



**BORNO STATE OF NIGERIA
HIGH COURT
(CIVIL PROCEDURE) RULES,
2017.**

HIGH COURT OF BORNO STATE (CIVIL PROCEDURE) RULES, 2017.

IN EXERCISE of the powers conferred on me by S. 116 of the High Court Law, Cap. 63, Laws of Borno State, 1994 and by virtue of all other powers enabling me in that behalf, I HON. JUSTICE KASHIM ZANNAH, Chief Judge of Borno State of Nigeria hereby make these Rules:

Rules of Procedure. 1. The Civil Procedure Rules set out herein shall be the Rules of Civil Procedure in the High Court of Justice of Borno State.

Construction of Reference under Rules. 2. (1) A reference in these Rules to anything done under these Rules include a reference to anything done before the commencement of these Rules.

(2) A reference in these Rules to an enactment shall be construed as a reference to that enactment as amended or as under any other enactment.

(3) All proceedings already filed and commenced in the High Court before the coming into operation of these Rules, shall be construed as if these Rules were not in force.

Repeal. 3. The High Court (Civil Procedure) Rules, 2012 are hereby repealed.

Dated in Maiduguri this 21st day of December, 2016

HON. JUSTICE KASHIM ZANNAH

**CHIEF JUDGE,
BORNO STATE OF NIGERIA.
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**HIGH COURT OF BORNO STATE OF NIGERIA
HIGH COURT (CIVIL PROCEDURE) RULES, 2017.**

(3/01/2017) Date of Commencement.

**ORDER 1
CITATION AND COMMENCEMENT**

*Citation and
Commencement.*

1. (1) These Rules may be cited as the Borno State High Court (Civil Procedure) Rules, 2017 and shall come into force on the 3rd day of January, 2017.

Application.

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

Interpretation.

2. (1) These Rules shall be interpreted in accordance with the Interpretation Law, Cap.70, Laws of Borno State, 1994 or any re-enactment thereof.
- (2) Where in these Rules depositions and affidavits are required to be made, if the deponent does not understand the English Language such deposition or affidavit shall be made in a language he understands and shall be accompanied by translation thereof in English language.
- (3) In the construction of these Rules, unless there is anything in the subject of context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the following meanings:

“ADR”, means Alternative Dispute Resolution;

“Claimant” shall include a claimant in a counter-claim;

“Court” means the High Court of Borno State;

“Court Process or “Process” includes writ of summons, originating summons, originating process, notices, petitions, pleadings, orders, motions, summons, warrants and all documents or written communication of which service is required;

“Decision” means any decision of a Court and includes judgment, ruling, decree, order, conviction, sentence or recommendation;

“Defendant” shall include a defendant to a counter claim;

“ Document” shall include anything in which information of any description is recorded or stored, including information held in an electronic format.

“State” means Borno State of Nigeria;

“Guardian” means any person who has for the time being, the charge of or control over a person under legal disability and includes a person appointed to institute or defend an action on behalf of any person under legal disability;

“Law” means the High Court Law, Cap.63, Laws of Borno State, 1994 or any re-enactment thereof;

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

“Originating Process” means any court process by which a suit is initiated.

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

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

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

“Registry” means the Registry of the High Court of Borno State in the appropriate judicial division;

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

ORDER 2**FUNDAMENTAL OBJECTIVE***Fundamental Objectives.*

1.(1) The Fundamental Objective of these Rules is to enable the Judge to deal with cases justly and swiftly.

(2) The Judge shall at all times and at any stage of the proceedings aim at conducting the case towards:

(a) ensuring that the parties are on equal footing;

(b) saving time and expenses;

(c) ensuring that cases are dealt with expeditiously and fairly; and

(d) allotting to each case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

(3) The Judge shall always seek to give effect to the fundamental objective at any stage of the claim or proceeding and when exercising any such power conferred by these Rules and when applying or interpreting any such rule.

(4) The parties shall assist the Judge to further the fundamental objective.

ORDER 3
CASE MANAGEMENT

*Duty of Judge to
Manage cases.*

1. (1) The Judge shall further the fundamental objective by actively managing cases.
- (2) In these Rules, “Active case management” includes:
 - (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
 - (b) identifying the issues at an early stage;
 - (c) deciding promptly which issues need full investigation and trial and accordingly, disposing summarily of other issues;
 - (d) deciding the order in which issues are to be resolved;
 - (e) encouraging or even directing the parties to use an ADR mechanism where appropriate and facilitating the use of that mechanism;
 - (f) helping the parties to settle the case in whole or in part;
 - (g) fixing timetable and otherwise controlling the progress of the case;
 - (h) considering whether the likely benefits of taking a particular step justify the cost in taking it;
 - (i) dealing with as many aspects of the case as possible on the same occasion even when not scheduled;
 - (j) limiting the number of witnesses either party may call;
 - (k) limiting time for cross – examination;
 - (l) where appropriate, dealing with the case without the parties attending Court, to enable cases to be attended to, even between sittings;
 - (m) making use of technology;

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- (n) giving directions to ensure that the trial of a case proceeds quickly and efficiently.
- (3) To assist the Judge in exercising his power under sub rule (2) (i), parties in a case are required to attend court everyday where a matter in their case is scheduled for hearing.

*Case Management,
Powers, etc.*

2. (1) The Judge, as the presiding officer of his Court, has an inherent jurisdiction to manage cases and in particular, may for that purposes exercise the powers listed in sub rule (2) herein.

(2) Except where these Rules provide otherwise, the Judge may:

- (a) adjourn or bring forward a hearing;
- (b) require a party to attend Court;
- (c) direct that part of any proceedings, such as a counterclaim, be dealt with as separate proceedings;
- (d) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;
- (e) consolidate proceedings;
- (f) try several claims on the same occasion;
- (g) direct a separate trial of any issue;
- (h) decide the order in which issues are to be tried;
- (i) exclude an issue from consolidation;
- (j) dismiss or give judgment on the proved part or portion of any case or claim while proceeding with the remaining part or portion;
- (k) at case management conference, consider and treat as many matter as possible, and issue as many orders and directions as appropriate, for conference consideration, including matters, orders and directions not listed under Order 29 (case management conference and scheduling);

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- (l) dispense with written application;
 - (m) convey decisions without a hearing;
 - (n) take any other step or make any other order for the purpose of managing the case and furthering the fundamental objective.
- (3) The Judge, may make an order specifying:
- (a) conditions, including a condition to pay a sum of money into Court, and
 - (b) the consequence of failure to comply with the order or a condition.
- (4) In exercising his case management powers and in furtherance of the fundamental objective, the Judge shall intervene to curtail abusive, aggressive, digressive, or excessive cross-examination.

Power of Judge to Make Orders of his own Initiative.

3. Unless provided otherwise in these Rules or any applicable law, the Judge may at any stage of any proceedings make any order or give any direction of his own initiative, if the order or direction can reasonably be made or given on application:
- (a) in the interest of the quick dispensation of justice; and
 - (b) in pursuit of the fundamental objective.

Parties to attend Judge in Chambers.

4. The parties shall, within ten days of close of pleading and in agreement with one another and the Judge, as to time, attend the Judge in Chambers until the matter dealt with in Order 29 have been resolved or settled, but the Judge may decide those matter notwithstanding the non-attendance of the parties.

ORDER 4
COURT DOCUMENT

Scope of this Order.

1. (1) This Order contains general provisions relating to:
 - (a) documents used in court proceedings; and
 - (b) the obligations of a Court Registrar in relation to those documents.
- (2) In this Order, “documents,” include all court processes.

Preparation of Documents.

2. (1) Where under these Rules, a document is to be prepared by the Court, the document may be prepared by the party concerned, unless a Court Registrar otherwise directs.
 - (2) Nothing in this rule requires a Court Registrar to accept a document which is illegal or has not been duly authorized, or is unsatisfactory for such other reasons as the Court may consider and determine.

Signature of Documents by Mechanical Means.

3. Where these Rules or Practice Direction requires a document to be signed, that requirement is satisfied if the signature is printed by computer or other mechanical means or stamped on the document.

Register of Claims.

4. (1) A Court or Court Registrar may keep a publicly accessible register of claims which have been issued out of that Court or Court Registry.
 - (2) A person who pays the prescribed fee may, during office hours, search any available register of claims kept under this Rule.

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Accessing documents.

5. (1) A party to proceedings may, unless the Court orders otherwise, obtain from the records of the Court a copy of any document.

(2) A party to proceedings may, if the Court gives permission, obtain from the records of the Court a copy of any document filed by a party or of any communication between the Court and a party or another person.

Accessing of documents by a person who is not a party to the proceedings from Court record attached.

6. (1) The general rule is that a person who is not a party to the proceedings may obtain from the Court records a copy of:

- (a) a statement of claim, but not any document filed with or to the statement of claim or intended to be served with the statement of claim;
- (b) a judgment or order given or made in public, whether made at a hearing or without a hearing.

(2) Subject to sub-rule (1) of this rule, a person who is not a party to the proceedings may, if the Court gives permission, obtain from the records of the Court a copy of any other document filed by a party, or of any communication between the Court and a party or another person.

(3) A person who is not a party to proceedings may obtain a copy of a statement of claim or judgment or order under sub-rule

(1) of this rule only if:

- (a) where there is one defendant, the defendant has filed a memorandum of appearance or a defence;
- (b) where there is more than one defendant, either:
 - (i) all the defendants have filed memorandum of appearance or defenses, or
 - (ii) at least one defendant has filed a memorandum of appearance or a defence, and the court gives permission;
- (c) the case has been listed for hearing; or
- (d) judgment has been entered in the case.

- (4) The Court may, on the application of a party or of any person identified in a statement of claim:
- (a) order that a person who is not a party to proceedings may not obtain a copy of a statement of claim under sub-rule (1) of this rule;
 - (b) restrict the persons or classes of persons who may obtain a copy of a statement of claim;
 - (c) order that persons or classes of persons may only obtain a copy of a statement of claim if it is edited in accordance with the directions of the Court; or
 - (d) make such other order as it thinks fit.
- (5) A person wishing to apply for an order under sub-rule (4), shall file and serve an application notice.
- (6) Where the Court makes an order under sub-rule (4), a person who is not a party to the proceedings who wishes to obtain:
- (a) a copy of the statement of claim; or
 - (b) an unedited copy of the statement of claim,
- may apply on notice to the party or person identified in the statement of claim who requested the order, for permission.

*Supply of document
from court records –
General.*

7. (1) A person wishing to obtain a copy of a document under Rule 5 or 6 shall pay any prescribed fee and if:
- (a) the court's permission is required, file and serve an application notice; or
 - (b) permission is not required, file and serve a written request for the document.

ORDER 5
Place of Instituting and Trial of Suits

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

Suits relating to land and property distrained or seized.

1. All suits relating to land or any mortgage or charge on land or any interest in land, or any inquiry or damage to land and action relating to personal property distrained or seized for any cause, shall be commenced and determined in the Judicial Division in which the land is situate, or the distraint took place.

*Suit for recovery of penalties for-
feitures and
against public
officers.*

2. All actions for recovery of penalties, forfeitures, and all actions against Public officers shall be commenced and tried in the Judicial Division in which the cause of action arose.

Suits upon contract.

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

Other suits.

4. (1) All other suits may be commenced and determined in the Judicial Division in which the defendant resides or carries on business.

(2) Where there are several defendants who reside or carry on business in different Judicial Divisions, the suit may be commenced in any one of those Judicial Divisions subject to order or direction a Judge may make or give as to the most convenient arrangement for trial of the suit.

*Suit
commenced
in wrong
Judicial Division.*

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

*Transfer
of
proceedings.*

6. No proceedings which may have been taken previously to such plea in objection shall be in any way affected thereby; but the Judge shall order that the cause be transferred to the Judicial Division to which it may be proved to his satisfaction to belong, or, failing such proof, that it be retained and proceeded in the Court in which it has been commenced.

ORDER 6
Form and Commencement of Action

*Proceedings
which must be
begun by writ.*

1. Subject to the provisions of these rules or any applicable law, requiring any proceedings to be begun otherwise by a writ, a writ of summons, shall be the form of commencing all proceedings:

- (a). where a claimant claims:
 - (i) any relief or remedy for any civil wrong or otherwise, or
 - (ii) damages for breach of duty, whether contractual, statutory or otherwise, or
 - (iii) damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or property;
- (b). where the claim is based on or includes an allegation of fraud, or
- (c). where an interested person claims a declaration.

*Mode of
beginning civil
proceedings
by writ.*

2. (1) All civil proceedings commenced by writ of summons shall be accompanied by:

- (a) statement of claim;
- (b) list of witnesses to be called at the trial;
- (c) written statements on oath of the witnesses and
- (d) copies of every document to be relied on at the trial.
- (e) list of documents which are not available at the time of filing the writ.

(2) Where a claimant fails to comply with Rule 2(1) of this rule, his originating process shall not be accepted for filing by the Registry.

*Form of writ:
Civil Form I.*

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

*Forms of writ
for service
out of Nigeria
Civil Form 2.*

4. A writ of summons to be served out of Nigeria shall be in either Form 7 or 8 of Appendix 1, with such modifications or variations as circumstances may require.

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Proceedings which may be begun by originating summons.

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

Construction of enactment where the right depends upon question of construction. Discretion of the Judge.

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

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

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

8. (1) An originating summons shall be in Forms 3, 4, or 5 to these Rules, with such variations as circumstances may require. It shall be prepared by the claimant or his Legal Practitioner, and shall be sealed and filed in the Registry, and when so sealed and filed shall be deemed to be issued.

- (2) An originating summons shall be accompanied by:
- (a) an affidavit setting out the facts relied upon;
 - (b) all the exhibits to be relied upon;
 - (c) a written address in support of the application.

(3) The person filing the originating summons shall leave at the Registry sufficient number of copies thereof together with the documents in sub-rule 2 above for service on the defendant or defendants.

