 23, shall be made by originating motion.

C — ENFORCEMENT OF ARBITRAL AWARDS

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

Mode of enforcing awards

(2) The supporting affidavit shall—

(a) exhibit the arbitration agreement and the original award or in either case certified copies of each;

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

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

D—REGISTRATION OF FOREIGN ARBITRAL AWARDS

17. Where an award is made in a proceeding on an arbitration in a foreign territory to which the Foreign Judgement (Reciprocal Enforcement) Act extends, if the award was in pursuance of the law in force in the place where it was made : it shall become enforceable in the same manner as a Judgement given by a Court in that place and the proceeding of the Foreign Judgements (Reciprocal Enforcement) Act shall apply in relation to the award as it applies in relation to a Judgement given by that Court.

Awards made in proceedings in foreign territory

ORDER 53 — APPEALS AND APPLICATIONS UNDER THE TRADE MARKS ACT AND PATENTS AND DESIGNS ACT

A — GENERAL

1. —(1) The rules under the general procedure rules shall apply with necessary modifications where there is no specific rules under this order.

Applications of general procedure rules.

(2) An appeal or application to the Court under this order shall be begun by originating motion.

Appeals from Registrar

(3) Notice of the motion by which any appeal or application is made shall be served on the Registrar.

(4) Where the Registrar refers to the Court an application made to him under the Trade Marks Act or the Patents and Designs Act, as the case may be, unless within (1) month after receiving notification of the decision to refer, the applicant makes to the Court, the application referred to it by the Registrar, the applicant shall be deemed to have abandoned the application.

2. —(1) A notice of motion by which an appeal is brought shall state the ground of the appeal and if the appeal is against a Judgement, an order or any

Notice of motion etc.

other decision of the Registrar, the notice shall state whether the appeal is against the whole or a part of the decision, and if against part only, shall specify the part.

(2) The notice shall be served, and the appeal entered within (30) days after the date of the order, determination or other decision against which the appeal is brought.

(3) The period specified in sub-rule (2) of this rule shall be calculated from the date in which notice of the decision or in a case where a statement of the ground for a decision was given later than that notice on which the statement was given to the appellant by the person who made the decision or by a person authorized in that behalf to do so.

(4) The filing of an appeal under this order shall not operate as a stay of proceeding on the Judgement, determination or other decision against which the appeal is brought, unless the Court by which the appeal is to be heard so orders.

Time within which appeal may be heard

3. Unless the Court otherwise directs, an appeal under this order shall not be heard sooner than (21) days after service of notice of the motion by which the appeal is brought.

Amendment of notice of motion

4.—(1) The notice of the motion by which an appeal is brought may be amended by the appellant without leave, by supplementary notice served not less than (7) days before the day appointed for the hearing of the appeal, on each person on whom the notice to be amended was served.

(2) Except with the leave of the Court hearing such appeal, no ground other than those stated in the notice of the motion by which the appeal is brought or any supplementary notice under sub-rule (1) of this rule, may be relied upon by the appellant at the hearing ; but the Court may amend the ground so stated or make any other order, on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

Power of the Court on appeal

5.—(1) Upon the first hearing or the motion, the Court shall give direction as to the procedure of appeal.

(2) The Court shall have power to receive further evidence on any question of fact, and the evidence may be given in such manner as the Court may direct either by oral examination in Court, by affidavit, by deposition taken before an examiner or in any other manner.

(3) The appellant shall apply to the Registrar for a signed copy of any note made to him of a proceeding and furnish the copy to the Court for the use of the Court; and in default of production of such note, or if the note is incomplete, in addition to the note, the Court may hear and determine the

appeal on any other evidence or statement of what occurred in the proceeding as appears to the Court to be sufficient.

(4) The Court may give any Judgement, decision or make any order which ought to have been given or made by the Registrar, and make such further or other orders as the case may require or may remit the matter with the opinion of the Court for re-hearing and determination by the Registrar.

(5) The Court may, in special circumstances, order such security to be given for the cost of the appeal as may be just.

(6) The Court shall not allow an appeal on the ground merely of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court, substantial wrong or miscarriage of justice has been occasioned thereby.

(7) Where an appeal is against the refusal of a trade mark application by the Registrar, the Registrar shall appear or be represented and be heard in the proceedings on the appeal.

6.—(1) The Registrar —

(a) may refer any application; and

(b) shall refer any application where the issue refers to a question of law to the Court for determination.

Reference by  
Registrar

(2) Any reference made under sub-rule (1) of this rule to the Court shall be made by originating motion and shall be served on every party to the proceedings to which the application relates.

(3) The notice of motion shall state the ground of the application, the question of law for determination, the contentions of the Registrar and of any other party (if any), on the question of law to which the reference relates and any other relevant matter.

(4) Unless the Court otherwise direct: the motion shall not be heard sooner than (14) days after service of notice on every party concerned.

(5) The Registrar shall appear or shall be represented and be heard in the proceeding of a matter referred to the Court.

#### B—TRADE MARKS

7—(1) An action for infringement of a registered trade mark shall be commenced by a writ of summons as provided in order 3 of these Rules.

Procedure for  
action on  
infringement of  
registered trade  
mark

(2) Where in any proceeding a claim is made for relief for infringement of the right to the use of a registered trade mark, the party against whom the claim is made may in his defence, put in issue the validity of the registration of that trade mark or may counter-claim for an order that the register of trade mark be rectified in cancelling or varying the relevant entry or both.

(3) A party to such proceeding who in his pleadings whether a defence or counter-claim disputes the validity of the registration of a registered trade mark shall serve along with the pleadings, particulars of the objection to the validity of the registration on which he relies in support of the allegation of invalidity.

(4) A party to such proceeding who counter-claims for an order that the register of trade marks be rectified shall serve on the Registrar of trade marks, a copy of the counter-claim with a copy of the particulars mentioned in sub-rule (2) of this rule; and the Registrar of trade marks shall take part in the proceeding as he may think fit but may not serve a defence or any other pleading unless ordered to do so by the Court.

C — PATENTS AND DESIGNS

Procedure for nullifications of patents or designs

8.—(1) An application for the nullification of a patent or a design, as the case may be, shall be by petition.'

(2) The respondent to a petition shall serve an answer to the petition within (21) days after service of the petition on him.

(3) A petitioner shall serve along with his petition or any other pleading, particulars of the objection to the validity of the patent or design on which he relies.

(4) The particulars given pursuant to sub-rule (3) of this rule shall state each ground on which the validity of the patent or design is questioned and shall include such particulars as shall clearly define every issue which it is intended to raise.

(5) Where the grounds stated in the particulars of objection include want of novelty or want of any inventive step, the particulars shall state the manner, time, place of every prior publication or user relied upon and, if prior user is alleged, shall—

(a) specify the name of each person alleged to have made the user;

(b) state whether the user is alleged to have continued until the priority date of the claim in question or of the invention, as may be appropriate, and, if not, the earliest and latest date on which the user is alleged to have taken place ;

(c) contain a description accompanied by the drawing, where necessary, sufficient to identify the user; and

(d) where the user relates to machinery or apparatus, state whether the machinery or apparatus is in existence and where it may be inspected.

(6) Where in the case of an existing patent or design—

(a) one of the ground stated in the particulars of objection is that the invention, so far as claimed in any claim of the complete specification, is not useful; and

(b) it is intended, in connection with the grounds stated in sub -rule 1 of this rule to rely on the fact that an example of the invention which is the subject of any claim cannot be made to work, either at all or as described in the specification, the particulars shall state that fact and identify each of such claim; and shall also include particulars of each example, specifying the respect in which it is alleged that it cannot work or be made to work as described.

9.—(1) Except with the leave of the Judge hearing any action or any other proceeding relating to a patent or a design, no evidence shall be admissible in proof of any alleged infringement, or of any objection to the validity of the patent or design, if the infringement or objection was not raised in the particulars of infringement or objection, as the case may be.

Restriction on evidence

(2) In any action or any other proceeding relating to a patent or a design, evidence which is not in accordance with a statement contained in the particulars of objection to the validity of the patent or design shall not be admissible in support of an objection unless the Judge hearing the proceeding, allows the evidence to be admitted.

(3) Where any machinery or apparatus alleged to have been used before the priority date mentioned in rule 8 (5) ( b ) of this order is in existence at the date of service of the particulars of objections, no evidence of its user before that date shall be admissible unless it is proved that the party relying on the user offered, where the machinery or apparatus is in his possession, inspection of it to the other parties to the proceedings or where it is not, used all reasonable endeavours to obtain inspection of it for those parties.

10—(1) An action for infringement of a patent or a design shall be commenced by a writ of summons.

Procedure for action on infringement of patent of design

(2) In an action for infringement of a patent or a design whether or not any other relief is claimed and in any proceeding by petition for the revocation of a patent or design—

(a) the plaintiff or petitioner shall within (1) month after service of a reply, answer or after the expiration of the period fixed for service, take out a summons for directions as to the place and mode of trial returnable in not less than (21) days ; and

(b) if the plaintiff or petitioner does not take out a summons in accordance with paragraph (a) of this sub -rule, the defendant or respondent, as the case may be, may do so, and the summons may be heard in chambers or in Court as the Court thinks fit.

(3) The Court hearing a summons under this rule may give directions for—

(a) the service of further pleadings or particulars ;

(b) the discovery of document;

(c) securing the making of admission ;

(d) the service of interrogatory and of answer to it ;

(e) the taking by affidavit, of evidence relating to a matter requiring expert knowledge, and for the filing of such affidavit and the service of it on the other party ;

(f) the service on the other party, by any party desiring to submit experimental proof, of full and precise particulars of the experiment proposed and of the fact which he claims to be able to establish;

(g) the making of experiment, test, inspection or report ;

(h) the hearing, as a preliminary issue, of any question that may arise including any question as to the construction of the specification or any other document, or as the Court thinks necessary or expedient for the purpose of defining and limiting the issue to be tried, restricting the number of the witness to be called at the trial of any particular issue and otherwise securing that the case shall be disposed of, consistently with adequate hearing, in the most expeditious manner.

(4) Where evidence is directed to be given by affidavit, the deponent shall attend at the trial for cross-examination unless, with the concurrence of the Court, the parties otherwise agree.

(5) On the hearing of a summons under this rule the Court shall consider, if necessary of its own motion, whether an expert shall be appointed under rule 11 of this order to assist the Court.

(6) An action for infringement or petition for the revocation of a patent or design shall not be set down for trial unless and until a summons under this rule in the action or proceedings, has been taken out and the direction given on the summons have been carried out or the time fixed by the Court for carrying it out has expired.

Appointment  
of expert

11. —(1) In any proceeding under the Patents and Designs Act the Court may at any time, and on or without the application of any party, appoint an expert to assist the Court by inquiring and reporting on any question of fact or of opinion not involving a question of law or construction as the Court may direct.

(2) the Court may nominate the expert and, where appropriate, settle any question or instruction to be submitted or given to him.

(3) Where the Court appoints an expert to inquire and report under sub-rule (1) of this rule, order 41 of these Rules shall apply in relation to his report as it shall apply in relation to a report made by a referee under that order.

Interpretation  
under his order

12. In this order. "Registrar" means the Registration of Trade Marks or the Registrar of Patents and Designs, as the case may be.

## ORDER 54 — APPEAL TO THE COURT FROM PROFESSIONAL BODIES

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1. This order shall apply to any appeal to the Court from the decision of any professional body under the provisions of any written law which confers the right to appeal to the Court against such decision. Application
2. An appeal to the Court from a decision of any professional body other than those specified in this order shall be by notice of motion. Method of appeal
3. The evidence upon the hearing of the appeal shall be by affidavit except in so far as the Court at the hearing may direct oral evidence to be given. Evidence
4. The notice of motion shall be served before the expiration of (6) weeks after the date of the decision to which it relates, upon the professional body. Content of notice and date of hearing
5. The notice of motion shall state the ground of appeal, and the date mentioned in the notice for the hearing of the appeal shall not be less than (28) days after the service of the notice. Reasons the appeal to be filed
- 6.—(1) The appellant shall within (7) days after service on the professional body of the notice of motion, file with the Registrar a copy of the notice and an affidavit setting out the reason stated by the professional body for its decision and the facts upon which the appellant intends to rely at the hearing and the motion shall be set down for hearing. Copies of affidavit to be served on the parties  
(2) Where the notice of motion is not set down in accordance with this rule, the professional body may apply to the Court, upon notice to the appellant, for an order discharging the notice of motion and for the cost of the application.
7. The appellant shall deliver to the professional body, a copy of any affidavit filed under rule 6 of this order in support of the motion and any person intending to oppose the motion shall, (4) days at least before the hearing, deliver to the appellant a copy of any affidavit intended to be used by him in opposing the motion. Fees: Appendix 2

## ORDER 55—FEES AND ALLOWANCES

- 1.—(1) Subject to the provisions of any written law and of the foregoing orders the fees set out in *Appendix 2* to these Rules shall be payable by any person commencing the respective proceeding or desiring the respective service which is specified in the Appendix. Allowance Appendix 4
- (2) Filing fees are waived in respect of the party which is or represent a Government Ministry, non-Ministerial Department, Federal, State and Local Government or any of its Agencies.
- (3) The allowance set out in *Appendix 4* to these Rules shall be payable to the various category of witness mentioned by any person at whose instance they testify.

(4) A witness who testifies at the instance of the Court acting on its own motion shall be paid out of public revenue.

Regulations Appendix 5.

2. The regulations set out in Appendix 5 to these Rules shall be observed by the officers of Court concerned with the rendering of any service and or collection of any fee payable under the provisions of the foregoing order.

ORDER 56—MISCELLANEOUS PROVISIONS

Orders to be made

1. Subject to particular rules, the Court may in any cause and matter make any order which it considers necessary for doing justice, whether the order has been expressly asked for by the person entitled to the benefit of the order or not.

Other procedure rules in Appendix 1

2—(1) Where no specific procedure is given in any of the laws in Appendix 1 to these Rules, the rules and procedure in these Rules shall apply with necessary modification so as to comply with the subject matter the law in Appendix 1 to these Rules deals with.

(2) The Chief Judge may modify or add to the list of rules set out in Appendix I to these Rules.

Recovery of penalties and costs

3. Any fine, forfeiture, pecuniary penalty and cost ordered to be paid may be levied by distress, seizure and sale of both movable and immovable property of the person making default in payment.

Notices

4. In any case in which the publication of any notice is required, the same may be made by advertisement in the Federal Gazette, unless otherwise provided in any particular case by any rule of Court or otherwise ordered by the Court.

Filing

5. A document shall not be filed unless it has endorsed on it, the name and number of the case, the date of filing, and whether filed by plaintiff or defendant, and on being filed the endorsement shall be initialed by the Registrar.

Fees: Appendix 3.

6. The fees set out in Appendix 3 to these Rule; may be charged in respect of the duties of a notary public or of a notarial act and any other duty mentioned.

Days of opening Registry to the public

7. The Registry of the Court shall, subject to the directives of the Chief Judge, be opened to the public on every day in the year from 8 o'clock in the forenoon to 2 O'clock in the afternoon, except on Saturdays and Sundays or on any day declared as public holiday by the Federal Government.

Where no rules exist.

8. Where a matter arises in respect of which no adequate provision is made in these Rules, the Court shall adopt such procedure in similar Rules or such procedure as will in its view do substantial justice to the party.

Forms of write summons etc. Civil Forms 1,2, 3 and 4

9. Any writ of summons, originating summons and petition shall be recorded in a permanent form by the Registrar as specified in Forms 1. 2. 3 or 4 in Appendix 6 to these Rules.

ORDER 57 — POWERS OF THE CHIEF JUDGE TO AMEND RULES AND ISSUE PRACTICE DIRECTIONS

1. Where any additional provision is made to these Rules or any part of it is amended or modified, the Chief Judge may issue a directive for addition, publication or reprint of the supplement to these Rules. Powers of Chief Judge over new Rule

2. Where the Chief Judge makes amendment or modification to these Rules it shall be sufficient to publish same as supplemental provisions without the necessity of new body of Rules except where necessary. Publication of new rule

3. The Chief Judge shall have the power to issue practice directions, protocols, directives and guidance towards the realization of speedy, just and effective administration of justice. Chief Judge's Power to issue practice direction etc.

4. The practice direction, protocol, directive and guidance shall be published and be given effect towards the realization of the fundamental objective of these Rules. Practice directions etc. to be published

ORDER 58 — ESTABLISHMENT OF COMMUNICATIONS AND SERVICE CENTRE FOR E-FILING

1. —(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 on-line filing of a process and document. Powers of the Chief Judge

(2) A cause or matter, which is electronically filed in this Court shall conform with these Rules.

(3) There shall be a Registry for filing any document and process of Court electronically, to be known as the E-Filing Unit. E-filing

(4) There shall be a scanning centre for scanning the hard copy of a process into soft copy.