Service outside Borno State Cap. 407, LFN, 1990

9. Subject to the provisions of the Sheriffs and Civil Process Act, a writ of Summons or other originating process issued by the Court for service in Nigeria outside Borno State shall be endorsed by the Registrar of the Court with the following notice –

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

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 to him and shall arrange for service thereof to be effected.

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

ORDER 7
Endorsement of Claim and of Address

Endorsement.

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

(2) All originating processes shall in addition to endorsement include the address of Counsel or person filing it and shall have or be endorsed with email and G.S.M. number of such Counsel or person(s):
“Provided that such email address shall be the official Bar email address of the Counsel.”

Endorsement to show representative capacity. Probate Actions.

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

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

What is endorsed where the defendant is liquidated.

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

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

Ordinary Account.

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

Endorsement of address by claimant or by legal Practitioner.

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

(2) Where a claimant sues through a Legal Practitioner the Legal Practitioner shall state on the originating process his chamber’s address as the address for service. If the Legal Practitioner is based outside the jurisdiction he shall state a chamber’s address within the jurisdiction as his address for service.

Endorsement of address.

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

Originating Process without an address or with fictitious address.

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

ORDER 8**Effect of Non-Compliance**

Non-Compliance with rules.

1. (1) Where in beginning or purporting to begin any proceeding there has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, the failure shall not nullify the proceedings.

(2) Where at any stage in the course of or in connection with any proceedings there has by reason of anything done or left undone, been a failure to comply with the requirements as to time, place, manner, or form, the failure shall be treated as an irregularity and may not nullify such step taken in the proceedings. The judge may give any direction as he thinks fit to regularise such steps.

(3) The judge shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these rules to be begun by an originating process other than the one employed.

Application to set aside for irregularity.

2.(1) An application to set aside for irregularity any step taken in the course of any proceedings may be allowed where it is made within a reasonable time and before the party applying has taken any fresh steps after becoming aware of the irregularity.

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

(3) In case of an irregularity, the judge may, of his own initiatives or on application;

- (a) allow the defect or deficiency to be regularized or remedied;
- (b) impose cost on the party responsible for the defect or irregularity;
- (c) set aside either wholly or in part the defective matter;
- (d) allow amendments; or
- (e) make other orders.

ORDER 9**Issue of Originating Process**

*Preparing
Originating
Process.*

1. Originating process shall be prepared by a claimant or his Legal Practitioner, and shall be clearly printed on Opaque A4 paper of good quality.

*Sealing of
Originating
Process.*

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

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

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

*What is to be
done after
sealing.*

3. The Registrar shall after sealing an originating process, file and note on it, the date of filing and the number of copies supplied by a claimant or his Legal Practitioner for service on the defendants. The Registrar shall then make an entry of the filing in the cause book and identify the action with a suit number that may comprise abbreviation of the Judicial Division, a chronological number and the year of filing.

*Copies to be
served.*

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

*Probate
actions:
affidavit with
originating
process.*

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

*Renewal of
Originating
Process: Civil
Form 6.*

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

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

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Endorsement of renewal.

7. 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 12 months. The Registrar shall state the fact, date, and duration of renewal on every renewed originating process.

Loss of Originating Process.

8. 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.

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

Concurrent originating Process for Service within and out of jurisdiction.

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

ORDER 10**Service of Originating Process**

By whom service is to be effected.

1. (1) Service of originating process shall be made by a Sheriff, Deputy Sheriff, Bailiff, Special Marshal or other officer or other officers of the court. The Chief Judge may also appoint and register any Law Chambers, Courier Company or any other person to serve court processes and such person shall be called process server.

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

Service of originating process etc. how effected.

2. The process server shall serve an originating process by delivering to the party to be served a copy of the process duly certified as prescribed by Order 9, Rule 2(3). *process,*

When originating process need not be served personally.

3. No personal service of an originating process shall be required where the defendant has authorised his Legal Practitioner in writing to accept service and such Legal Practitioner enters appearance: Provided that such written authority shall be attached to the memorandum of appearance filed by such Legal Practitioner.

Mode of service when not personal.

4. (1) All processes in respect of which personal service is not expressly required by these rules or any applicable law shall be sufficiently served if left with an adult person resident or employed at the address for service given under Order 7, Rule 6.

(2) Where personal service is not expressly required as stated in sub-rule (1) of this rule, service by electronic media e.g e-mails and text messages to the mail address or telephone lines of parties if perfected is deemed sufficient.

Substituted Service.

5. (1) Where personal service of an originating process is required by these Rules or otherwise and a Judge is satisfied that prompt personal service cannot be effected, the Judge may upon application by the claimant make such order for substituted service as may seem just.

(2) Every application to the Judge for substituted or other service, or for the submission of notice for service shall be supported by an affidavit setting forth the grounds upon which the application is made.

Persons under legal disability.

6. (1) Where a person under legal disability is a defendant, service on his guardian shall be deemed good and sufficient personal service, unless a Judge otherwise orders: provided that personal service on a minor who is over 16 years of age living independently or doing business is good and sufficient.

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

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*Prisoner or
Detainee.*

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

Partners.

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

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

*Corporation
or Company.*

9. Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process or other process requiring personal service may be served on the organization by delivery to a director, secretary, trustee or other senior, principal or other officer of the organization or by leaving it with an officer at the registered principal or advertised place of business of the organization within the jurisdiction.

*Foreign
Corporation
or Company
Cap.59.*

10. When the suit is against a foreign corporation or company within the meaning of Section 54 of the Companies and Allied Matters Act having an office and carrying on business within the jurisdiction, and such suit is limited to a cause of action which arose within the jurisdiction, the originating process or other documents requiring personal service may be served on the principal officer or representative of such foreign corporation or company within the jurisdiction:

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

*Local agent
of principal
who is out
of jurisdiction.*

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

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Where violence threatened.

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

Proof of service generally.

13. (1) After serving any process, the process server shall promptly depose to and file an affidavit setting out the fact, date, time, place and mode of service, describing the process served and shall exhibit the acknowledgment of service.

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

Expenses of service.

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

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

Time of Service on Certain days.

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

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

(3) Notwithstanding the foregoing provisions in this Order service by electronic means shall be deemed proper service at anytime with the leave of court.

Recording of service.

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

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

ORDER 11**Service out of Nigeria and Service of Foreign Process**

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

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

(a) the whole subject matter of the claim is land situate within jurisdiction, or

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

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

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

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

(i) made within jurisdiction, or

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

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

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

(g) an injunction is sought as to anything to be done within jurisdiction, or any nuisance within jurisdiction is sought to be prevented or removed,

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whether or not damages are sought in respect thereof, or

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

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

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

(k) the proceedings relate to probate matters, or

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

*Agreement
as to service.*

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

*Service abroad
by letter of
Request.*

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

Civil Form 7.

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

Civil Form 26.

(b) a party wishing to serve a process under this rule shall file a praecipe in Form 26 with such modifications or variations as circumstances may require;

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

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

Provided that notwithstanding the foregoing provision a claimant may with leave of a Judge serve any originating process by courier. Nothing herein contained shall in any way affect any power of a Judge in cases where lands, funds, choses in action, rights or property within the jurisdiction are sought to be dealt with or affected. The Court may, without assuming jurisdiction over any person out of the jurisdiction, cause such person to be informed of the nature or existence of the proceedings with a view to such person having an opportunity of claiming, opposing or otherwise intervening.

Where leave is granted or not required.

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

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

- (i) directly through diplomatic channels or
- (ii) through the foreign judicial authority;

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

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

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

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

Service of Foreign processes.

5. Where in any civil or commercial matter pending before a court or tribunal of a foreign country a Letter of Request from such court or tribunal for service on any person or citation in such matter is transmitted to the Court by the Borno State Attorney-General with intimation that it is desirable that effect be given to the same, the following procedure shall be adopted:

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

(b) service of the process or citation shall be effected by a process server unless a Judge otherwise directs;

(c) such service shall be effected by delivering to and leaving with the person to be served one copy of the process or citation to be served, and one copy of the translation thereof in accordance with the rules and practice of the Court regulating service;

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

(e) the Chief Registrar shall examine and verify the process server's particulars of charges and may approve it or approve some lesser figure, whereupon the Chief Judge shall forward to the Attorney-General a letter of request for service, the approved amount for service, evidence of service and a certificate appended to it.

Inapplicability of Rule 4.

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

Service on behalf of foreign tribunals.

7. Where in any civil suit pending before a court or tribunal in a foreign country with which a Convention in that behalf has been made, request for service of any process or document on any person within the jurisdiction is received by the Chief Judge from the appropriate authority in that country, the following procedure shall, subject to any special provisions in the convention, be adopted:

- (a) the process server shall deliver the original or a copy thereof, along with a copy of its translation to the party to be served;
- (b) the process server shall submit the particulars of the costs and expenses of service to the Chief Registrar who shall certify the amount payable in respect of the service;
- (c) the Chief Registrar shall transmit to the appropriate foreign authority a certificate establishing the fact and date of service, or indicating reasons for failure to serve, and also notify the authority as to the amount certified under paragraph (b) of this rule.

*Substituted
service of
foreign
process.*

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

ORDER 12
Appearance

Mode of entry of appearance civil form 1.

1. (1) A defendant served with an originating process shall, within the period prescribed in the process for appearance, file in the registry the original copy of a duly completed and signed memorandum of appearance as in Form 1 with such modifications or variations as circumstances may require. Such memorandum of appearance shall contain email address and G.S.M. number of the Defendant or his Counsel:

Provided that such email address shall be the official Bar email address of the Counsel.

(2) On receipt of the memorandum of appearance, the Registrar shall make entry thereof and stamp the copy with the seal showing the date he received it and return the sealed copy to the person making the appearance.

Defendant appearing in person or represented by Legal Practitioner.

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

(2) Where a defendant appears by a Legal Practitioner, the Legal Practitioner shall state in the memorandum of appearance his place of business and an address for service which shall be within Borno State, and where any such Legal Practitioner is only the agent of another Legal Practitioner he shall also insert the name and place of business of the principal Legal Practitioner.

Fictitious address.

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

Defendants appearing through same Legal Practitioner.

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

Late appearance.

5. If a defendant files an appearance after the time prescribed in the original process, he shall pay to the Court an additional fee of N200.00 (two hundred naira) for each day of default.

Intervener in probate matters.

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

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*Recovery of
Land.*

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

*Landlord
appearing.*

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

*Person under
legal
disability.*

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

10. In this order the word “Tenant” includes a sub-tenant or any person occupying any premises whether on payment of rent or otherwise.

ORDER 13
Default of Appearance

- Default of appearance by person under legal disability.* **1.** Where no appearance has been entered for a person under legal disability, a claimant shall apply to a Judge for an order that some person be appointed guardian for such defendant and when appointed the person may appear and defend. The application shall be made after service of the originating process. Notice of the application shall be served on the person intended to be appointed the guardian of the defendant.
- Default of Appearance.* **2.** Where any defendant fails to appear, a claimant may proceed upon default of appearance under the appropriate provisions of these rules upon proof of service of the originating process.
- liquidated demand.* **3.** Where the claim in the originating process is a liquidated demand and the defendant or all of several defendants fail to appear, a claimant may apply to a Judge for judgment for the claim on the originating process or such lesser sum and interest as a Judge may order.
- Liquidated demand several defendants.* **4.** Where the claim in the originating process is a liquidated demand and there are several defendants of whom one or more appear to the process and another or others fail to appear, a claimant may apply to a Judge for Judgment against those who have not appeared and may execute the judgment without prejudice to his right to proceed with the action against those who have appeared.
- Judgment in default of appearance.* **5.** Where the claim in the originating process is for pecuniary damages; or for detention of goods with or without a claim for pecuniary damages, and the defendant or all of several defendants fail to appear, a claimant may apply to a Judge for judgment. The value of the goods and the damages or the damages only as the case may be shall be ascertained in such manner and subject to the filing of such particulars as a Judge may direct before judgment in respect of that part of the claim.
- Several Defendants.* **6.** Where the claim in the originating process is as in Rule 5 of this Order and there are several defendants one or some of whom appear while another or others do not appear, a claimant may apply for judgment against the defendant(s) failing to appear. The value of the goods and the damages or the damages only as the case may be shall be ascertained in such manner and subject to the filing of such particulars as a Judge may direct before judgment in respect of that part of the claim.
- Detention of goods, damages and liquidated demand.* **7.** Where the claim in the originating process is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any of the defendants fail to appear, a claimant may apply to a Judge for judgment. The value of the goods and the damages, or the damages only as the case may be shall be ascertained in such manner and subject to the filing of such particulars as a Judge may direct before judgment in respect of that part of the claim.

*Recovery of
Land.*

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

*Mesne
profits.*

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

*Judgment
for costs:
upon
satisfaction
etc.*

10. In any case to which Rule 3 to 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 claimant to proceed, he may apply to a Judge for judgment for costs:

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

*Setting
aside
Judgment.*

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

*Default of
appearance in
actions not
otherwise spe-
cially provided
for.*

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

*Compulsory
service.*

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

ORDER 14**Disputing the Court's Jurisdiction***Disputing Court jurisdiction.*

1. A defendant who wishes to:
 - (a) dispute the Court's Jurisdiction to try the Claim; or
 - (b) argue that the Court should not exercise its jurisdiction
 may apply to the Court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.
2. The Court may determine the application along with the substantive claim if the trial will not entail oral evidence.
3. A defendant who wishes to make an application shall first file a Memorandum of Appearance.
4. A defendant who files a memorandum of appearance does not, by doing so, lose any right that he may have to dispute the court's jurisdiction.
5. An application under this Rule shall be made within ten days after filing a memorandum of appearance, and shall be supported by;
 - (a) an affidavit based partly or solely on facts; and
 - (b) written address.
6. If the defendant:
 - (a) files a memorandum of appearance; and
 - (b) does not make such application within the period specified in sub- rule (5) of this rule, he is to be treated, as having accepted that the Court has jurisdiction to try the claim.
7. An order containing a declaration that the Court has no jurisdiction or will not exercise its jurisdiction may also make further provision, including provisions;
 - (a) setting aside the statement of claim;
 - (b) setting aside service of the statement of claim;
 - (c) discharging any order made before the statement of claim was filed or before the statement of claim was served; and
 - (d) discharging any order staying the proceedings.