2. —(1) There shall be an officer of the Court to be known as the E-Filing Registrar who shall be the designated officer in charge of the Unit. E-filing Registrar

(2) The E-Filing Registrar shall be responsible for the management of the documents and processes of Court which are electronically transmitted to the Court.

3. The E-filing system shall run parallel with the existing filing procedure in the rules of the Court Parallel operation with the present service

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Plaintiff to determine method of filing

4. The Plaintiff shall determine the appropriate method of filing to adopt and the defendant shall comply in filing his defence using the same method.

Where electronically filed matter shall be held

5. An electronically filed matter shall be heard in such Court as may be designated by the Chief Judge.

Filing electronically filed matter in the same manner

6. A Plaintiff who files a cause or matter electronically shall continue in the same manner until the determination of the matter.

Documentary Exhibits

7. A documentary exhibit may be saved directly where such document is in soft copy or scanned where it is in hard copy.

Electronic signature

8. The electronic signature shall constitute the parties signature on the document.

Document under oath

9. Where a document is to be signed or made under oath, the party may—

- (a) electronically sign the document; or
- (b) manually sign the document and scan the page with the signature.

Process deemed filed in case of technical failure

10. Where an e-filed process or document is considered filed out of time arising from a technical failure or system outage on the part of the e filing system of the Court, any process or document so filed may be deemed filed and the party may seek appropriate relief from the Court.

System outage of technical failure in preventing compliance

11. Where a system outage or technical failure prevents the party from complying with an order as to time, the party may seek further direction from the Court.

## APPENDIXES

## APPENDIX 1

1. Fundamental Rights (Enforcement Procedure) Rules 1979
2. Federal High Court (Tax Appeals) Rules 1992
3. Admiralty Jurisdiction Procedure Rules 1993
4. Companies Proceedings Rules 1992
5. Companies Winding Up Rules 2001
6. Bankruptcy Rules 2001

APPENDIX 2  
FEES PAYABLE

₦

1. For the recovery of a specified sum—
  - (a) not exceeding N20,000 .. .. . 1,000.00
  - (b) exceeding ₦20,000; but not above ₦100,000 .. .. 1,500.00
  - (c) exceeding ₦100,000 ; but not above ₦1,000,000 .. .. 2,500.00
  - (d) exceeding ₦1,000,000 per ₦100,000 or part of it .. .. 1,500.00
  - (e) maximum fee.. . . . . . 50,000.00
  - (f) claim in foreign currency shall be converted into the local currency as assessed above
- 2(a) For the recovery of an unspecified sum the fee payable is the same as the maximum payable per relief.
- (b) For set off or counter-claim the same as payable under item 1.
3. For an account to be taken and payment of the sum found due —
  - (a) initial fee .. .. . 1,000.00
  - (b) second fee (payable before setting down for Judgement) - per ₦100 or part of it found due in excess of ₦200.. .. . 1,000.00
  - (a) maximum fee .. .. . 5,000.00
4. Originating Summons—
  - (a) originating summons .. .. . 2,000.00
  - (b) oaths .. .. . 100.00
  - (c) filing .. .. . 100.00

(d) double sealing .. .. .	200.00
(e) each exhibit .. .. .	20.00
(f) service same as in item 37 of this appendix	
5. Motion on Notice .. .. .	200.00
(a) motion on notice .. .. .	100.00
(b) oaths .. .. .	100.00
(c) filing .. .. .	100.00
(d) sealing .. .. .	20.00
(e) each exhibit	
(f) service, same as in item 37 of this appendix	
6. Motion <i>Ex parte</i> —	
(a) motion <i>ex parte</i> .. .. .	200.00
(b) oaths .. .. .	100.00
(c) filing .. .. .	100.00
(d) sealing .. .. .	100.00
(e) each exhibit .. .. .	0.00
7. For any other relief or assistance not specially provided for application, affidavit, Judgement, order, security bond, warrant and writ .. .. .	100.00
8. On application for warrant to detain a ship .. .. .	2,500.00
9. On application for a writ of <i>Habeas Corpus</i> .. .. .	500.00
10. On filing any other application —	
(a) if on notice .. .. .	200.00
(b) if <i>ex parte</i> .. .. .	200.00
(c) if accompanied by other papers same as payable under items 4, 5 and 6	
11. On filing an affidavit .. .. .	100.00
12. On filing a security bond .. .. .	200.00
13. On filing any other paper .. .. .	100.00
14. On justification of sureties : for each surety .. .. .	500.00
15. For the issue of warrant to detain an absconding defendant of a ship .. .. .	500.00

	N
16. For the issue of a writ of <i>Habeas Corpus</i> .. ..	500.00
17. For the drawing up of any order of Judgement .. ..	200.00
18. For an inquiry by a Court officer where so ordered : for each sitting .. .. .	2,000.00
19. For an account taken by a Court officer where so ordered per N100 or part of it found to have been received .. .. .	5.00
20. For taking down a person's statement where so ordered as the Court may direct but not exceeding ..	100.00
21. For searching the archives : for each period of six months or part of it .. .. .	500.00
22. For drawing up a bill of costs where so directed; per folio of 72 words .. .. .	10.
23. For taking costs where so ordered : N10 or part of it	1.00
24. For preparing a copy where authorized per folio of 72 words .. .. .	10.00
25. (1) For every subpoena .. .. .	200.00
(2) Witness allowances, same as in <i>Appendix 4</i>	
26. On warrant for prisoner to give evidence .. ..	500.00
27. On commission to take evidence –	
(1) out of jurisdiction .. .. .	5,000.00
(2) within jurisdiction .. .. .	2,000.00
28. For attesting the execution or signature of an instrument other than an instrument regarding payment of pension by Government not otherwise provided for .. .. .	100.00
29. For sealing any document not in the proceeding ..	200.00
30. For certifying a copy as a true copy per folio of 72 words or part of it .. .. .	10.00
31. For certifying a record of proceeding per folio 72 words or part of it .. .. .	10.00
32. For payment into Court except when ordered by the Court or proceeds of execution	
(1) not exceeding N100 per N20 or part of it .. ..	2.00
(2) exceeding N100 per N100 or part of it .. ..	10.00

		N
	(3) on payment into an interest yielding account part of interest paid into Court. .. .. .	1%
33	On appointment of Commissioner to administer Oaths and take declarations not being a Government Officer .. .. .	500.00
34.	For sealing a letter of request .. .. .	500.00
35.	On transfer of a foreign Judgement .. .. .	500.00
36.	For certificate of service of foreign process where not disallowed by convention .. .. .	200.00
37.	For the service of any document or process fees plus distance as determined by the Registry—	
	(1) each service as per distance but not below or within 12 kilometres from the Court .. .. .	100.00
	(2) if beyond 12 kilometres for every subsequent 2 kilometres or part of it (one way) .. .. .	10.00
	(3) if outside jurisdiction and in addition the postage fee or courier charges as the case maybe .. .. .	100.00
38	Fee for late filing .. .. .	1000.00 per day

APPENDIX 3  
(0.56 R. 6)

1.	NOTARIES FEES OF OFFICE	N
(1)	Noting protest on bill or note .. .. .	100.00
(2)	Extending protest on bills of exchange .. .. .	200.00
(3)	Promissory note .. .. .	200.00
(4)	Minuting or noting ship's protest .. .. .	100.00
(5)	Extending ship's protest .. .. .	200.00
(6)	Attestation to any document .. .. .	100.00
2.	TRANSLATIONS	
(1)	For every folio of 72 words .. .. .	100.00
(2)	Attestation to translation of any document .. .. .	3,000.00

3.	FEES FOR REGISTRATION OF JUDGEMENTS							
(1)	Registration of a certificate of a Judgement of a High Court	..	..	..	..	..	..	2,000.00
(2)	Registration of a certificate of a Judgement of any Court	..	..	..	..	..	..	2,000.00
4.	REGISTRATION OF A CAVEAT							
	For filing a Caveat	..	..	..	..	..	..	2,000.00

APPENDIX  
(0.55 r. 1)

1.	ALLOWANCE TO WITNESSES AND INTERPRETERS							
								<i>Per day</i>
								N : K
(1)	Professional men, merchants, captains of ships, auctioneers , pilots, mercantile agents, bank : managers, chiefs, surveyors and any officer of the public service whose salary is not less than grade level 07	..	..	..	..	..	..	12,000.00
(2)	Mercantile assistants, other persons and officers in the public service whose salary is less than grade level 07							5,000.00
	Servants, labourers, canoe men and the like not specifically provided for in the schedule	..	..	..	..	..	..	2,500.00
(4)(a)	Interpreter of Nigerian language	..	..	..	..	..	..	2,500.00
(b)	Interpreter of foreign language	..	..	..	..	..	..	2,500.00
2.	TRANSPORT ALLOWANCE							
(1)	By private car per kilometre	..	..	..	..	..	..	20.00
(2)	By private motorcycle per kilometre	..	..	..	..	..	..	10.00

3. NOTE

(1) The travelling expenses of witnesses shall be allowed according to the sums reasonably and actually paid.

(2) An allowance shall not be made to an officer of the public service who is summoned as a witness by the Government or by any department of the Government.

(3) In any other case he shall be allowed cost and travelling expenses as if he were not an officer in the public service.

(4) Any fee, cost or expenses payable to an officer in the public service shall be paid into revenue unless otherwise ordered.

1. REGULATIONS REGARDING FEES

(1) A summons, warrant, writ or subpoena shall not, except by special order of the Court, be issued until—

(a) any fee payable as contained in the appropriate *Appendix* of fees shall have been paid ; and

(a) an account of it, initialled as received is set forth by the officer issuing the process both in the margin and in the counter-foil.

(2) Such fee shall be carried to account immediately on the process being signed by the Judge.

(3) A document, for or in respect of which any fee has been paid shall bear an endorsement initialled by the Registrar or other officer showing the amount of the fee so paid and the number of the receipt referring to the payment.

(4) Where any form of process specifies the fee , it shall be for the Registrar or other officer to initial the amount of the fee appearing on it, and to quote the number of the receipt.

(5) The Registrar or other officer submitting any writ of summons or other process to be signed by a Judge shall at the same time produce the stamp of the receipt given for the fees of such process.

(6) A document in respect of which a fee is payable shall not be used in any legal proceeding, unless it has been initialled as aforesaid by the Registrar or other officer or unless the Court is otherwise satisfied that the proper fee in respect of it has been paid

(7) Any fee for service, execution and distance in kilometres shall be paid into revenue.

(8) The hearing fee or any other fee shall be returned except upon a voucher payable at the treasury in favour of the party entitled to receive it and prepared at the direction of the Judge before whom the cause or matter is set down and comes on for hearing.

APPENDIX 6  
CIVIL PROCEDURE FORMS  
FORM 1  
(0.3 r.4)

GENERAL FORM OF WRIT OF SUMMONS  
(Here put the letter and number (see note following this form))

IN THE FEDERAL HIGH COURT

IN THE ..... JUDICIAL DIVISION

BETWEEN

Suit No.

A.B..... Plaintiff

AND

C.D..... Defendant

To C.D. of ..... in the ..... of

You are hereby commanded that within 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 A. B. and take notice that in default of your so doing the plaintiff may proceed there in, and judgement 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 twelve calendar months from the date thereof or if renewed, within six calendar months from the date of the last renewal including the day of such date, and not afterwards. The defendant may enter appearance personally or by legal practitioner either by handing in the appropriate forms duly completed at the Registry of the Federal High Court of the Judicial Division in which the action is brought or by sending them to the Registry by registered post.

*Endorsement to be made on the writ before issue thereof*

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The plaintiff's claim is for etc. (b).....

The writ was issued by G.R. of.....Whose address for service (c) is agent for.....of .....legal practitioner for the said plaintiff who resides at (d).....(mention the city town or district and also the name of the street and number of the house of the plaintiff's residence, if any).

*Endorsement to be made on copy of writ forthwith after service*

This writ was served by me at.....on the defendant (here insert mode of service) on the.....day of 20..... Endorsed the.....day of.....20.....

(Signed).....

Address.....

*Note*

(a) *Heading and Title* — If the action is for administration, the writ must be headed "in the matter of the Estate of (Deceased)" If it is a debenture holder's action, the writ must be headed "In the matter of the A.B. 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 titled "In the matter of the (trust or settlement)"

(b) *Endorsement of Claim*—If the plaintiff sues, or defendant is sued, in a representative capacity, the endorsement must state in what capacity the plaintiff sues or the 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 provision of the Act including a claim for four days costs

(c) *Address for Service*—see 0.4 r. 5. The address must be within the jurisdiction.

(d) *Address of Plaintiff*—In the case of a company in liquidation the plaintiff's address should run".....plaintiffs, who are a company in liquidation. The liquidator is (name of liquidator, address of liquidator)"

In the case of a foreign corporation within the meaning of the Companies and Allied Matters Act, the plaintiffs' address should run thus; .....plaintiffs, 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 —See 0.6 r. 13.

Before the writ is issued the following certificate must be indorsed on it.

*The Registry, Federal High Court*

In the ..... Judicial Division

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

.....  
*(Signature of Registrar)*

FORM 1 (A)  
(0.3 r. 3(1) (e))

CIVIL SUMMONS TO WITNESS REQUIRING SUBPOENA  
*In the Federal High Court*

In the .....Judicial Division

*Suit No.:*.....

BETWEEN

.....Plaintiff(s)

AND

.....Defendant(s)

WHEREAS the plaintiff/defendant has listed your name as a prospective witness in this case and has indicated that a subpoena will be needed to get you to testify at the trial;

Whereas the rules of practice and procedure of this Court, requires every witness to reduce his intended testimony in writing under oath for same to be filed in the Registry of the Court by the party calling the witness, for service on the opposite party ;

Now THEREFORE, you are commanded in the name of the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria to deliver to the above named plaintiff(s)/defendant(s) or his/her legal practitioner at the address indicated below, on or before.....the.....day of..... 20..... your written statement (i.e. your intended testimony) on oath, concerning the case.

TAKE NOTICE that if you fail to deliver the statement as aforesaid, you will be guilty of contempt of the Court and Bench warrant for arrest and or to prison may be issued against you.

*Dated this..... dayof.....20.....*

Address at which the statement is to be delivered :

To plaintiff(s) /defendant(s)

C/o.....

.....

.....

.....  
*Registrar*

*Note :*

(a) This summons is to be served with the pleadings of the party calling the witness.

(b) The witness will still be required to attend Court when duly notified, or a formal adoption of the written statement on oath and to tender exhibits if need be, and be cross-examined.

FORM 2

(O. 3 r.5 & O. 6 r. 18)

WRIT FOR SERVICE OUT OF JURISDICTION

(HEADING AS IN FORM 1)

To C.D. of.....

You are hereby commanded that within {here insert the number of days directed by the Court or Judge ordering the service or notice) days after service of this writ (or notice of writ, as the case may be) on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the.....Judicial Division of the Federal High Court in anaction at the suit of A.B. , and take notice that in default of your so doing the plaintiff may proceed therein and judgement 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 twelve calendar months from the date thereof, or if renewed within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant (or defendants) may appear hereto by entering appearance (or appearances) either personally or by legal practitioner at the Registry of the Judicial Division in which the writ is issued.

This writ was served, etc (as in Form 1) Endorsement to be made on the writ before the issue thereof:

*N.B:*

This Writ is to be used where the defendant or all defendants or one or more defendants is or are out of jurisdiction.

When the defendant to be served is not a citizen of Nigeria and is not in the Commonwealth, notice of this writ and not the writ itself is to be served upon him.

*Note :*

The above endorsement “N.B” must be on every writ or concurrent writ for service out of the jurisdiction, or of which notice is to be served out of jurisdiction.

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

*Endorsement* : If the claim is for a debt or liquidated demand only, the endorsement, even though not special, must strictly comply with the provisions of 0.4 r. 3, including a claim for costs.

See also notes to Form I, supra."

FORMS (0.3 r.9)

GENERAL FORM or ORIGINATING SUMMONS

*In the Federal High Court*

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.....Plaintiff(s)

AND

C.D. and E.F.....Defendant(s)

Let.....of  
 .....In

.....within thirty days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons which is issued upon the application..... of.....of.....who claims 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 practitioners for the above-named.....

The defendant may appear hereunto by entering appearance personally or by a legal practitioner either by filing the appropriate processes (as in Order 7) in response at the Registry of the Court where the summons was issued or by sending them to that office by any of the methods allowed by these Rules.

*Note* : If the defendant does not respond within the time at the place above mentioned, such orders will be made and proceedings may be taken as the Judge may think just and expedient.

FORM 4  
ORIGINATING SUMMONS UNDER  
(0.3 r.9)  
(Headings as in Form 1)  
*In the Federal High Court*

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 before the Judge, or (Chief  
Registrar's Office) Federal High Court Registry.....on  
the..... day of.....20 at 9 o'clock in the forenoon (on the  
hearing of an application on the part of.....(state relief sought). (If for  
leave to enforce award under the Arbitration Act 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  
FEDERAL 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 hereon), such order will be  
made and proceedings taken as the Judge may think just and expedient.