ORDER 15
Summary Judgment

Where claimant believes there is no defence.

1. Where a claimant believes that there is no defence to his claim, he shall file with his originating process the statement of claim, the exhibits, the depositions of his witnesses and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief and a written brief in respect thereof.

Delivery of extra copies.

2. A claimant shall deliver to the registrar as many copies of all the processes and documents referred to in Rule 1 of this Order as there are defendants.

Service.

3. Service of all the processes and documents referred to in Rule 1 of this Order shall be effected in the manner provided under Order 10.

Where defendant intends to defend.

4. Where a party served with the processes and documents referred to in Rule 1 of this Order intends to defend the suit he shall, not later than 14 days file:

- (a) his statement of defence;
- (b) deposition of his witnesses;
- (c) exhibits to be used in his defence; and
- (d) a written brief in reply to the application for summary judgment.

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

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

(2) Where it appears to a Judge that the defendant has no good defence the Judge may thereupon enter judgment for a claimant.

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

Where there are several defendants.

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

Oral submission on written brief.

7. Where provision is made for written briefs under these rules, each party shall be at liberty to advance before a Judge oral submission to expatiate his written brief with the leave of court.

ORDER 16
Application for Account

*Order for
account.*

1. Where in an originating process a claimant seeks an account under Order 7, Rule 5 or where the claim involves taking an account, if the defendant either fails to appear, or after appearance fails to satisfy a Judge that there is a preliminary question to be tried, the Judge shall, on application make an order for the proper accounts, with all necessary inquiries and directions.

*Application
how made.*

2. An application for account shall be supported by an affidavit filed on a claimant's behalf, stating concisely the grounds of his claim to an account. The application may be made at any time after the time prescribed for defence.

*Account may
be taken by
a Judge or
Referee.*

3. Where an order is made for account under this Order, the account may be taken by a Judge or a Referee appointed by a Judge.

ORDER 17
Parties Generally

Person claiming jointly or severally.

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

Action in name of wrong claimant.

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

Misjoinder and Counter-Claim.

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

Any person may be joined as defendant.

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

Action in name of wrong defendant.

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

Defendant need not be interested in all the reliefs sought.

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

(2) 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 proceedings in which he may have no interest.

Joinder of persons severally or jointly liable.

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

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

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

Persons under legal disability.

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

Guardian.

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

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

11. Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust, or estate, and shall be considered as representing such person, but a judge may, at any stage of the proceedings order any of such persons to be made parties in addition to or in lieu of the previously existing parties. This rule shall apply to trustees, executors and administrators in proceedings to enforce a security by foreclosure or otherwise.

Numerous persons.

12. (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may sue or be sued on behalf of or for the benefit of all persons so interested.

(2) Where there are numerous persons having the same interest in one suit and they seek to defend the action, a Judge may allow one or more of such persons to defend the action on behalf or for the benefit of all persons so interested.

Representation of persons or classes of persons in certain proceedings.

13. (1) Where in any proceedings concerning:

(a) the administration of an estate or

(b) property subject to a trust or

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

(d) the construction of any written instrument, including a statute, a Judge is satisfied that;

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

- (ii) the person, the class or some members of the class interested if ascertained cannot be found;
- (iii) though the person or the class and the members thereof can be ascertained and found;

it is expedient for the purpose of efficient procedure that one or more persons be appointed to represent that person or class or member of the class, the Judge may make the appointment. The decision of the Judge in the proceedings shall be binding on the person or class of persons so represented.

(2) Notice of appointment made by a Judge under this rule and all processes filed in court shall be served on a person(s) so appointed.

(3) If in any proceedings mentioned in sub-rule 1 of this Rule, several persons having the same interest in relation to the matter to be determined attend the hearing by separate Legal Practitioners, then, unless the Judge, considers that the circumstances justify separate representation, not more than one set of costs of the hearing shall be allowed to these persons, and the judgment or order shall be framed accordingly.

(4) In this Rule, the word “class” includes the persons recognized by Customary Law as members of a family or as members of a land owning community.

*Power to
approve
compromise.*

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

- (i) where there are some other persons having the same interest before the court who assent to the compromise or on whose behalf the court sanctions the compromise or
- (ii) the absent persons are represented by a person under Rule 13 of this Order who so assents;

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

*Where there
is no personal
representative.*

15. (1) If in any proceedings it appears to a Judge that any deceased person who was interested in the proceedings has no legal personal representative, the Judge may proceed in the absence of any person representing the estate of

the deceased person, or may appoint some person to represent his estate for the purpose of the proceedings, on such notice to such persons (if any) as the Judge shall deem fit, either specifically or generally by public advertisement, and the order so made and any order consequent thereon shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal representative of the deceased had been a party to the proceedings.

(2) Where a sole or sole surviving claimant or defendant in any proceedings dies and the cause of action survives but the person entitled to the proceeds fails to proceed, a Judge may on the application of either the deceased's Legal Practitioner or the opposing party order any person to take the place of the said deceased and proceed with the suit.

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

*Proceedings
not
defeated by
misjoinder or
the application of.*

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

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

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

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

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

*Application
to add, etc.*

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

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

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

Where defendant is added.

18. Where a defendant is added or substituted the originating process shall be amended accordingly and the claimant 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 Parties may be joined by any of the parties.

19. (1) Where it appears to a Judge that any person not a party in the proceedings may bear eventual liability either in whole or in part, the Judge may upon an *ex parte* application allow that person to be joined as a Third Party by any of the defendants. The application shall state the grounds for the applicant's belief that such Third Party may bear eventual liability.

(2) The order and existing processes shall be served on the Third Party within the time prescribed for delivering the defence.

Appearance by Third party.

20. Where a party is joined to any proceeding as a Third Party he may after service enter appearance within 15 days or within 30 days if he resides or carries on business outside jurisdiction or within such further time as a Judge may order.

Default by Third Party.

21. If a Third Party duly served with the order and all existing processes does not enter an appearance or makes default in filing any pleading, he shall be deemed to admit the liability and shall be bound by any judgment given in the action, whether by consent or otherwise.

Subsequent Third Party.

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

Claim against co-defendant.

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

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

Actions by and against firms.

24. Any two or more persons claiming or alleged to be liable as partners and doing business within the jurisdiction may sue or be sued in the name of the firms, if any, of which they were partners when the cause of action arose and any party to an action may in such case apply to the Judge for a statement of the names and addresses of the persons who were partners in the firm when the cause of action arose, to be furnished in such manner, and verified on oath or otherwise as the Judge may direct.

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Disclosure of partners' names.

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

(2) Where the claimants or their Legal Practitioners fail to comply with such demand, all proceedings in the action may upon an application for that purpose, be stayed upon such terms as 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 claimants in the originating process: provided that the proceedings may continue in the name of the firm.

Appearance of partners.

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

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

Application of rules to actions between co-partners.

27. The above rules in this Part shall apply to proceedings between a firm and one or more of its partners and between firms having one or more partners in common, provided such firm or firms carry on business within the jurisdiction.

Persons trading as firms.

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

III. Change of Parties by Death or Otherwise, etc.

Action not abated where cause of action survives.

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

Order to carry on proceedings.

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

(2) An order obtained under this rule shall be served upon the continuing party or parties, or their Legal Practitioner(s) and also upon such new party unless the person making the application is the new party.

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

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

In case of assignment, creation or devolution of estate or title.

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

Application to discharge order by person 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 30 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.

By persons 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 30 such a person may apply to a Judge to discharge or vary such order at anytime within 14 days from the appointment of a guardian for such party, and until such period of 14 days has expired, such order shall have no force or effect as against the person under legal disability.

IV Legal Practitioners or Agents.

*Acts may
be done
by Legal
Practitioner.*

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

V. Change of Counsel of Parties.

*Party may
change legal
representative.*

35. (1) A party to any cause or matter who sues or defends by Counsel, may change his Legal Practitioner without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are served on every other party to the cause or matter and on the former legal practitioner, the former legal representative shall be considered the legal practitioner of the party until the final conclusion of the cause or matter.

(2) A copy of the notice endorsed with an affidavit stating that the notice has been duly filed in the registry shall also be filed.

(3) The party giving the notice may perform the duties prescribed by this Order in person or by his new legal representative.

*Where legal
representative
ceases to act.*

36. (1) Where a legal practitioner who has acted for a party in a cause or matter is disengaged he shall notify the Court for an order declaring that he ceases to be the party's legal practitioner in the case or matter and the Court may make an order to that effect.

(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 till the final conclusion of the cause or matter.

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

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

Address of party.

37. After an order is made under rule 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 him of any document not required to be served personally.

ORDER 18**Joinder of Causes of Action**

All causes of action may be joined.

1. Subject to the following rules of this Order, the claimant may unite in the same action 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 any such causes of action or may make such order as may be necessary or expedient for the separate disposal thereof.

Recovery of Land.

2. (1) An action for recovery of land may be joined with an action for declaration of title, *mesne profit* or arrears of rent, damages for breach of any contract under which the land or any part thereof is held, or for any wrong or injury to the premises.

(2) An action for foreclosure or redemption may be joined with a claim for delivery of possession of the mortgaged property and a claim for payment of principal money or interest secured by or any other relief in respect of the mortgage or charge on such land.

Executor and administrator.

3. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last mentioned claims are alleged to arise with reference to the estate in respect of which the claimant or defendant sues or is sued as executor or administrator.

Claims by joint claimants.

4. Claims by claimants jointly may be joined with claims by them or any of them separately against the same defendant.

Counter-claim against claimant.

5. (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 claimant in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action make a counter-claim in respect of that matter; and where he does so he shall add the counter-claim to his defence.

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

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

Court may order separate trials, etc.

6. (1) If claims in respect of two or more causes of action are included by a claimant in the same action or by a defendant in a counter-claim, or if two or more claimants or 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 trial or is otherwise inconvenient, the court may order separate trials or make such other order as may be expedient.

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

ORDER 19
Pleadings

Filing of Pleadings.

1. (1) A statement of claim shall include the relief or remedy to which a Claimant claims to be entitled.

(2) A defendant shall file his statement of defence, set off or counter-claim, if any, not later than 30 days after service on him of the claimant's originating process and accompanying documents. A counter-claim shall have same effect as a cross action, so as to enable the court pronounce a final Judgment in the same proceedings. A set-off must be specifically pleaded.

(3) A claimant shall within 14 days of service of the statement of defence and counter-claim, if any, file his reply, if any, to such defence or counter-claim:

Provided that where a defendant sets up a counter-claim, if a claimant or any other person named as party to such counter-claim contends that the claim thereby raised ought to be disposed of by way of counter-claim, but in an independent proceeding, a Judge may at any time order that such counter-claim be excluded.

Pleadings to state material facts and not evidence.

2. 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 numbered consecutively. Dates, sums and numbers shall be expressed in figures. Pleadings shall be signed by a Legal Practitioner or by the party if he sues or defends in person.

Particulars to be given where necessary.

3. (1) In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence and in all other cases, in which particulars may be necessary, particulars (with dates and items, if necessary) shall be stated in the pleadings.

(2) In an action for libel or slander if the claimant alleges that the words or matter complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of his allegation.

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Further and better statement or particulars.

4. An application for a further and better statement of the nature of the claims or defence, or further and better particulars of any matter stated in any pleading requiring particulars shall be made to a Judge at the first pre-trial conference. The Judge may grant such application upon such terms as may be just.

Denial.

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

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

Conditions precedent.

6. Each party shall specify distinctly in his pleadings any condition precedent, the performance or occurrence of which is intended to be contested.

Defence, certain facts to surprise the other party, must be specifically pleaded.

7. (1) All grounds of defence or reply which makes an action, reply; not maintainable or if not raised will take the opposite party by surprise or raise issues of facts not arising out of the preceding to the pleadings shall be specifically pleaded.

(2) Where a party raises any ground which makes a transaction void or voidable or such matters as fraud, Limitation Law, release, payment, performance, facts showing insufficiency in contract or illegality either by any enactment or by Common Law, he shall specifically plead same.

Pleadings to be consistent.

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

Joinder of issue.

9. A party may by his pleadings join issues upon the pleadings of the opposing party and such joinder of issues shall operate as a denial of every material allegation of fact in the pleadings upon which issue is joined except any fact which the party may be willing to admit.

Effect of documents to be stated.

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

Notice.

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

Implied contract or relation.

12. Whenever any contract or any relation between any person is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. If in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

Presumptions of law.

13. A party may not allege in any pleadings any matter or fact 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.

Stated or settled account.

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

Technical objection.

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

Striking out of pleadings.

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

Defamation.

17. (1) Wherever it is material to allege malice, fraudulent intention, knowledge or condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

(2) Where in an action for libel or slander the defendant pleads that any of the words or matters complained of are fair comment on a matter of public interest or were published upon a privileged occasion, the claimant shall, if he intends to allege that the defendant was actuated by express malice, deliver a reply giving particulars of the facts and matters from which such malice is to be inferred.

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

Where pleading discloses no reasonable cause of action.

18. (1) The Judge may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that:

- (a) it discloses no reasonable cause of action or defence, as the case may be; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the Court;

and may order the action to be stayed or dismissed or Judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on application under paragraph (1)(a).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petitions, as the case may be, were a pleading.