FORM 5  
(0.3 r.9)

FORM OF EX PARTE ORIGINATING SUMMONS

*In the Federal High Court*

In the ..... Judicial Division

*Suit No* .....

In the matter of A.B. an infant (or, as may be).

LET ALL PARTIES concerned attend before the Judge or (Chief Registrar's Office), Federal High Court, at the time specified in the margin hereof, on the hearing of an application on the part of the above named A.B. an infant by C.D his next friend, that etc.

This summons was taken out by ..... of ..... (agents for ..... of ..... )

*Legal practitioners for the applicant.*

FORM 6  
(0.3 r. 17)

FORM OF MEMORANDUM FOR RENEWED ORIGINATING PROCESS

(Heading as in form No. 1)

Seal renewed Originating Process in this action endorsed as follows :

The Originating Process renewed on the.....day of.....

20 .....pursuant to order of Court made..... day of.....

20..... for six months.

(Copy original originating process and the endorsements)

FORM 7

(O. 6 r. 19 and 26)

REQUEST TO MINISTER OF FOREIGN AFFAIRS TO TRANSMIT  
NOTICE OF WRIT TO FOREIGN GOVERNMENT  
(HEADING AS IN FORM 1)

The Chief Judge of the Federal High Court presents his compliments to the Minister of Foreign Affairs and encloses herewith a notice of writ of summons issued in an action of..... versus ..... pursuant to Order, out of the .....Judicial Division of the Federal High Court for transmission to the Ministry of Foreign Affairs in..... (name of country) with the request that the same may be served personally upon..... (name of defendant to-be served) against whom proceedings have been taken in the.....Judicial Division of the Federal High Court and with the further request that such evidence of the service of the same upon the said defendant further request that such evidence of the service of the same upon the said defendant may be officially certified to the Federal High Court or declared upon oath or otherwise in such manner as is consistent with the usage or practice of the Courts of the (name of country) in proving service of legal process.

The Chief Judge further requests that in the event of efforts to effect personal service of the said notice of writ proving ineffectual, the Government or Court of the said country be requested to certify the same to the Federal High Court.

Chief Judge

**B 401**

**FORM 8**  
**(O. 6 r. 19, 26 and 28)**

**REQUEST FOR SERVICE ABROAD**  
**(Heading as in Form 1)**

I (or we) hereby request that a notice of summons in this action be transmitted through the proper channels to (name of country) for service (or substituted service) on the defendant (name 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 request 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 Federal High Court Registry for transmission to the Permanent Secretary of the Ministry of Foreign Affairs.

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

.....  
*Signature and Address of  
Legal Practitioner*

FORM 9 (0. 6 r. 19, 26 and 27)

LETTER FORWARDING REQUEST FOR SUBSTITUTED SERVICE  
(HEADING AS IN FORM 1)

The Chief Judge of the Federal High Court presents his compliments to the Minister of Foreign Affairs and encloses herewith a notice of a writ of summons in the case of.....versus.....in which the plaintiff has obtained an order of the .....Judicial Division of the Federal High Court (which is also enclosed) giving leave to bespeak a request that the said notice of writ may be served by substituted service on the defendant at .....in the .....(name of country).

The Chief Judge requests that the said notice of 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 Court 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 Federal High Court or declared upon oath or otherwise, in such manner as is consistent with the practice of the Court of.....(name of country) in proving service of legal process.

.....  
*Chief Judge*

FORM 10

(O. 6 r. 19 and 27)

REQUEST TO MINISTER OF FOREIGN AFFAIRS TO  
TRANSMIT NOTICE OF WRIT TO A FOREIGN GOVERNMENT

CIVIL AVIATION ACT

(Heading as in Form 1)

The Chief Judge of the Federal High Court presents his compliments to the Minister of Foreign Affairs and encloses herewith a notice of a writ of summons issued in an action .....of.....versus (insert name of- the defendant high contracting party) pursuant to order, out of the..... Judicial Division of the Federal High Court 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 said Judicial Division of the Federal High Court stating that the notice of writ of summons has been so delivered and on what date.

.....  
*Chief Judge*

FORM 11  
(0.7 r. 1)  
MEMORANDUM OF APPEARANCE  
IN THE FEDERAL HIGH COURT OF  
NIGERIA

In the .....Judicial Division

*Suit No*.....

BETWEEN

.....Plaintiff (a)

AND

.....Defendants (b)

Please enter an appearance for.....(give full name of defendant wishing to appear).

*(sued as)*

.....(give name by which defendant is described in writ if this differs from defendant's full name, otherwise delete words in square brackets).

*In this Action*

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

FORM 12  
(0.9 r. 18)

THIRD PARTY NOTICE CLAIMING INDEMNITY OR  
CONTRIBUTION OR OTHER RELIEF OR REMEDY

*In the Federal High Court*

Suit No.....of

BETWEEN

A.B.....Plaintiff  
AND

C.D.....Defendant

AND

E.F.....Third party

THIRD PARTY NOTICE

Issued pursuant to the order of the Hon. Justice .....dated  
the .....day of.....20.....

To E.F. of..... in the .....of  
Take NOTICE that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant (here state concisely the nature of the plaintiff's claim) as appears from the endorsement on the writ of summons (or originating summons) (or statement of claim) a copy whereof is delivered herewith (together with a copy of the statement of claim) The defendant claims against you (here state concisely the nature of the claim against the third party as for instance to be indemnified against the plaintiff's claim and the costs of this action or contribution to the extent of (one-half) of the plaintiff's claim) or (the following relief remedy namely on the grounds, namely that (state concisely the grounds of the claim against the third party).

And take NOTICE that if you wish to dispute the plaintiff's claim against the defendant or the defendant's claim against you, you must cause an appearance to be entered for you within eight days after the service of this notice upon you. In default of your entering such appearance, you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and your liability to indemnify the defendant or to contribute to the extent claimed or to (stating the relief or remedy sought) and the validity of any Judgement that may be given in the action and you will be bound by such Judgement and such Judgement may be enforced against you.

**B 406**

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

Signed.....  
Legal practitioner for the defendant

The third party may appear hereto by entering appearance, personally or by legal practitioner by handing in the appropriate forms, duly completed at the Registry of the ..... Judicial Division..... of the Federal High Court. The appropriate forms may be obtained from the Registrar.

FORM 13

(0.9 r. 18)

THIRD PARTY NOTICE WHEN QUESTION OR ISSUE TO BE DETERMINED

In the Federal High Court

In the .....Judicial Division.

BETWEEN

A.B. ....Plaintiff

AND

C.D. ....Defendant

AND

E.F. ....third party

Issued pursuant to the order of the Hon. Justice.....

dated the .....day of.....20.....of

To : E.F. of .....in the.....

Of.....

Take NOTICE that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant (here state concisely the nature of the plaintiff's claim) as appears from the endorsement on the writ of summons (or originating summons) (or statement of claim) a copy whereof is delivered herewith (together with a copy of the statement of claim).

The defendant claims that the following question or issue, viz (here state concisely the question or issue to be determined) should be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and yourself.

And take NOTICE that if you wish to be heard on the issue or question or to dispute the defendant's liability to the plaintiff or your liability to the defendant you must cause an appearance to be entered for you within eight days after service of this notice upon you. In default of your so doing you will be deemed to admit the validity of the said question or issue and you will be bound by any Judgement or decision in the action so far as it is relevant to the said question or issue and the Judgement may be enforced against you in accordance with the provisions of the Decree.

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

(Signed)

Legal practitioner for defendant

The third party may appear hereto by entering appearance, personally or by the legal practitioner by handing in the appropriate forms duly completed at the Registry, of the .....Judicial Division of the Federal High Court. The appropriate forms may be obtained from the Registrar.

FORM 14  
(0. 13 r. 3(2), 35(7) and (8))  
NOTICE OF COUNTER -CLAIM  
IN THE FEDERAL HIGH COURT

BETWEEN

A.B.....Plaintiff

AND

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

To the within named X. Y

Take NOTICE that if you do not appear within eight days from the service of this defence and counter-claim upon you, you will be liable to have Judgement given against you in your absence.

Appearance to be entered at .....the Judicial Division of the Federal High Court Registry.

FORM 15  
(0. 13 r. 35 (14))  
CONCESSION TO DEFENCE  
*In the Federal High Court*

In the .....Judicial Division

BETWEEN

A.B.....Plaintiff

AND

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

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

FORM 16

(0.19 r.3)

JUDGEMENT FOR DISMISSAL

*In the Federal High Court*

In the ..... Judicial Division

Suit No .....