(4) No proceedings shall be open to objection on the ground that only a declaratory judgment or order is sought thereby and a Judge may make a binding declaration of right whether any consequential relief is or could be claimed or not.

Close of pleading.

19. (1) Where a pleading subsequent to reply is not ordered then, at the expiration of 7 days from the service of the defence or reply (if a reply has been filed) pleadings shall be deemed closed.

(2) Where a pleading subsequent to reply is ordered, and the party who has been ordered or given leave to file the same fails to do so within the period limited for that purpose, then, at the expiration of the period so limited the pleadings shall be deemed closed:

Provided that this rule shall not apply to a defence to counterclaim and unless the claimant files a defence to counterclaim, the statements of fact contained in such counterclaim shall at the expiration of 14 days from the service thereof or of such time (if any) as may by order be allowed for filing of a defence thereto be deemed to be admitted, but the Judge may at any subsequent time give leave to the claimant to file a defence to counterclaim.

ORDER 20**STATEMENT OF CLAIM**

Statement of claim.

1. (1) Every statement of claim, defence or counter claim shall state specifically the relief claimed either singly or in the alternative, and it shall not be necessary to ask for general or other relief, which may be given as a Judge may think just as if it had been asked for.

(2) Where the claimant seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. The same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off or counter claim founded upon separate and distinct facts.

Claim beyond endorsement.

2. Whenever a statement of claim is filed, the claimant may alter, modify or extend his claim without any amendment of the endorsement of the writ:

Provided that the claimant may not completely change his cause of action endorsed on the writ without amending the writ.

ORDER 21**DEFENCE AND COUNTER-CLAIM**

- Statement of defence.* **1.** The statement of defence shall be a statement in summary form and shall be supported by copies of documentary evidence, list of witnesses and their written statements on oath.
- Evasive denial.* **2.** When a party in any 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. If an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.
- Denials generally.* **3.** (1) In an action for debt or liquidated demand in money, a mere denial of the debt shall not be sufficient defence.
- (2) In an action for money had and received, a defence in denial must deny the receipt of the money or the existence of those facts which are alleged to make such receipt by the defendant and receipt to the use of the claimant.
- (3) In an action for goods sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed.
- (4) In an action upon a bill of exchange, promissory note or cheque, a defence in denial must deny some matter of fact, e.g. the drawing, making, endorsing, accepting, presenting or notice of dishonour of the bill or note.
- Persons in representative capacity.* **4.** If either party wishes to deny the right of any other party to claim as executor, or a trustee or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.
- Pleading to damages.* **5.** No denial or defence shall be necessary as to damages claimed or their amount; they are deemed to be in issue in all cases, unless expressly admitted.
- Set-off and counter-claim.* **6.** Where any defendant seeks to rely upon any grounds 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.
- Title of Counter-claim.* **7.** Where a defendant by his defence sets up any counter-claim which raises questions between himself and the claimant along with any other persons, he shall add to the table of his defence, a further title similar to the title in a statement of claim, setting forth the names of all persons who, if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his defence to such of them as are parties to the action within the period which he is required to deliver it to the claimant.

*Claim
against
persons
not party
Civil Form 12.*

8. Where any such person as in Rule 7 of this Order is not a party to the action he shall be summoned to appear by being served with a copy of the defence and 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 in Form 12 with such modifications or variation as circumstances may require.

*Appearance
by added
parties.*

9. Any person not already a party to the action, who is served with a defence and counterclaim as aforesaid, must appear thereto as if he had been served with an originating process to appear in an action.

*Reply to
counter-claim.*

10. Any person not already a party to the action, who is named in a defence as a party to a counter claim thereby made, shall deliver a defence in a mode and manner prescribed under this Order and the provisions of the Order shall apply to such a person.

*Discontinuance
of the
Claimant's
claim.*

11. If, in any case in which the defendant sets up a counter-claim, the action of the claimant is stayed, discontinued or dismissed, the counter claim may nevertheless be proceeded with.

*Judgment for
balance.*

12. Where in an action, a set off or counter claim is established as a defence against the claimant's claim, the Judge may, if the balance is in favour of the defendant, give judgment 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.

*Grounds
of defence
after action
brought.*

13. (1) Any ground of defence which arises after the action has been filed, but before the defendant has delivered his defence, and before the time limited for doing so has expired, may be raised by the defendant in his defence, either along or together with other grounds of defence.

(2) If after a defence has been delivered along with a set-off or counter-claim, any basis for answer or ground of defence arises to any such set-off or counter-claim respectively, it may be raised by the claimant in his reply (in the case of a set-off) or defence to counter-claim, either alone or together with any other ground of reply or defence to counterclaim.

*Further
defence
or reply.*

14. Where any ground or defence arises after the defendant has delivered a defence, or after the time limited for his doing so has expired the defendant may, and where any ground of defence to any set-off or counterclaim arises after reply, or after the time limited for delivery of a reply has expired, the claimant 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 defence.
Civil Form 13.*

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

*Defence to
originating
summons.*

16. A defendant to an originating summons shall file a counter affidavit together with all the exhibits he intends to rely upon and a written address within 21 days after service of the originating summons.

ORDER 22

REPLY

*Filing of
reply.*

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

*Reply
to
counter-claim.*

2. Where a counterclaim is pleaded, a reply thereto is called a defence to counterclaim and shall be subject to the rules applicable to defences.

ORDER 23**ADMISSIONS**

Notice of admission of facts.

1. Any party to a proceeding may give notice by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Notice to admit documents.

2. (1) Either party may, not later than 7 days before the first pre-trial conference, by notice in writing filed and served, require any other party to admit any document and the party so served shall not later than 4 days after service give notice of admission or non-admission of the document, failing which he shall be deemed to have admitted it unless otherwise ordered.

(2) When a party decides to challenge the authenticity of any document, he shall not later than 7 days of service of that document give notice that he does not admit the document and requires it to be proved at the trial.

(3) 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 five thousand naira, shall be paid by the party who has challenged it, unless at the trial or hearing the Judge shall certify that there were reasonable grounds for not admitting the authenticity of the document.

Notice to admit facts.

3. (1) Either party may not later than 7 days before the first pre-trial conference by notice in writing filed and served require any other party to admit any specific fact or facts mentioned in the notice, and the party so served shall not later than 4 days after service give notice of admission or non-admission of the fact or facts 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 purposes of that particular proceedings 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 refusal or neglect to admit the same within 4 days after service of such notice or within such further time as may be allowed by the Judge, the cost of proving such fact or facts which shall not be less than a 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.

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Request for time to pay. 4. (1) (a) A defendant who makes an admission under this Order may request *For time to pay.*

(b) A request for time to pay is a proposal about the date of payment or a proposal to pay by instalments at the times and rate specified in the request.

(c) The defendant's request for time to pay shall be served or filed with his admission.

(d) If the claimant accepts the defendant's request, he may obtain judgment by filing a request for judgment.

(e) On receipt of the request for judgment, the Court shall enter judgment accordingly.

(f) If the claimant does not accept the request for instalmental payment judgment shall be entered based on the admission without prejudice to the Defendant's right to apply for instalmental payment.

Interest. (2) (a) Judgment under rule 3(admission of whole of claim for specified amount) shall include the amount of interest claimed to the date of judgment if the claimant's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the claim form to the date of the request for judgment.

(b) In any case where judgment is entered under rule 3 and the conditions in paragraph (a) are not satisfied, judgment should be for an amount of interest to be decided by the court.

(c) Where judgement is entered for an amount of interest to be decided by the court, the court shall give directions for the management of the case.

Judgment or order upon admission of facts. (3) The Judge may, on application, at a pre-trial conference or at any other stage of the proceedings where admissions of facts have been made, either on the pleadings or otherwise, make such orders or give such judgment as upon such admissions a party may be entitled to, without waiting for the determination of any other question between the parties.

Cost of notice where documents unnecessary. (4) Where a notice to admit or produce comprise documents that are not necessary, the costs occasioned thereby which shall not be less than five thousand naira shall be borne by the party giving such notice.

ORDER 24**DEFAULT OF PLEADINGS**

Claim for debt or liquidated demand.

1. If the claim is only for a debt or liquidated demand, and the defendant does not within the time allowed for the purposes, file a defence, the claimant may, at the expiration of such time, apply for final judgment for the amount claimed with costs.

Several defendants: default of one.

2. When in any such action as in Rule 1 of this Order there are several defendants, if one of them makes default as mentioned in Rule 1 of this Order, the claimant may apply for final judgment without prejudice to his right to proceed with his action against the other defendants.

Damages and Detention of goods.

3. If the claimant's claim be for pecuniary damages or for detention of goods with or without a claim for pecuniary damages only, 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 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.

Default of one or more defendants.

4. When in any such action as in Rule 3 of this Order there are several defendants, if one or more of them default as mentioned in Rule 1 of this Order, the claimant may apply to a Judge for interlocutory judgment against the defendant or defendants so making default and proceed with his action against others. In such case the value and amount of damages against the defendant making default shall be assessed at the trial of the action or issues therein against the other defendants, unless the Judge shall otherwise order.

Debt or damages and detention of goods or damages.

5. Where the claim is for debt or liquidated demand and also for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any defendant makes default as mentioned in Rule 1, the claimant may apply to a Judge for final judgment for the debt or liquidated demand, and may also apply for interlocutory Judgment for the value of the goods and damages, or the damages only as the case may be, and proceed as mentioned in Rules 3 and 4.

Recovery of land.

6. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 1, the claimant may apply for a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land with his costs.

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Mesne-claim for profit, arrears or damages.

7. Where the claimant has endorsed a claim for *mesne profit* or arrears of rent in respect of the premises claimed, or any part of profits, rent or damages for breach of contract or wrong or injury to the premises claimed upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 1, or if there be more than one defendant, some or one of the defendants make such default, the claimant may apply for final judgment against the defaulting defendant or defendants and proceed as mentioned in Rules 3 and 4.

Where a defence is filed to part of claim only.

8. If the claimant's claim is for or liquidated demand or for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, or for any such matters, or for the recovery of land, and the defendant files a defence which purports to offer an answer to part only of the claimant's alleged cause of action or the claimant may apply for judgment, final 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 a debt or liquidated demand:
 Provided also that where there is a counter-claim, execution on any such judgment as above mentioned in respect of the claimant's claim shall not issue without leave of the Judge.

Defendant in default.

9. In all actions other than those in the preceding rules of this Order, if the defendant makes default in filing a defence, the claimant may apply to a Judge for judgment, and such judgment shall be given upon the statement of claim as the Judge shall consider the claimant to be entitled to.

One of several defendants in default.

10. Where in any such action as mentioned in Rule 9 of this Order, there are several defendants, if one of such defendants makes such default as aforesaid, the claimant may apply for judgment against the defendant so making default, and proceed against the other defendants.

Default of third party.

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

Setting aside judgment by default.

12. Any judgment 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.

ORDER 25**PAYMENT INTO AND OUT OF COURT**

*Payment
into and out
of court.*

1. (1) Where after service in any proceeding for debt or damages a defendant wishes to pay money into court in respect of the proceeding he shall notify the Chief Registrar who will thereupon direct him to pay the money into an interest yielding account in a commercial bank and he shall file the teller for such payment with the Chief Registrar.

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

(3) Where a defence of tender before action is set up, the sum of money alleged to have been tendered shall be brought into Court.

(4) Where the money is paid into Court in satisfaction of one or more of several causes of action, the notice shall specify the causes of action in respect of which payment is made and the sum in respect of each such cause of action unless a Judge otherwise directs.

*Civil Form
14.*

(5) The notice shall be in Form 14 with such modifications or variations as circumstances may require. The receipt of the notice shall be acknowledged in writing by the claimant within 3 days. The notice may be modified or withdrawn or delivered in an amended form by leave of a Judge upon such terms as may be just.

(6) Where money is paid into court with denial of liability the claimant may proceed with the action in respect of the claim and if he succeeds, the amount paid shall be applied so far as is necessary in satisfaction of the claim, and the balance, if any, shall on the order of a Judge be repaid to the defendant. Where the defendant succeeds in respect of such claim, the whole amount paid into Court shall be repaid to him on the order of a Judge.

*Claimant
may take
out money.*

2. (1) Where money is paid into Court under Rule 1, the claimant may within 14 days of the receipt of the notice of payment into Court, or where more than one payment into Court has been made, within 14 days of the receipt of the notice of the last payment into Court, accept the whole sum or any one or more of the specific sum in satisfaction of the cause or causes of action to which the specified sum or sums relate by giving notice to the defendant in Form 15 with such modifications or variations as circumstances may require and thereupon shall be entitled to receive payment of the accepted sum or sums in satisfaction as aforesaid.

*Civil Form
15.*

(2) Payment shall be made to the claimant or on his written authority to his Legal Practitioner and thereupon proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall abate.

(3) If the claimant accepts money paid into court in satisfaction of his claim, or if he accepts a sum or sums paid in respect of one or more specified causes of action, and gives notice that he abandons the other causes of action, he may after 4 days from payment out and unless a Judge otherwise orders, tax the claimant's cost incurred to the time of payment into court, and 48 hours after taxation may sign judgment for the taxed cost.

(4) Where in an action for libel or slander, the claimant accepts money paid into court, either party may apply by summons to a Judge for leave for the parties or either of them to make a statement in open Court in terms approved by the Judge.

Money remaining in court.

3. If the whole of the money in court is not taken out under Rule 2, the money remaining in court shall not be paid out except in satisfaction of the claim or specified cause 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, at or after trial.

Several defendants.

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

(2) If the claimant elects within 14 days after receipt of notice of payment into court to accept the sum or sums paid into court, he shall give notice as in Form 16 with such modifications or variations as circumstances may require to each defendant and thereupon all further proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall abate.

(3) The money shall not be paid out except in pursuance of an order of a Judge dealing with the whole cause or causes of action.

Civil Form 15.

(4) In an action for libel or slander against several defendants sued jointly, if any defendant pays money into court, the claimant may within 14 days elect to accept the sum paid into court in satisfaction of his claim against the defendant making the payment and shall give notice to all the defendants as in Form 15 with such modifications or variations as circumstances may require. The claimant may tax his costs against the defendant who has made such payment in accordance with Rule 2 (3) of this Order and the action shall abate against that defendant.

(5) The claimant may continue with the action against any other defendant but the sum paid into court shall be set off against any damages awarded to the claimant against the defendant or defendants against whom the action continued.

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Counter-claims.

5. Any person made a defendant to a counter-claim may pay money in 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 or are claimed by or on behalf of a person under legal disability suing either alone or in conjunction with other parties, no settlement or compromise or payment or acceptance of money paid into court, whether before, at or after the trial, shall, as regards the claims of any such person, be valid without the approval of a Judge.

(2) No money (which expression for the purposes of this Rule includes damages) in any way recovered or adjudged or in respect of the claims of any such person under legal disability whether by judgment, settlement, compromise, payment into court or otherwise, before at or after the trial shall be paid to the claimant or to the guardian of the claimant or to the claimant's Legal Practitioner unless a Judge shall so direct.

(3) All money so recovered or adjudged or ordered or awarded or agreed to be paid shall be dealt with as the Judge shall direct. The directions thus given may include any general or special directions that the Judge may deem fit to give, including directions on how the money is to be applied or dealt with and as to any payment to be made either directly or out of money paid into Court to the claimant or to the guardian in respect of moneys paid or expenses incurred or for maintenance or otherwise for or on behalf of or for the benefit of the person under legal disability or otherwise or to the claimant's Legal Practitioner in respect of costs or of the difference between party and party and Legal Practitioner and client costs.

Withdrawal of money from Court.

7. Every application for the withdrawal of any money under this Order shall be made ex-parte.

ORDER 26

PROCEEDINGS IN LIEU OF DEMURRER

*Demurrer
abolished.*

1. No demurrer shall be allowed.

Points of law.

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

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

ORDER 27**DISCONTINUANCE AND WITHDRAWAL**

*Claimant
may
discontinue
before
defence.*

1. (1) The claimant may at any time before receipt of the defence or after the receipt thereof, before taking any other proceeding in the action, by notice in writing duly filed and served, wholly discontinue his claim against all or any of the defendants or withdraw any part or parts of his claim. He shall thereupon pay such defendant's costs of the action, or if the action be not wholly discontinued, the cost occasioned by the matter so withdrawn.

(2) A discontinuance or withdrawal as the case may be, shall not be a defence to any subsequent claim.

(3) Where a defence has been filed, the claimant may with the leave of a Judge discontinue the proceedings or any part thereof on such terms and conditions as the Judge may order.

(4) Where proceedings have been stayed or struck out upon a claimant's withdrawal or discontinuance under this Order no subsequent claim shall be filed by him on the same or substantially the same facts until the terms imposed on him by the Judge have been fully complied with.

(5) The Judge may in like manner and like discretion as to terms, upon the application of a defendant order the whole or any part of his alleged grounds of defence or counter claim to be withdrawn or struck out.

*Withdrawal
by consent.*

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

ORDER 28**AMENDMENT**

- Amendment of originating process and pleadings.*
- 1.** A party may amend his originating process and pleadings at any time before the close of pre-trial conference and not more than twice during the trial but before the close of the case.
- Application.*
- 2.** Application to amend may be made to a Judge. Such application shall be supported by an exhibit of the proposed amendment and may be allowed upon such terms as to costs or otherwise as may be just.
- Amendment of originating process.*
- 3.** Where any originating process and or a pleading is to be amended a list of any additional witness 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 obtained.*
- 4.** If a party who has obtained an order to amend does not amend accordingly within the time limited for that purpose by the Order, or if no time is thereby limited, then within 7 days from the date of the order, such party shall pay an additional fee of N200.00 (two hundred naira) for each day of default.
- Filing and service of amended copy.*
- 5.** Whenever any originating process or pleading is amended, a copy of the document as amended shall be filed in the Registry and additional copies served on all the parties to the action.
- Date of order of amendment to be displayed.*
- 6.** Whenever any endorsement or pleading is amended, it shall be marked in the following manner:
- “Amended this.....day of.....pursuant to Order of
(name of Judge) dated the.....day of..... 20...”
- Clerical mistakes and accidental omissions.*
- 7.** A Judge may at anytime correct clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission upon application, without an appeal being filed.
- General Power to amend.*
- 8.** Subject to the provisions of rule 1 of this Order, a Judge may at any time and on such terms as to costs or otherwise as may be just, amend any defect or error in any proceedings.

ORDER 29**PRE-TRIAL CONFERENCES AND SCHEDULING**

*Pre-trial
conference
notice.*

1. (1) Within 14 days after close of pleadings, the claimant shall by a letter apply to the Registrar of the Court for the issuance of a pre-trial conference notice as in Form 17.

*Civil Form
17, 18.*

(2) Upon application by a claimant under sub-rule 1 above, the Judge shall cause to be issued to the parties and their Legal Practitioners (if any) a pre-trial conference notice as in Form 17 accompanied by a pre-trial information sheet as in Form 18 for the purposes set out hereunder:

(a) disposal of matters which must or can be dealt with on interlocutory application;

(b) giving such directions as to the future course of the action as appear best adapted to secure its just, expedient and economical disposal;

(c) promoting amicable settlement of the case or adoption of alternative dispute resolution.

(3) If the claimant does not make the application in accordance with sub-rule 1 of this rule, the defendant(s) may do so or apply for an order to dismiss the action.

*Scheduling and
planning.*

2. At the pre-trial conference, the Judge shall enter a scheduling Order for:

(a) joining other parties;

(b) amending pleadings or any other processes;

(c) filing motions;

(d) further pre-trial conference;

(e) any other matters appropriate in the circumstances of the case.

Agenda.

3. At the pre-trial conference, the Judge shall consider and take appropriate action with respect to such of the following (or aspects of them) as may be necessary or desirable;

(a) formulation and settlement of issues;

(b) amendments and further and better particulars;

(c) the admissions of facts, and other evidence by consent of the parties;

- (d) control and scheduling of discovery, inspection and production of documents;
- (e) narrowing the field of dispute between expert witnesses, by their particulars at pre-trial conference or in any other manner;
- (f) hearing and determination of objection on point of law;
- (g) giving orders or directions for separate trial of a claim, counter-claim, set-off, cross-claim or third party claim or of any particular issue in the case;
- (h) settlement of issues, inquiries and accounts under Order 31;
- (i) securing statement of special case of law or facts under Order 32;
- (j) determining the form and substance of the pre-trial order;
- (k) such other matters as may facilitate the just and speedy disposal of the action.

Time-table.

4. The pre-trial conference or series of pre-trial conferences with respect to any case shall be completed within 3 months of its commencement, and the parties and their Legal Practitioners shall co-operate with the Judge in working within this time table. As far as practicable, pre-trial conference shall be held from day to day or adjourned only for purposes of compliance with pre-trial conference orders, unless extended by the Chief Judge.

Report.

5. After a pre-trial conference or series of pre-trial conferences, the Judge shall issue a Report. This Report shall guide the subsequent course of the proceedings unless modified by the trial Judge.

Sanctions.

6. If a party or his Legal Practitioner fails to attend the pre-trial conference or obey a scheduling or pre-trial order or is substantially unprepared to participate in the conference or fails to participate in good faith the Judge shall:

- (a) in the case of the claimant dismiss the claim;
- (b) in the case of a defendant enter final Judgment against him.

Any Judgment given under this rule may be set aside upon an application made within 7 days of the judgment or such other period as the pre-trial Judge may allow not exceeding the pre-trial conference period. The application shall be accompanied by an undertaking to participate effectively in the pre-trial conference.

Management.

7. The Judge shall direct the pre-trial conference with due regard to its purposes and agenda as provided under this Order, and shall require parties or their Legal Practitioners to co-operate with him effectively in dealing with the conference agenda.

ORDER 30**DISCOVERY AND INSPECTION**

- Discovery by interrogatories.* **1.** In any cause or matter the claimant or defendant may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties and such interrogatories when delivered shall have a note at the end of it stating which of the interrogatories each person is required to answer. Interrogatories shall be delivered within 7 days of close of pleadings and shall form part of the agenda of pre-trial conference.
- Civil Form 19.* **2.** Interrogatories shall be in Form 19 with such modifications or variations as circumstances may require.
- Corporation or companies.* **3.** If 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 persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may deliver interrogatories to any member or officer of each party.
- Objection to interrogatories by answer.* **4.** Any objection to answering any one or more of several interrogatories on the ground that it is or they are scandalous or irrelevant may be taken in the affidavit in answer at the pre-trial conference.
- Affidavit in answer; filing of.* **5.** Interrogatories shall be answered by affidavit to be filed within 7 days, or within such other time as the Judge may allow. Two copies of the affidavit in answer shall be supplied to the Registrar.
- Form of affidavit in answer; Civil Form 20.* **6.** An affidavit in answer to interrogatories shall be in Form 20 with such modifications or variations as circumstances may require.
- Order to answer, etc.* **7.** If any person interrogated omits to answer or answers insufficiently, the pre-trial Judge shall on application issue an order requiring him to answer or to answer further as the case may be.
- Application for discovery of documents.* **8.** (1) Any party may in writing request any other party to any cause or matter to make discovery on oath of the documents that are or have been in his possession, custody, power or control, relating to any matter in question in the case. Request for discovery shall be served within 7 days of close of pleadings and shall form part of the agenda of pre-trial conference. The party on whom such a request is served shall answer on oath completely and truthfully within 7 days of the request or within such other time as the Judge may allow and it shall be dealt with at pre-trial conference.

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

Civil Form 21.

(3) The affidavit to be made by any person in answer to a request for discovery of documents shall specify which, if any, of the listed documents he objects to producing, stating the grounds of his objection, and it shall be in Form 21 with such modifications or variations as circumstances may require.

Processes filed after pre trial conference.

9. (1) Any process to be filed after the pre-trial conference shall be accompanied by copies of documents referred to in the process.

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

Verification of business books.

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. 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 of document has been ordered or filed, make an order requiring any party to state by affidavit whether any particular document or any class of documents is or has at any time been in his possession, custody, power or control, when he parted with the same and what has become of it.

Contempt of party after service on Legal Practitioner.

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

Contempt by Legal Practitioner.

12. A Legal Practitioner upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding Rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable for contempt.

Using answers to interrogatories.

13. 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 at trial without putting in the answers or the whole of such answer:

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

*Discovery
against
Sheriff.*

14. In any action against or by a Sheriff in respect of any matters connected with the execution of his office, a Judge may, on application of either party, order that the affidavit to be made in answer either to interrogatories or to any order for discovery shall be made by the officer actually concerned.

*Order to
apply to
person
under legal
disability.*

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

ORDER 31**ISSUES, INQUIRIES, ACCOUNTS AND REFERENCES TO REFEREES.**

Issues of facts in dispute.

1. (1) In all proceedings, issues of facts in dispute shall be defined by each party and filed within 7 days after close of pleadings.

Reference to referee.

(2) If the parties differ on the issues the Judge may settle the issues.

2. In any legal proceedings the Judge may at any time order the whole cause or matter or any question or issue of facts arising therein, to be tried before an official referee or officer of the court, notwithstanding that it may appear that there is a special or other relief sought or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

Instructions to referee.

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

General powers of referee.

4. The referee may, subject to the order of the Judge, hold the inquiry at or adjourn it to any place which he may deem most expedient, and have any inspection or view which he may deem expedient for the disposal of the controversy before him. The referee shall, so far as practicable, proceed with the inquiry from day to day.

Taking of evidence of witnesses at inquiry.

5. (1) Subject to any order made by the Judge ordering the inquiry, evidence shall be taken at any inquiry before a referee, and the attendance of witnesses to give evidence before a referee may be enforced by the Judge in the same manner as such attendance may be enforced before the Court, and every such inquiry shall be conducted in the same manner or as nearly as circumstances will admit as trials before a Court.

(2) The referee shall have the same authority in the conduct of any inquiry as a Judge when presiding at any trial.

(3) Nothing in these rules shall authorize any referee to commit any person to prison or to enforce any order by attachment or otherwise; but the Judge may, in respect of matters before a referee, make such order of attachment or commitment as he may consider necessary.

Reports made in pursuance of reference under order.

6. (1) The report made by a referee in pursuance of a reference under this Order shall be made to the Judge and notice thereof served on the parties to the reference.

(2) A referee may by his report submit any question arising therein for the decision of the Judge or make a special statement of facts from which the Judge may draw such inferences as he deems fit.

(3) On the receipt of a referee's report, the Judge may:

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

(b) vary the report;

(c) require an explanation from him;

(d) remit the whole or any part of the question or issue originally referred to him for further consideration by him or other referee;

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

(4) When the report of the referee has been made, an application to vary the report or remit the whole or any part of the question or issue originally referred may be made on the hearing by the Judge for the further consideration of the matter, after giving not less than 4 days notice thereof and any other application with respect to the report may be made on that hearing without notice.

(5) Where on a reference under this Order a Judge orders that the further consideration of the cause or matter in question shall not stand adjourned until the receipt of the referee's report, the order may contain directions with respect to the proceedings on the receipt of the report and the foregoing provisions of this rule shall have effect subject as to such directions.

Special directions as to mode of taking account.

7. The Judge may order or direct an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account, the books of account in which the accounts in question have been kept shall be taken as prima facie evidence of their contents, with liberty to the interested parties to object.

Accounts to be verified by affidavit. numbered and left in the registry.

8. Where any account is directed to be taken the accounting party shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit and left in the Registry.

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Mode of vouching Accounts.

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

Surcharge.

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

Accounts and inquiries to be numbered; Civil Form 22.