BETWEEN

A.B ..... Plaintiff

AND

C. D. and E.F ..... Defendants

Dated and entered the ..... day.....of..... 20.....

This action having on the .....day.....of..... 20.....  
been called on for hearing before and the plaintiff having failed to appear and the defendants  
having thereupon become entitled under order to Judgement dismissing the action  
.....and the said having ordered that Judgement  
be entered accordingly.

Therefore it is adjudged that this action do stand dismissed out of this Court with costs.

And it is further adjudged that the defendants recover against the plaintiff their costs to be  
awarded by the Court.

FORM 17  
(O. 20 r. 6 (a))  
Legal Practitioner's Undertaking as to Expenses  
(Heading as in Form No.1)

I (or we) hereby undertake to be responsible for all expenses incurred by the Ministry of Foreign Affairs in respect of the letter of request issued herein and on receiving due notification of the amount of such expenses undertake to pay the same as directed by the Chief Registrar of the Federal High Court.

The following have been appointed as agents for the parties in connection with the execution of the above letter of request:

Plaintiff's Agent of..... (full address)

Defendant's Agent of ..... (full address)

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

.....

Legal Practitioners for .....

FORM 18  
(O. 20 r. 6 (b))

LETTER OF REQUEST TO TAKE EVIDENCE  
(CONVENTION COUNTRY)  
(Heading as in Form 1)

To the competent judicial authority of..... in  
the ..... of.....

Whereas a civil (commercial) action is now pending in the .....  
Judicial Division of the Federal High Court of the Federal Republic of Nigeria, in which  
..... is the plaintiff and ..... is the defendant.

And in the said action the plaintiff claims .....

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

Now, I,..... the Chief Judge of the  
Federal High Court of the Federal Republic of Nigeria, have the honour to request, and do  
hereby request, that for the reasons aforesaid and for the assistance of the said Court, you  
will be pleased to summon the said witnesses (and such other witnesses as the agents of the  
said plaintiff and defendant shall humbly request you in Writing to so 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 plaintiff and defendant or such of them as shall on due notice given, attend such  
examination.

And I further have the honour to request that you will permit the agents of both the said  
plaintiff and defendant or such of them as shall be present to be at liberty to examine (upon  
interrogatories and viva voce upon the subject- matter thereof or arising out of the answers  
thereto) such witnesses as may, after due notice in writing, be produced on their behalf, and  
give liberty to the other party to cross -examine the said witnesses (upon cross -  
interrogatories and viva voce upon the subject-matter thereof or arising out of the answers  
thereto) such witnesses as may, after due notice in writing, be produced on their behalf, and  
give liberty to the other party to cross -examine the said witnesses (upon cross -  
interrogatories and viva voce) and the party producing the witnesses for examination, liberty  
to re-examine him viva voce.

**B 412**

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses and all additional viva voce questions, whether on examination, cross examination or re -examination the evidence of such witnesses to be reduced into writing and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same together with (the interrogatories and cross interrogatories) and a note of the charges and expenses payable in respect of the execution of this request, through the Ministry of Foreign Affairs from whom the name was received for transmission to the said Federal High Court of Nigeria :

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

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

.....  
Chief Judge

FORM 19

(0.20 r.7)

ORDER FOR APPOINTMENT OF THE NIGERIAN DIPLOMATIC AGENT AS SPECIAL EXAMINER (IN CONVENTION COUNTRY)

(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 Federal 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 plaintiff's and defendants respectively do exchange the names of their agents at to whom notice relating to the examination of the said witnesses may be sent. That days (exclusive of Sunday) prior to the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party unless such notice be dispensed with). That the depositions when 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 Federal High Court of 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 incidental to this application and such examination be costs in the action.

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



FORM 21

(0.20 R. 20)

SUBPOENA AD TESTIFICANDUM

*In the Federal High Court*

In the ..... Judicial Division

*Suit No:*.....

BETWEEN

..... Plaintiff

AND

..... Defendants

To.....

Of.....

You are commanded in the name of the President and Commander-in-Chief of the

Armed Forces of the Federal Republic of Nigeria to attend before this Court

at..... on..... the ..... day..... of

..... 20..... at..... o'clock in the forenoon, and so from day to day till the above case is tried, to give evidence on behalf of the:

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

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

.....  
Judge

FORM 22

(0.20 r. 20)

HABEAS CORPUS AD TESTIFICANDUM  
*In the Federal High Court*

In the ..... Judicial Division

Suit No .....

BETWEEN

..... Plaintiff

AND

..... Defendant

..... The Controller of Prison, at..... you  
are commanded in the name of the President and Commander-in-chief of the Armed Forces  
of the Federal Republic of Nigeria to have..... who it is said is detained in  
your custody in Prison, 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 prison from which he shall have been brought.

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

.....  
Judge

FORM 23  
(0. 20 r. 20)  
SUBPOENA DUCES TECUM  
*In the Federal High Court*

In the ..... Judicial Division

*Suit No:* .....

BETWEEN

.....Plaintiff

AND

.....Defendant

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

You are commanded in the name of the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria to attend before the Court at.....on .....the.....day of.....20.....at the hour of .....o'Clock in the forenoon, and so from day to day until the above cause is tried, to give evidence on behalf of the..... And also to bring with you and produce at the time and place aforesaid.....(Specify documents to be produced)

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

.....  
*Judge*

FORM 24  
(O. 40 r. 2(1))

FORM OF GUARANTEE FOR THE ACTS AND DEFAULTS OF A RECEIVER  
*In the Federal High Court*

*Suit No*.....

Re..... v..... guarantee for ₦.....  
Annual premium ₦.....

This guarantee is made the.....day of.....20.....  
Between .....(Receiver”) of.....(herein after called "the Receiver”) of the first part, the above -named (name of surety) the registered office of which is at.....in.....(herein after called "the Surety") of the second part and the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, an order of the Judicial Division of the Federal High Court dated the.....day of 20..... and made in the above mentioned action the Receiver has been appointed to receive (and manage) (follow words of the order). And it was ordered that the receiver should give security to the satisfaction of the Judge on or before the .....day of..... 20.....

And where as the Surety has agreed at the request of the Receiver to issue this guarantee in consideration of the annual premium above-mentioned (the first payment of which the surety hereby acknowledges) which guarantee has been accepted by the Judge as a proper security pursuant to the said order in testimony whereof one of the Registrars of the Federal High Court has signed in the margin hereof.

Now this guarantee witnesses as follows :

1. The Receiver and the Surety hereby jointly and severally covenant with the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria 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 and 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 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 fifteen days after the expiration of such twelve months pay at the office of the surety, the annual premium or sum of N.....then, the Surety shall be at liberty to apply by summons at Chambers 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 Federal High Court of the amount which the Receiver is liable to pay and has not paid under this guarantee and that the loss or damage has been incurred through the act or default of the Receiver shall be conclusive evidence in any action or information by the President and Commander -in-Chief of the Armed Forces of the Federal Republic of Nigeria 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 its funds and property without its being necessary for the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria to take any legal or other proceedings against the Receiver for the recovery thereof and without any further or other proof being given in that behalf in any action to enforce this guarantee ;

(c) the liability of the Surety under this guarantee is limited to the sum of N.....

Provided nevertheless that a Registrar of the Federal High Court may by his signature to the endorsement on this guarantee (in the form printed thereon), reduce the said liability of the Surety still further or (but only with the consent of the Surety by an instrument in writing duly executed), increase such liability as may be necessary and upon endorsement this guarantee, shall continue in full force but in that case the premium shall be correspondingly reduced or increased.

3. It is hereby further agreed between the receiver and the surety as follows—

(a) The Receiver will on being discharged from his office or on ceasing to act as Receiver (and Manager) as aforesaid, forthwith give written notice thereof to the Surety by courier service and also within seven days of such notice furnish 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.....

Signature  
Name  
Address  
Occupation

In the matter of.....increased liability. (To be attached by way of endorsement guarantee)

The liability of the Surety under the within written guarantee has with the consent of the Receiver and the Surety been increased from ₦..... to ₦.....in respect of any acts or omissions to which the within written guarantee and this endorsement being limited to the increased sum above relates committed by the Receiver subsequent to the date hereof the total liability of the Surety in respect of both the within written guarantee stated.

Sealed with the seal of the Receiver and also the Common Seal of the Surety this .....day of.....20.....as evidence of such increased liability and the admission thereof by the Receiver and the Surety respectively.