11. Where by any judgment or order any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that as far as may be, each distinct account and inquiry may be designed by a number and such judgment or order shall be in Form 22 with such modifications or variations as the circumstances of the case may require.

Just allowances.

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

Expediting proceedings in case of undue delay.

13. If it shall appear to the Judge that there is any undue delay in the prosecution of any proceedings, the Judge may require the party having the conduct of the proceedings or any other party, to explain the delay and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof and as to the costs of the proceedings as the circumstances of the case may require; and for the purposes aforesaid any party may be directed to summon the person whose attendance is required, and to conduct any proceeding and carry out any directions which may be given.

ORDER 32**SPECIAL CASE**

*Special case
by consent.*

1. At the pre-trial conference parties may concur in stating the questions of law arising in their case in the form of a special case for the opinion of the Judge. Every such special case shall be divided into paragraphs, numbered consecutively and shall concisely state such facts and documents as may be necessary to enable the court to decide the questions. Upon the argument of each case the Judge and the parties may refer to all the contents of such documents and the Judge may draw the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn from them if proved at a trial.

*Special case
by order
before trial.*

2. If at the pre-trial conference it appears to the Judge there is in any cause or matter a question of law, which could be conveniently decided before any evidence is given or any question or issue of fact is tried, the Judge may make an order accordingly, and may raise such question of law or direct them to be raised at the trial either by special case or in such other manner as the Judge may deem expedient, and all such question of law as may render unnecessary may thereupon be stayed.

*Special case
to be signed.*

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

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

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

*Agreement
to payment of
money and
costs.*

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

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

*Application
of order*

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

ORDER 33**CAUSE LISTS**

*List of causes
for hearing.*

1. (1) The Registrar shall keep a list (hereinafter called the Pre-Trial List) of action directed to be set down for pre-trial conference under Order 29, Rule 3.

(2) The Registrar shall also keep a Weekly Cause List of all other actions which are ready for trial or hearing.

*Pre-trial
and Weekly
Cause List.*

2. (1) The Registrar shall post up every Friday a Pre-Trial and Weekly Cause List which shall set out the arrangement of causes before such of the Judges sitting in Court during the following week.

(2) Nothing in this rule shall preclude the Chief Judge from making special arrangements, whenever necessary or convenient, for the disposal of causes and matter included in the list.

*Public Cause
List.*

3. Where any Friday is a public holiday, the Pre-Trial List and Holidays, shall be posted up on the day last preceding which is not a public holiday.

*Judge unable
to sit.*

4. On any day when a Judge shall be unable to sit in Court and deal with any cause or matter fixed for hearing, a minute, recording the parties present and the step taken by the Registrar, shall be entered on the Court file.

*Notice
boards.*

5. Pre-Trial and Weekly Cause Lists and other such lists shall be posted up on one or more notice boards set up in such place or places within or near the Court premises as the Chief Judge may designate.

ORDER 34**PROCEEDINGS AT TRIAL**

Non-Appearance of both parties.

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

Default of appearance by defendant at trial.

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

Default of appearance by claimant.

3. When a cause is called for hearing, if the defendant appears and the claimant does not appear, the defendant, if he has no counterclaim, shall be entitled to judgment dismissing the action, but if he has a counterclaim, then he may prove such counterclaim, so far as the burden of proof lies upon him.

Judgment by default may be set aside on terms.

4. (1) Where a cause is struck out under Rule 1 of this Order either party may apply that the cause be replaced on the cause list on such terms as the Judge may deem fit.

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

(3) An application to re-list a cause struck out or to set aside a judgment shall be made within 6 days after the order or judgment or such other larger period as the Judge may allow.

Adjournment of trial.

5. 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.

Order of proceedings.

6. The order of proceeding at the trial of a cause shall be as prescribed in the following rules:

Burden of proof by party to begin.

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

Documentary evidence.

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

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*Additional
witness.*

(c) (i) 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.

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

*Close of
case of
Parties.*

(d) (i) A party shall close his case when he has concluded his evidence.

Either the claimant or defendant may make oral application to have the case closed.

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

*Exhibits
during trial.*

(e) (i) The Registrar shall take charge of every document or object put in as an exhibit during the trial of an action and shall mark or label every exhibit with

a letter or letters indicating the party by whom the exhibit is put in (or where more convenient the witness by whom the exhibit is proved) and with a number, so that all the exhibits put in by a party (or proved by a witness) are numbered in one consecutive series.

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

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

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

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

*Written
address by
party
beginning.*

7. When the party beginning has concluded his evidence, the Judge shall ask the other party if he intends to call evidence. If the other party does not intend to call evidence, the party beginning shall within 21 days after close of evidence file a written address, and the other party shall also within 21 days file his own written address.

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*Written
address by
the other
party.*

8. Where the other party calls evidence he shall within 21 days after the close of evidence file a written address.

*Written
address of
party
beginning.*

9. Upon being served with other party's written address the party beginning shall within 21 days file his own written address.

*Right of
Reply.*

10. The party who files the first address shall have a right to reply on point of law only. The reply shall be filed within 7 days after service of the other party's address.

*Custody of
Exhibit.*

11. An exhibit shall not be released after the trial to the party who has put it in unless the period during which notice of appeal may be given has elapsed without such notice having been given, and then only if the trial Judge (or in his absence, another Judge) grants leave to release such exhibit on being satisfied:

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

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

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

*Copy of
list of exhibits
for the purpose
of an appeal.*

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

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

*Indolent
Prosecution.*

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

ORDER 35**FILING OF WRITTEN ADDRESS**

- Application.* **1.** This Order shall apply to all applications and final addresses.
- Content of written address.* **2.** A written address shall be printed on white opaque A4 size paper and set out in paragraphs numbered serially and shall contain:
- (i) the claim or application on which the address is based;
 - (ii) a brief statement of the facts with reference to the exhibit attached to the application or tendered at the trial;
 - (iii) the issues arising from the evidence;
 - (iv) a succinct statement of argument on each issue incorporating the purport of the authorities referred to together with full citation of each such authority.
- Summation of address.* **3.** All written addresses shall be concluded with a numbered summary of the points raised and the party's prayer. A list of all authorities referred to shall be submitted with the address. Where any unreported judgment is relied upon the Certified True Copy shall be submitted along with the written address.
- Oral argument.* **4.** Parties may seek leave to expatiate.
- Copies of written address.* **5.** Each party shall file two copies of his written address in court and serve a copy thereof on every party.
- Adoption of written address.* **6.** If a party fails to appear his written address shall be deemed argued.

ORDER 36**EVIDENCE GENERALLY***Facts how
Proved.*

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

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

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

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

*Particular
facts.*

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.

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

- (a) by statement on oath of information or belief;
- (b) by the production of documents or entries in books;
- (c) by copies of documents or entries in books; or
- (d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact.

*Limitation of
modified and
medical and
expert evidence.*

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

*Limitation
on use of
documentary
evidence.*

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

*Revocation
and variation.*

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

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*Office copies
admissible
in evidence.*

6. Office copies of all writs, processes, records, pleadings, and documents filed in the High Court shall be admissible in evidence in all matters to the same extent as the original would be admissible.

*Examination
of witnesses
abroad.*

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

*Civil Forms
23 & 24.*

(a) the party obtaining such order shall file in the Registry an undertaking in Form 23 which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used;

(b) such undertaking shall be accompanied by:-

(i) a request in Form 24, with such modifications or variations as may be directed in the order for its issue, together with a translation in the language of the country in which it is to be executed (if not English);

(ii) a copy of the interrogatories (if any) to accompany the requests, with a translation if necessary;

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

*Form of
order for
examination
of witnesses
abroad. Civil*

8. Where an order is made for the examination of a witness or witnesses before the Nigerian Diplomatic Agent in any foreign country with which a convention in that behalf has been made the order shall be in Form 25, the form may be modified or varied as may be necessary to meet the circumstances of the particular case in which it is used.

*Form 25.
Order for
attendance
of person to
produce
document.*

9. The Judge may at any stage of any proceedings order the attendance of any person for the purpose of producing any writings of or other documents named in the order:

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

*Disobedience
of order for
attendance.*

10. Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document shall be in contempt of court, and may be dealt with accordingly.

*Expenses of
persons
ordered to
attend.*

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

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Contempt of court.

12. If any person duly summoned by *subpeona* to attend for examination shall refuse to attend or having attended, refuses to be sworn or to answer any lawful question he shall be in contempt of court and be dealt with accordingly by the Judge.

Examination of witnesses.

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

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

14. Except where by this Order otherwise provided or directed by a Judge, no deposition shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the Judge is satisfied that the deponent is dead or beyond the jurisdiction of the court or unable from sickness or other infirmity to attend the hearing or trial, in any of which case the depositions certified under the hand of the person taking the examination shall be admissible in evidence, saving all just exceptions, without proof of the signature to such certificate.

Oaths.

15. Any officer of the Court or other person directed to take the examination of any witness or person or any person nominated or appointed to take the examination of any witness or person pursuant to the provisions of any Convention now made or which may hereafter be made with any foreign country, may administer oaths.

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

16. A party may by *subpoena ad testificandum* or *duces tecum* require the attendance of any witness before an officer of the court or other person appointed to take the subpoena for examination, for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing 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.

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

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

Special direction as to taking of evidence.

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

Evidence taken at trial to be used in subsequent proceedings.

19. Subject to the provisions of Section 46 of the Evidence Act, all evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.

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

ORDER 37**AFFIDAVITS**

Evidence on motions, etc.

1. Upon any motion, petition, summons or other applications, evidence may be given by affidavit, but the Judge may, suo motu 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, his affidavit shall not be used as evidence save by special leave.

Title of affidavit.

2. Every affidavit shall bear the title in the cause or matter in which it is sworn but in every case in which there is more than one claimant or defendant, it shall be sufficient to state the full name of the first claimant or defendant respectively, and that there are other claimants or defendants, as the case may be.

Use of any defective affidavit.

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

Special time for filing affidavits.

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

Affidavits in support of ex-parte applications.

5. Except by leave of the Judge no order made *ex-parte* in court founded on any affidavit shall 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 use affidavit.

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

Alterations in accounts to be initialed.

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

Exhibits.

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

Certificate of exhibits.

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

10. The provisions of the Evidence Act governing affidavits shall be applicable under these rules.

*Application of
Evidence Act
Cap. 112, LFN.*

11. A document purporting to have been affixed or impressed thereon or subscribed thereto the seal or signature of a Court, Judge, Notary Public or person having authority to administer an oath in any part of the Commonwealth outside Nigeria in testimony of an affidavit being taken before it or him in that part of the Commonwealth Country shall be admitted in evidence with proof of the seal or signature of that Court, Judge, Notary Public or person.

*Affidavit taken
in Common-
Wealth Country
admissible with
proof of seal, etc.*

ORDER 38**NON-SUIT**

Power of court to non-suit.

1. When satisfactory evidence is not given entitling the claimant or defendant to the judgment of the Court, the Judge may *suo motu* or on application non-suit the claimant, but the parties' Legal Practitioners shall have the right to make submissions about the propriety or otherwise of making such order.

Non-suit where no leave reserved.

2. The Judge may upon a motion for a new trial or review of judgment, order a suit or judgment to be entered, although no leave has been reserved at the trial.

ORDER 39**JUDGMENTS, ENTRY OF JUDGMENTS**

Delivery of Judgment at or after trial.

1. (a) The Judge shall, at the pre-trial conference or after trial, deliver judgment in open court, and shall direct judgment to be entered.

(b) A judge is not required to read out his entire decision, but may summarise its purport and if he does that, the decision is taken as read.

Judgments to be pasted on web page or sent by electronic media.

(c) Judgments mentioned in paragraph (a) can also be pasted on web-page and or be sent to parties through their respective e-mails or through courier services and shall be deemed delivered.

Date of judgment in Court.

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

Date of Judgment directed to be entered.

3. When any judgment is directed to be entered by an order made on application for judgment, the judgment shall, unless the Judge otherwise orders, be dated as of the day which the order is made and take effect from that time:

Provided that the order may direct that the judgment shall not be entered until a given date, in which case it shall take effect from that date.

Judge may direct time for payment or performance and Interest.

4. The Judge at the time of making any judgment or order or at any time afterwards, may direct the time within which the payment is to be made or other act is to be done, reckoned from the date of the judgment or order, or from some other point of time, as the Judge deems fit and may order interest at a rate exceeding 100% per annum to be paid upon any judgment.

Time to be stated for doing any act.

5. Every judgment or order made in any cause or matter requiring any person to do an act shall state the time or the time after service of the judgment or order, within which the act is to be done. There shall be endorsed on the judgment or order a memorandum by the Registrar in the following words, viz:

Memorandum to be endorsed.

“If you, the within-named A, B, neglect to obey this judgment (or order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the said judgment (or order)” and same shall be served upon the person required to obey the judgment or order.

Judgment by consent

6. In any cause or matter where the defendant has appeared by Legal Practitioner no order for entering judgment shall be made by consent unless the

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*where
Defendant
appears
by a Legal
Practitioner.*

consent of the defendant is given by his Legal Practitioner or agent.

*Judgment by
consent where
defendant has no
Legal Practitioner.*

7. Where the defendant has no Legal Practitioner such order shall not be made unless the defendant gives his consent in person in open court.

ORDER 40**Drawing Up of Order**

*Date of order,
when drawn.*

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

*What orders
need not be
drawn up.*

2. Where an order has been made not embodying any special terms, including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave –

(a) for the issue of any writ other than a writ of attachment;

(b) for the amendment of any writ or pleading;

(c) for the filing of any document; or

(d) for any act to be done by any officer of the Court other than a Legal Practitioner, it shall not be necessary to draw up such order unless the Judge otherwise directs; but the production of a note or memorandum of such order signed by a Judge shall be sufficient authority for such enlargement of time, issue, amendment, filing or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed to be a special direction within the meaning of this rule.

Form of order.

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

ORDER 41**SALE OF LAND AND CONVEYANCING COUNSEL, EXPERTS & ASSESSORS****PART I - SCOPE**

*Scope of this
Part of this Order*

1. (a) This Part of this Order:

- (i) deals with the court's power to order the sale, mortgage, partition or exchange of land;
and
- (ii) contains provisions about conveyancing counsel.

(b) In this Part of this Order, "land" includes an interest in, or a right over, land.

*Power to order
sale, etc.*

2. In any proceedings relating to land, the court may order the land, or part of it, to be:

- (a) sold;
- (b) mortgaged;
- (c) exchanged; or
- (d) partitioned..

*Power to order delivery
up of possession, etc.*

3. Where the Court has made an order under rule 1, it may order a party to deliver up to the purchaser or any other person:

- (a) possession of the land;
- (b) receipt of rents or profits relating to it; or both.

*Reference to
conveyancing counsel.*

4. (1) The Court may direct independent conveyancing counsel not engaged in the litigation to investigate and prepare a report on the title of any land or to draft any document.

(2) The Court may take the report on title into account when it decides the issue in question.

*Party may
object to report.*

5. (1) A party to the proceedings may object to the report on title prepared by conveyancing counsel.

(2) Where there is an objection, the issue will be referred to a judge for determination.

PART II - EXPERTS AND ASSESSORS

Interpretation.

1. In this Order:

(a) "expert" means a person who has been instructed to give or prepare expert evidence for the purpose of proceedings; and

(b) "single joint expert" means an expert instructed to prepare a report for the Court on behalf of two or more of the parties, including the claimant, to the proceedings.

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Duty to restrict expert evidence.

2. Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.

Experts – Overriding duty to the Court.

3. (1) It is the duty of an expert to help the Court on matters within his expertise.

(2) This duty overrides any obligation to the person from whom an expert has received instructions or by whom he is paid.

Restriction of Expert evidence.

4. (1) A party shall not call an expert or put in evidence an expert's report without the Court's permission.

(2) When parties apply for permission they shall identify:

- (a) the field in which expert evidence is required; and
- (b) where practicable, the name of the proposed expert.

(3) If permission is given it is in relation only to the expert named or the field identified under paragraph (2) thereof.

(4) The Court may limit the amount of a party's expert's fees and expenses that may be recovered from any other party.

Requirement for expert evidence.

5. (1) Expert evidence shall be given in a written report unless the court directs otherwise.

(2) The Court shall not direct an expert to attend a hearing unless it is necessary to do so in the interests of justice.

Questions to Experts.

6. (1) A party may put written questions about an expert's report, which shall be proportionate to:

- (a) an expert instructed by another party; or
- (b) a single joint expert appointed under rule 7.

(2) Unless in any case the court gives permission or the other party agrees, written questions under paragraph (1):

- (a) may be put once only;
- (b) shall be put within twenty-eight days of service of the expert's report; and
- (c) shall be for the purpose only of clarification of the report.

(3) An expert's answers to questions put in accordance with paragraph (1) are treated as part of the expert's report.

(4) Where:

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- (a) a party has put a written question to an expert instructed by another party; and
- (b) the expert does not answer that question;

the Court may make one or both of the orders specified in paragraph (5) in relation to the party who instructed the expert.

- (5) The orders referred to in paragraph (4) are that the party shall not;
 - (a) rely on the evidence of that expert; or
 - (b) recover the fees and expenses of that expert from any other party.

Court's power to direct.

7. (1) Where several parties wish to submit expert evidence on a particular issue, the Court may direct that the evidence on that issue shall be given by a single joint expert.

- (2) Where the parties who wish to submit the evidence ('the relevant parties') cannot agree who should be the single joint expert, the Court may;
 - (a) select the expert from a list prepared or identified by the relevant parties; or
 - (b) direct that the expert be selected in such other manner as the court may direct.

Single joint Expert.

8. (1) Where the court gives a direction under rule 7 for a single joint expert to be used, any relevant party may give instructions to the expert.

(2) When a party gives instructions to the expert that party shall, at the same time, send a copy to the other relevant parties.

(3) The Court may give directions relating to:

- (a) the payment of the expert's fees and expenses; and
- (b) any inspection, examination or experiments which the expert wishes to carry out.

(4) The Court may, before an expert is instructed:

- (a) limit the amount that can be paid by way of fees and expenses to the expert; and
- (b) direct that some or all of the relevant parties pay that amount into the

Court.

(5) Unless the Court otherwise directs, the relevant parties are jointly and severally liable for the payment of the expert's fees and expenses.

Power to direct party available to another party.

9. Where a party has access to information which is not reasonable, the Court may direct the party who has access to the information to:

- (a) prepare and file a document recording the information; and
- (b) serve a copy of that document on the other party.

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*Contents
of report.*

10. (1) An expert's report shall comply with the requirements set out in a pertinent practice direction.

(2) At the end of an expert's report, there shall be a statement that the expert understands and has complied with his duty to the court.

(3) The expert's report shall state the substance of all material Instructions, whether written or oral, on the basis of which the report was written.

(4) The instructions referred to in paragraph (3) are not privileged against disclosure but the Court shall not, in relation to those instructions:

(a) order disclosure of any specific document; or

(b) permit any questioning in Court, other than by the party who instructed the expert, unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under paragraph (3) to be inaccurate or incomplete.

*Use of expert
Report.*

11. Where a party has disclosed an expert's report, any party may use that expert's report as evidence at a trial.

*Discussion
Between Experts.*

12. (1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to:

(a) identify and discuss the expert issues in the proceedings; and

(b) where possible, reach an agreed opinion on those issues.

(2) The Court may specify the issues which the experts shall discuss.

(3) The Court may direct that following a discussion between the experts they shall prepare a statement for the Court setting out those issues on which:

(a) they agree; and

(b) they disagree, with a summary of their reasons for disagreeing.

(4) The content of the discussion between the experts cannot be referred to at the trial unless the parties agree.

(5) Where experts reach agreement on an issue during their discussions, the agreement does not bind the parties unless the parties expressly agree to be bound by the agreement.

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Failure to disclose report.

13. A party who fails to disclose an expert's report may not use the report at the trial or call the expert to give evidence unless the court gives permission.

Right to ask court for direction.

14. (1) An expert may file a written request for direction for the purpose of assisting him in carrying out his functions.

(2) An expert shall, unless the Court orders otherwise, provide copies of the proposed request for direction under paragraph (1) to:

- (a) the party instructing him, at least seven days; and
- (b) to all other parties, at least four days, before he files the request.

(3) The Court may, in giving the direction, also direct that a party be served with a copy of the direction.

Assessors.

15. (1) This rule shall apply where the Court appoints one or more persons as assessors.

(2) An assessor shall assist the Court in dealing with a matter in which the assessor has skill and experience.

(3) An assessor will take such part in the proceedings as the Court may direct and in particular the Court may direct an assessor to:

- (a) prepare a report for the Court on any matter in issue in the proceedings; and
- (b) attend the whole or any part of the trial to advise the Court on the matter.

(4) If an assessor prepares a report for the court before the trial has begun:

- (a) the Court will send a copy to each of the parties; and
- (b) the parties may use it at the trial.

(5) The remuneration to be paid to an assessor shall be determined by the court and form part of the costs of the proceedings.

(6) The Court may order any party to deposit in the Court office a specified sum in respect of an assessor's fees and, where it does so, the assessor shall not be asked to act until the sum has been deposited.

(7) Paragraphs (5) and (6) do not apply where a statute provides for the remuneration of the assessor otherwise than by the parties or without contribution from the parties.

ORDER 42**TRANSFERS AND CONSOLIDATION****1 Transfer.**

*Order
Transferring
Proceedings
to High Court
Cap. 63, s.72.
LBOS, 1994.*

1. Where the Chief Judge has in exercise of any powers conferred on him by any relevant law, ordered the transfer of any action or matter from a lower court to the High Court, a copy of the order duly certified by the Registrar shall forthwith be sent to the High Court together with the documents referred to in the relevant law and other necessary documents and processes.

*Payment of
filing fees.*

2. (1) On receipt by the court of the relevant documents and processes, the Registrar shall notify the party who applied for the transfer; or where the transfer was not made on the application of any party, the claimant, to attend at the Registry and pay the fees for filing the documents. Such payment shall be without prejudice to the question of how the costs shall ultimately be borne.

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

*Duties of
Registrar.*

3. (1) The Registrar shall on payment of the prescribed fees, in any case not later than 7 days:

- (a) file the documents received from the Lower Court;
- (b) make an entry of the filing in the Cause Book; and
- (c) transmit the documents to the Chief Judge or to each other Judge appointed by the Chief Judge.

(2) The Registrar shall then give notice to the parties to attend in person or by counsel before a named Judge on the day and at the time specified in the notice. The fees for the service of this notice shall be borne in the first instance by the party who has paid the fees for filing as provided by Rule 2 of this Order.

Directions.

4. (1) The Chief Judge or such other Judge appointed by him shall, not later than 14 days after receiving the documents referred to in Rule 3 of this Order:

- (a) hear the parties or their Legal Practitioners;
- (b) take cognizance of the documents; and thereafter;
- (c) give directions for the trial or hearing of the action or matter.

(2) Directions given under this rule may include directions for filing and service of pleadings.

*Party failing
to attend.*

5. (1) If the claimant fails to attend in compliance with a notice given under Sub-rule (2) of Rule 3 of this Order, the Judge shall record his default and may, *suo motu* or on application, dismiss the action or matter. Upon an application by a defendant to dismiss the action or matter, the Judge may either dismiss the action or matter upon such terms as may be just or make such other order on such terms as he deems just.

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(2) If the defendant fails or all of several defendants fail to attend in compliance with a notice under Sub-rule (2) of Rule 3, the claimant may enter judgment with costs or obtain the order prayed for in the transferred proceedings.

Construction.

6. In the preceding rule of this Order, the references to the claimant and the defendant shall, in relation to proceedings commenced otherwise than by writ, be construed as references to the applicant and the respondent.

Transfer of cause or matter.

7. A cause or matter, may before evidence is taken, and at the request of either party to the suit, be remitted to the Chief Judge for re-assigning to another Court.

Re-assignment of cause or matter.

8. A cause or matter may at any stage of the proceedings 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.

Action by Chief Judge on transfer of cause.

9. If for any reason a Judge hearing a cause or matter, and who has taken any step in the proceedings considers it necessary either at his own opinion or upon application of any party to the proceedings, to have the cause or matter transferred to another court, the Judge shall refer the cause or matter to the Chief Judge for such necessary action as the Chief Judge may think expedient.

Evidence of part-heard cause or matter.

10. Where a Judge retires or is transferred to another Division and having part-heard a cause or matter which is being re-heard de novo by another Judge the evidence already given before the retired Judge or the Judge being transferred out of the Division can be read at the re-hearing without the witness who had given it being recalled if the witness is dead or cannot be found but the onus of establishing that the witness is dead or cannot be found shall lie on the party that wishes to use the evidence.

II – CONSOLIDATION.

Consolidation of actions.

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

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

(3) An order to consolidate may be made where two or more actions are pending between the same claimant and the same defendant or between different claimants and the same defendant or between different claimants and different defendants:

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

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

ORDER 43**INTERLOCUTORY ORDERS, ETC.**

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

1. (1) When by any contract a *prima facie* case of liability is established and there is alleged as a matter of defence a right to be relieved wholly or partially from such liability, a Judge may make an order for the preservation or interim custody of the subject – matter of the litigation or may order that the amount in dispute be brought into Court or otherwise secured.

*Early trial of
cause.*

(2) An application for an order under Rule 1, sub-rule 1 of this Order may be made by the claimant at any time after his right thereto appears from the pleadings.

2. Whenever an application shall be made before trial for an injunction or other Order and on the opening of such application, or at any time during the hearing thereof, it shall appear to the Judge that the matter in controversy in the cause or matter, is one which can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purpose of the application, it shall be lawful for the Judge to make an order for such trial accordingly and in the meantime to make such order as the justice of the case may require.

*Order for sale of
perishable goods,
Etc.*

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

*Detention,
Preservation
of property;
the subject of an
action.*

4. (1) A Judge may upon the application of any party to an action or matter and upon such terms as may be just, make any order for the detention, preservation or inspection of any property or thing, being the subject of such action or matter or as to which any question may arise therein, and for all or any of the purposes aforesaid authorise any persons to enter upon or into any land or building in the possession of any party to such action or matter, and for all or any of the purposes aforesaid authorise any samples to be taken or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

(2) Where an order for the inspection of any property or thing is made on an application under this rule (including an application made before any pleadings have been delivered in the action or matter) it appears that inspection was requested in writing by the applicant and was not given, then, unless the Judge is satisfied that the respondent did not unreasonably fail or refuse to permit the inspection, the Judge shall order the costs to be paid by the respondent in any event and except where the respondent is a “Poor Person”, shall order the costs to be paid forthwith.

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Inspection by Judge.

(3) The Judge by whom any action or matter may be heard or tried, may inspect any property or thing concerning which any question may arise therein.

Sale of property in possession of Court.

5. (1) Where any property is in possession of the Court either before or after Judgment and it has remained so for a period of 12 months, a Judge may *suo motu* make an order for the sale of that property and the proceeds thereof to be paid into an interest yielding account in a commercial bank directed by the Judge for the benefit of the person that succeeds at the trial or on appeal.

(2) The money paid after disposal of any property shall be withdrawn from the Bank by the successful party who shall present to the Chief Registrar a Certified True Copy of the enrolment of the Judgment.

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

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

Allowance of income of property pendente-lite.

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

Injunction against repetition of wrongful act for breach of contract.

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

Appointment of a receiver by way of equitable execution.