Signed, sealed and delivered by the Receiver in the presence of..... The Common Seal of the Surety was hereunto affixed in the presence of .....

Signature  
Name  
Address  
Occupation

.....  
*Chairman*

.....  
*Receiver*

.....  
*Secretary*

Form 25  
(0.40 r.2(2))

RECEIVER'S SECURITY BY UNDERTAKING  
*In the Federal High Court*

In the ..... Judicial Division

(Title) Suit No.....

Re.....v.....

I, ..... of.....

Receiver (and Manager) appointed by order dated .....(or proposed to be appointed) in this action hereby undertake with the Court, to duly account for money 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 all property received by me as such Receiver (or Manager) at such time and in such manner in all respects as the Court or a Judge shall direct.

And we.....hereby jointly and severally (in the case of guarantee or other company strike out jointly and severally") undertake with the Court to be answerable for any default by the said.....Such Receiver (or Manager) and upon such default to pay to any person or persons or otherwise as the Court or a Judge shall direct, any sum or sums not exceeding in the whole

₹.....that may from time to time be certified by a Registrar of the Federal 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, 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 26  
(0.40. r. 4(1))  
RECEIVER'S ACCOUNT  
(Heading as in Form 1)

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 rents and profits of the real estate, and to collect and get in the outstanding personal estate of C.D. the testator (or, intestate) in this cause named, from the.....day of .....to the.....day.....of

REAL ESTATE RECEIPTS

No of Item	Date when received	Tenants Name	Description of Premises	Annual Rent	Arrears due at	Amount received	Arrears remaining	Observations
1								
2								

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE

No of Items	Date of Payment of Allowance	Names of Persons to whom paid or allowed	For what purpose paid or allowed	Amount
1			One year's insurance of due Bill for repairs at house to let	N
2			Allowance for a half years income Tax due.....	
			Total Payment	
			N	

Receipts on Account of Personal Estates  
Personal Estate

Payment and Allowances on  
Account of

No. of Items	Date when received	Names of Persons From whom received	On what Account Received	Amount Received N	No. of Item	Date when Paid or allowed	Names of Persons paid or allowed	For what purpose paid or allowed	Amount paid or Allowed N

Summary

Amount of balance due from Receiver on account of real estate on last account N.....

Amount of receipts on the above account of real estate N.....

Balance of last account paid into Court N.....

Amount of payments and allowances on the above account of real estate N.....

Amount of Receiver's costs of passing this account as to real estate N.....

Balance due from the Receiver on account of real estate N.....

Amount of balance due from Receiver on last account of personal estate N.....

Amount of receipts on the above account of personal estate N.....

Balance of last account paid into Court N.....

Amount of payments and allowances on the above account of personal estate N.....

Amount of Receiver's costs of passing this account as to personal estate N.....

Balance due from the Receiver on account of personal estate N.....

.....  
Receiver/Manager

FORM 27  
(0. 42r. 1 (6))  
NOTICE OF PAYMENT INTO COURT  
*In the Federal High Court*

In the .....JudiciaDivision

BETWEEN

A. B.....Plaintiff

AND

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

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

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

.....  
P. Q. legal practitioner for the defendant, C.D. to X.Y., the Plaintiffs legal practitioner, and to Mr.  
R.S. legal practitioner for the Defendant E.F.

To be filled in by the Cashier, Federal High Court.

Received the above sum of N.....into Court in this action.

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

FORM 28  
(0. 42 r. 2(1))  
ACCEPTANCE OF SUM PAID INTO COURT  
*In the Federal High Court*

In the ..... Judicial Division

BETWEEN

A.B. .... Plaintiff

AND

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

TAKENOTICE that the Plaintiff 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 the ..... day of ..... 20 .....

.....  
*X. Y. Plaintiff's  
Legal Practitioner*

(To : Mr. P. Q. legal practitioner for the defendant C.D. and Mr. R. S. legal  
practitioner for the Defendant E.F.).

FORM 29  
(0.42 r.4 (2) and (4))  
Acceptance of Sum Paid into Court by One of Several Defendants  
*In the Federal High Court*

In the ..... Judicial Division

BETWEEN

A. B ..... Plaintiff

AND

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

Take Notice that the Plaintiff accepts the sum of N..... paid  
by the defendant C.D. into Court in satisfaction of his claim against  
the defendant C.D.

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

.....  
*X. Y Plaintiff's*  
*Legal Practitioner*

(To : Mr. P. Q. legal practitioner for the defendant C.D. and Mr. R. S. legal practitioner for  
the Defendant E.F.).

FORM 30  
(0.43 r.2)  
INTERROGATORIES  
Headings as in Form 1)

In the ..... Judicial Division

BETWEEN

A.B.....Plaintiff

AND

C.D and E.F and G.R .....Defendants

Interrogatories on behalf of the above-named (plaintiff or defendant C.D) for the examination of the above-named (defendants E.F and G.R or plaintiff).

- 1. Did not, etc.
- 2. has not, etc.

(The defendant E.F. is required to answer the interrogatories numbered)  
(The defendant G.R is required to answer the interrogatories numbered).

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

.....  
*Legal Practitioner*

FORM 31  
(0.43 r. 6 and 16(2))  
ANSWER TO INTERROGATORIES  
*In the Federal High Court*

*Suit No* :.....

In the .....Judicial Division

BETWEEN

A.B.....Plaintiff

AND

C.D. and 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 plaintiff.

In answer to the said interrogatories, I the above-named E.F. make oath and say as follows—

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

FORM 32  
(0. 43 r. 8 (3)).  
AFFIDAVIT AS TO DOCUMENTS  
In the Federal High Court

Suit No.....

In the.....Judicial Division

BETWEEN

A.B .....Plaintiff

AND

C.D. and E.F. and GH .....Defendants

I, the above-named defendant C.D. make oath and say as follows—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.
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 agents. (Legal practitioner or Agent) or in possession, custody or power of any other persons or person on my behalf, and deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing or any copy of or extract any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedule hereto.

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

(ILLITERATE JURAT) (where applicable)

FORM 33  
(0.43 r. 14(1) (b))  
ORDER FOR PRODUCTION OF SHIP'S PAPERS  
*In the Federal High Court*

In the ..... Judicial Division  
Suit No.....

BETWEEN

A.B.....Plaintiff

AND

C.D.....Defendants

Upon hearing the legal practitioners or agents for all parties, it is ordered that the Plaintiff and all persons interested in these proceedings and in the insurance, the subject of this action, do produce and show to the defendant his legal practitioner or agents upon oath all insurance slips, policies, letters of instruction or order, order for effecting such slips or policies or relating to the insurance of the subject matter of the insurance on the ship .....or the cargo on board thereof or the freight thereby and also all documents relating to the sailing or alleged loss of all letters and correspondence with any person or persons in any manner relating to the effecting of the insurance on the said ship, the cargo on board thereof or the freight thereby, or any other insurance whatsoever effected on the said ship or the cargo on board thereof or the freight thereby on the voyage insured by or relating to the policy used upon in this action or any other policy whatsoever effected on the said ship or the cargo on board thereof or freight thereby on the same voyage. Also all correspondence between the captains or agents of the vessel and any other person, with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened. Also and protests, survey, log-books, charter parties, trademensbills for repairs, average statements, letters, invoices, bills of parcels, bills of lading, manifest, accounts, account-current, account-sale, bills of exchange, receipts, vouchers, books, documents, powers of attorney, correspondence, papers and writings, (whether originals, duplicates or copies) respectively which now are in the custody, possession or power of the plaintiff or any other person, his or any of either of their brokers, legal practitioners or agents any way relating to or referring to the matters in questions in this action, with liberty for the defendant, his legal practitioners or agents to inspect and take copies of or extracts whom the same or any by either of them and that in the like manner the plaintiff and the said other persons interested as aforesaid do account for all such documents as were once but are not now in his, their or any or either of their possession, custody or power and that in the meantime all further proceedings be stayed and that the costs of and occasioned by this application be costs in the action.

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

FORM 34

(0.43 r. 19 and 20)

NOTICE TO PRODUCE (GENERAL FORM)

*In the Federal high Court*

*Suit No* .....

BETWEEN

A.B..... Plaintiff

AND

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

Take Notice that you are hereby required to produce and show to the Court on the trial of this..... all books, papers, letter, copies of letters and other writings and documents in your custody, possession or power containing any entry, memorandum or minute relating to the matters in question in this.... ..and.....particularly.....

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

To the above -named (signed) ..... of..... agent for.....

G.H. Legal practitioner  
Legal practitioner for the above -named or agent.

FORM 35  
COMMISSION TO EXAMINE WITNESSES  
In the Federal High Court

Suit No ..... of 20.....

BETWEEN

..... Plaintiff

AND

..... Defendant

To..... of.....  
Commissioner named by and on behalf of.....and to.....  
Commissioner named by and on behalf of.....  
In confidence of your prudence and fidelity you have been appointed Commissioner  
by these presents and given power and authority to examine on interrogatories and  
*viva voce* as hereinafter mentioned witnesses on behalf of the  
said.....and.....  
respectively at..... before you or any two of you so that  
one Commissioner only on each side be present and act at the examination and you  
are requested as follows :

1. Both the said .....and the said.....  
shall be at liberty to examine on interrogatories and *viva voce* on the subject matter  
thereof or arising out of the answers thereto such witnesses as shall be produced  
on their behalf with liberty to the other party to cross-examine the said witnesses  
on cross-interrogatories and *viva voce*, the party producing any witness for  
examination being at liberty to re-examine him *viva voce*; and all such additional  
*viva voce* questions, whether on examination, cross examination or re-examination  
shall be reduced into writing and with the answers thereto shall be returned with the  
said Commission

2. Not less than .....days before the examination of  
any witness on behalf of either of the said parties, notice in writing, signed by one  
of you, the Commissioners of the party on whose behalf the witness is to be  
examined and stating the time and place of intended examination and the names of  
the witnesses to be examined, shall be given to the Commissioners of the other  
party by delivering the notice to them or by leaving it at their usual place of abode  
or business and if the Commissioners or Commissioner of that

party neglect to attend pursuant to the *notice* then one of you, *the Commissioners* of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witness *ex parte* and adjourn any meeting or meetings or continue the same until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination or re-examination producing any book, document, letter, paper or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof or extract therefrom, certified by the Commissioners or Commissioner present and acting to be a true and correct copy or extract, shall be annexed to the witness's deposition.

4. Each witness to be examined under this Commission shall be examined on oath, affirmation or otherwise in accordance with his religion by or before the Commissioners or Commissioner present at the examination.

5. If any or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English language through the medium of an interpreter or interpreters to be nominated by the Commissioners or Commissioner present at the examination and to be previously sworn according to his or their several religion by or before the said Commissioners or Commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this Commission shall be subscribed by the witness or witnesses and by the Commissioners or Commissioner who shall have taken the depositions.

7. The interrogatories, Cross-interrogatories and depositions, together with any documents referred to therein or certified copies thereof or extracts therefrom, shall be sent to the Chief Registrar of the Federal High Court Nigeria or before the.....day of.....enclosed in a cover under the seals of the Commissioner or Commissioners.

8. Before you or any of you, in any manner act in the execution hereof you shall severally take the oath hereon endorsed or otherwise in such other manner as is sanctioned by the form of your several religions and as considered by you respectively to be binding on your respective consciences. In the absence of any other Commissioner, a Commissioner may himself take the oath.

You are hereby given authority to administer such oath to the other or others of you.

Issued at.....this.....day of.....20.....

.....  
*Judge*

*Witness's Oath*

I swear by Almighty God that I will truly answer to all such questions as shall be asked me. without favour or affection to either party, and therein I will speak the truth, the whole truth and nothing but the truth.

*Commissioner's Oath*

I swear by Almighty God that I will, according to the best of my skill and knowledge, truly and faithfully and without partiality, to any or either of the parties in this case, take the examination and depositions of all and every witness produced and examined by virtue of the Commission within written.

(Where there is only a single Commissioner, he may be authorised to administer this oath to himself).

*Interpreter's Oath*

I swear by Almighty God that I will truly and faithfully without partiality to any or either of the parties in this cause and to the best of ability interpret and translate the oath or oaths, affirmation or affirmations which he shall administer to and all and every of the questions which shall be exhibited or put to all and every witness and witnesses produced before and examined by the Commissioners named in the Commission within written, as far forth as I am directed and employed by the said Commissioners, to interpret and translate the same out of the English language into the language of such witness or witnesses and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language.

*Clerks Oath*

I swear by Almighty God that I will truly and faithfully without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every of the questions, which shall be exhibited or put to all and every witness and witnesses and also the depositions of all and every such witness and witnesses, produced before and examined by the said Commissioner named in the Commission within written, as far forth as I am directed and employed by the Commissioners to take, write down, transcribe or engross the said questions and depositions.

Direction of interrogatories, etc. when returned by the Commissioners :

THE CHIEF REGISTRAR, FEDERAL HIGH COURT  
FORM 36  
CERTIFICATE OF THE CHIEF REGISTRAR  
(Title as in Form 1)

In pursuance of the directions given to me by Hon. Justice.....  
I hereby certify that the result of the accounts and inquiries which have been taken and made  
in pursuance to the Judgement(or order) in this case dated the.....day  
of.....is as follows:

- 1. The defendants .....the executors the testator have received personal  
estate to the amount of N.....and they have paid, or are entitled to be  
allowed an account thereof, sums to the amount of N leaving a balance due from(or to)  
them of on that account.

The particulars of the above receipts and payments appear in the account marked  
.....verified by the affidavit of filed on the .....day  
of.....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).

The defendants .....have brought in an account  
verified by the affidavits of.....filed on the .....day of.....and  
which account is marked..... and which is also to be filed with this  
certificate in a transcript of the account as altered and passed.

The debts of the testator which have been allowed, are set forth in the Schedule  
hereto and with the interest thereon and costs mentioned in the Schedule are due to  
the person therein named and amount altogether to N.....

- 3. The funeral expenses of the testator amounted to the sum of N.....  
Which I have allowed the said executors in the said amount of personal estate.
- 4. The legacies given by the testator are set forth in the Schedule hereto and with the  
interest therein mentioned remain due to the person therein named and amount  
altogether to N.....
- 5. The outstanding personal estate of the testator consists of the particulars set forth, in  
the..... Schedule hereto.

6. The real estate to which the testator was entitled consists of the particulars set forth in the Schedule hereto.
7. The defendants have received rents and profits of the testator's real estate, etc. (in a form similar to that provided with respect to the personal estate)
8. The incumbrances affecting the said testator's real estate as specified in the.....Schedule here to.
9. The real estates of the testator directed to be sold, have been sold and the purchase money amounting altogether to N..... have been paid into Court.

*Note :*

The above numbers are to correspond with the numbers in the order after each statement; the evidence produced is to be stated as follows :

The evidence produced on this account (or inquiry) consists of the probate of the testator's will, the affidavit of A.B., filed.....and paragraph Numbered.....of the affidavit of C.D., filed.....

MADE at Lagos this..... day of.....20.....

FORM 37  
(Order 6 r.20 (a))

LETTER OF REQUEST TO TAKE EVIDENCE ABROAD  
(CONVENTION COUNTRY )  
(Heading as in Form I)

To the Competent Judicial Authority of .....  
In the.....of.....  
Whereas a civil (commercial) action is now pending in the Federal High Court of Nigeria, in which.....is plaintiff and.....is defendant  
And in the said action the plaintiff claims.....  
And whereas it has been represented to the said Court that it is necessary for the purpose of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say .....of.....and.....of.....

And it appears that such witnesses are resident within your jurisdiction.

Now, I, .....the Chief Judge of the Federal High Court, 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 witness as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to ( ) 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) *viva voce* touching the said matters in question in the presence of the agents of the plaintiff and the defendant or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will permit the agents of both the said plaintiff and the 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 answer there to) 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 witness (upon cross-interrogatories and *viva voce*) and the party producing the witnesses for examination liberty to re-examine them *viva voce*.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses and all additional *viva voce* questions, cross-

examination whether on examination, or re -examination) the evidence of such witnesses to be reduced into writing and all books, letters, papers and documents produced upon such examination to be duly marked for identification and that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as is in accordance with your procedure and to return it, together with (the interrogatories and cross-interrogatories and) a note of the charges and expenses payable in respect of the execution of this request through the Ministry of Foreign Affairs from where the same was received for transmission to the Federal High Court.

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

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

*Note:*

\*"due notice in writing" ..... This refers to a notice given by the Legal practitioner having conduct of the action.

Justice A. Abdu-Kafarati  
*Chief Judge of the Federal High Court*

**EXPLANATORY NOTE**

*(This note does not form part of the above Rules  
but is intended to explain their purport)*

These Rules provide for the rules of procedure to be followed in the Federal High Court and accordingly revoke the Rules contained in the Schedule to the Federal High Court (Civil Procedure Rules) 2009.