9. In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Judge in determining whether it is just or convenient that such appointment should be made shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver and to the probable costs of his appointment and may if the Judge shall deem fit, direct any inquiries on these or other matters before the appointment.

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Receiver's security and recommendation.

10. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be approved by the Judge, duly to account for what he shall receive as such receiver, and to pay the same as the Judge shall direct; and the person so to be appointed shall, unless otherwise ordered be allowed a proper salary or allowance. The security to be given shall be by guarantee or by an undertaking in Forms 30 and 31 with such variations as circumstances may require.

Civil Forms 30, 31.

The undertaking shall be filed in the Registry and form part of the record of proceedings until it has been duly vacated.

Where receiver appointed in court: adjournment to give security.

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

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

12. When a receiver is appointed with a direction that he shall pass accounts, the Judge shall fix the days upon which he shall (quarterly or at shorter periods) leave and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part of them as shall be certified as proper to be paid by him. With respect to any such receiver as neglects to leave and pass his accounts and pay the balances at the times fixed for the purpose as aforesaid, the Judge may from time when his subsequent accounts are produced to be examined and passed, disallow the neglect of salary claimed by such receiver and may also charge him with interest at a rate not exceeding twenty-five per cent per annum upon the balances so neglected to be paid by him during the time the same appears to have remained in his hands.

Form of accounts.

13. Receiver's accounts shall be in Form 32 with such variations as circumstance may require.

Civil Form 32. Leaving account at the Registry.

14. Every receiver shall deliver to the Registrar his Account, together with an affidavit account verifying the same in Form 33 with such variations as circumstances may require. An appointment shall thereupon be obtained by the claimant or person having the conduct of the action for the purpose of passing such account.

Consequences of default by the receiver.

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

Passing of guardians' account.

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

ORDER 44**Motions and other Applications**

Application by motion.

1. (1) Where by these rules any application is authorized to be made to a Judge, such application shall be made by motion which may be supported by affidavit and shall state under what Rule of Court or Law the application is brought. Every motion shall be served within 7 days of filing.

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

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

(4) The applicant may on being served with the written address of the opposing party file and serve an address in reply on point of law within 3 days of being served. Where a counter affidavit is served on the applicant he may file further affidavit with his reply.

Restriction on Rule nisi and order to show cause.

2. No motion or application for a rule *nisi* or order to show cause shall be made in any action.

When notice of motion should be given.

3. (1) Except where an application *ex-parte* is required or permitted under any law or rules, every motion shall be on notice to the other party.

(2) No application for an injunction shall be made *ex-parte* unless the applicant files with it a motion on notice in respect of the application.

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

(4) A Judge may upon application extend the effective period of an order made *ex-parte* if he is satisfied that the motion on notice have been served and that such extension is necessary in the interest of justice or to prevent an irreparable or serious mischief. The application for such an extension shall be made before abatement of the order and the extension shall not be for a period exceeding 7 days from the day the extension is granted.

Oral application.

4. (a) A party may at any time request an indulgence, direction or order from the Judge, in order to adjust his position in view of a development in the course of the proceedings, or react immediately to another party's step, or for some other reason.

(b) The kind of request referred to in paragraph (a) is described as a simple application.

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- (c) A simple application may be made immediately the need arises or become known to the applicant.
- (d) Simple or on the spot applications may be made orally.
- (e) A Judge can not refuse to hear or consider an application merely because it is not written.
- (f) A Judicial decision, direction, order, or ruling on simple, on the spot, or oral application shall be very brief and;
- (g) A Judge may consider such oral application promptly except where the interest of justice demands otherwise.
- (i) shall be given on the same occasion as the application was made immediately, after all sides have been heard; or
- (ii) may be adjourned to a maximum of 3 days.

*Motion on
arbitral award.*

5. (1) Every motion on notice to set aside, remit or enforce an arbitral award shall state in general terms the grounds of the application and where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

(2) The party relying on an award, on applying for its enforcement shall supply:

- (a) the duly authenticated original award or a duly certified copy thereof;
- (b) the original arbitration or a duly certified copy thereof.

(3) An award by an arbitrator or a decision reached at the Multi-Door Court House may by leave of a Judge be enforced in the same manner as a Judgment or order of Court.

(4) An application to set aside or remit any award may be made at anytime within 6 weeks after such has been made, and published to the parties;

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

6. The Court may deal with an application without a hearing if:

- (a) the parties agree as to the terms of the order sought;
- (b) the parties agree that the court should dispose of the application without a hearing; or
- (c) the court does not consider that a hearing would be appropriate or necessary.

Special leave.

7. Unless a Judge grants special leave to the contrary, there must be at least 2 clear days between the service of all processes in respect of a motion and the day named in the notice for hearing the motion.

Motions may be dismissed or adjourned where necessary notice not given.

8. If on the hearing of a motion or other application the Judge shall be of opinion that any person to whom notice has been given ought to have had such notice, the Judge may either dismiss the motion or application or adjourn the hearing thereof, order that such notice may be given upon such terms, if any, as the Judge may deem it fit to impose.

Adjournment of hearing.

9. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Judge shall deem fit:

Provided that application for adjournment at the request of a party shall not be made more than two times.

Service of Motion with Writ.

10. A claimant may file any application along with an originating process and may serve both on any defendant simultaneously.

Account by Legal Practitioner.

11. (1) Where the relationship of Legal Practitioner and client exists or has existed, a summons may be issued by the client or his representative for the delivery of a cash account or the payment of moneys or the delivery of securities, and a Judge may from time to time order the respondent to deliver to the applicant a list of the moneys or securities which he has in his custody or control on behalf of the applicant or to bring into court the whole or any part of the same, within such time as the Judge may order.

(2) In the event of the respondent alleging that he has a claim for costs, the Judge may make such provision for the taxation and the payment or security thereof or the protection of the respondent's lien (if any) as he may deem fit.

Interim certificate.

12 (1) If during the taxation of any bill of costs or the taking of any account between Legal Practitioner and client, it shall appear to the taxing officer that there must, in any event be moneys due from the Legal Practitioner to the client, the taxing officer may from time to time make an interim certificate as to the amount so payable by the Legal Practitioner.

(2) Upon the filing of such certificate, a Judge may order the moneys so certified to be forthwith paid to the client or brought into Court.

ORDER 45**Application for Judicial Review**

Cases appropriate for judicial review.

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

- (2) An application for a declaration or an injunction (not being an injunction in Rule 1(1)(b) of this Rule) may be made by way of an application for judicial review and the Court may grant the declaration or injunction if it deems it just and convenient to grant it by way of judicial review, having regard to:
 - (a) the nature of the matters in respect of which relief may be granted by way of an order of *mandamus*, prohibition or *certiorari*;
 - (b) the nature of the persons and bodies against whom relief may be granted by way of such an order; and
 - (c) all the circumstances of the case.

Joinder of claims; etc.

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

Time within which to bring application.

3. (a) An application for judicial review shall be brought within 3 months of the date of occurrence of the subject of the application.
- (b) The time limit in this rule shall not be extended by agreement between the parties.
- (c) This rule does not apply when other enactment specifies a shorter time limit for making the claim for judicial review.

Mode of applying for judicial review.

4. (1) The application shall be made by motion or by originating summons.
- (2) The notice of motion or summons shall be served on all persons directly affected and where it relates to any proceedings before a Judge and the object of the application is either to compel the Judge or an officer of the court to do any act in relation to the proceedings, or to quash them or any order made therein, the notice or summons shall also be served on the Clerk or Registrar of the Court and where any objection to the conduct of the Judge is to be made, on the Judge.
- (3) There shall be at least 7 days between the service of the notice of motion or summons and the day named therein for the hearing.
- (4) A motion shall be entered for hearing within 14 days after the service of the notice of motion or summons.

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

(6) If on the hearing of the motion or summons the Judge is of 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 or summons may be served on that person.

Judge may allow amendment.

5. (1) The Judge may on the hearing of the motion or summons allow the applicant to amend his statement whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as he deems fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

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

(3) Each party to the application shall supply to every other party a copy of every affidavit which he proposes to use at the hearing.

Claim for damages.

6. On an application for judicial review the Judge may, subject to Rule 2, award damages to the applicant if:

(a) he has included in the statement in support of his application 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.

Interlocutory application.

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

Hearing of application for judicial review.

8. (1) On the hearing of any motion or summons under Rule 5, any person who desires to be heard on the motion or summons, and appears to the Judge to be a proper person to be heard, shall be heard notwithstanding that he has not been served with notice of the motion or the summons.

(2) Where the relief sought is or includes an order of *certiorari* to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he had filed a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Judge hearing the motion or summons.

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

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

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

Person acting in obedience to an order of mandamus.

9. No action or proceeding shall be brought or prosecuted against any person in respect of any thing done in obedience to an order of *mandamus*.

Consolidation of application.

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

ORDER 46**1 - Jurisdiction of Chief Registrar**

Chief Registrar.

1. In this Order, any reference to the Chief Registrar means the Chief Registrar of the High Court and includes the Deputy Chief Registrar.

Business to be transacted by Judge.

2. The Chief Registrar may transact all such business and exercise all such authority and jurisdiction as may be transacted or exercised by a Judge in respect of the following matters:

- (a) application for the taxation and delivery of bills of costs and applications for the delivery by any Legal Practitioner of deeds, documents and papers;
- (b) the taking of an account in any case where a Judge has ordered that the account be taken by the Chief Registrar;
- (c) the taxation of bills of costs;
- (d) application leading to the issue of the grant of probate of the Wills or Letters of Administration of the estates of deceased persons in non-contentious or common form probate business.

Chief Registrar may refer matter to the Chief Judge.

3. If any matter appears to the Chief Registrar proper for the decision of a Judge, he may refer same to the Chief Judge or the Judge who referred the matter to the Chief Registrar. The Chief Judge or the Judge may either dispose of the matter or refer the same back to the Chief Registrar with such directions as he may deem fit.

Appeal from order of a Chief Registrar.

4. Any person affected by an order or decision of the Chief Registrar in the exercise of the jurisdiction conferred upon him by this Order may appeal therefrom to a Judge. Such appeal shall be by notice in writing to attend before Judge without a fresh summons within 5 days after the decision complained of or such further time without a fresh summons within 5 days after the decision complained of or such further time as may be allowed by the Judge. Unless otherwise ordered, there shall be at least 2 clear days between service of the notice of appeal and the day of hearing. An appeal from the decision of the Chief Registrar shall not operate as a stay of proceedings unless so ordered by the Judge.

Chief Registrar's List.

5. Lists of matters to be heard by the Chief Registrar shall be made out and Registrar's list published by being posted on the courts' notice boards.

Legal Practitioner may represent party.

6. In any proceedings before the Chief Registrar under the jurisdiction vested in him by this Order, a Legal Practitioner may represent any party.

II – CHIEF REGISTRAR’S CERTIFICATE

- Certificate.* 7. Except as otherwise provided for in these rules, the directions to be given for or concerning any proceedings before the Chief Registrar shall require no particular form, but the result of such proceedings shall be stated in a concise certificate.
- Reference to Judgment, etc.* 8. The certificate of the Chief Registrar regarding accounts and inquiries shall not, unless the circumstances of the case render it necessary, set out the Judgment or order or any documents or evidence or reasons but shall refer to the Judgment or order, documents and evidence or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded.
- Form of Certificate.* 9. (1) In case of accounts and inquiries the certificate of the Chief Registrar shall be in Form 34 with such variations as the circumstances may require.
- (2) The certificate shall state the result of the account and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed and shall specify by the numbers attached to the items in the account which (if any) of such items have been disallowed or varied and shall state what additions (if any) have been made by way of surcharge or otherwise and where the account verified by the affidavit has been so altered, such transcript may be required to be made by the party prosecuting the judgment or order and shall then be referred to by the certificate. The accounts and transcripts (if any) referred to by certificates shall be filed therewith.
- When certificate becomes binding.* 10. Every certificate with the accounts (if any) to be filed therewith shall be transmitted by the Chief Registrar to the Registry for filing and shall henceforth be binding on all the parties to the proceedings unless discharged or varied upon an application made to a Judge before the expiration of 8 clear days after the filing of the certificate.
- Bill of costs.* 11. When taxing a bill of costs the Chief Registrar shall insert in red ink against every item disallowed, reduced or altered by him the substance of the modification made by him and at the bottom of the bill of costs he shall certify the net result of the taxation. The bill of costs shall then be transmitted by the Chief Registrar to the Registry for filing and the provisions of Rule 10 of this Order shall apply in respect of such certificate.
- Discharge or variation of certificate after lapse of any time.* 12. The Judge may, if the special circumstances of the case require, upon an application direct a certificate to be discharged or varied at any time after the same has become binding on the parties.

ORDER 47**Habeas Corpus, Attachment for Contempt****1 – Habeas Corpus**

- Application.*
1. An application for an Order of *Habeas Corpus Ad Subjucendum* shall be made to the Court, except that:
 - (a) in vacation or at anytime when no Judge is sitting in Court it may be made to a Judge sitting otherwise than in court;
 - (b) in cases where the application is made on behalf of a child, it shall be made in the first instance to a Judge sitting otherwise than in Court.
- How made.*
2. (1) The applications may be made *ex-parte* and shall be accompanied by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.
 - (2) Where the person restrained is unable owing to the restraint to make the affidavit, the application shall be accompanied by an affidavit to the like effect made by some other person which shall state that the person restrained is unable to make the affidavit himself.
- Power to issue order of release immediately.*
3. (1) A Judge to whom the application is made may make the order forthwith.
 - (2) Where the application is made to a Judge sitting otherwise than in court he may direct the Order to issue or that an application therefor be made by notice of motion to the Judge or to a Judge.
 - (3) A Judge to whom the application is made may adjourn it so that notice thereof may be given to the jailer.
 - (4) Where the person detained is produced before a Judge he may discharge him immediately with or without conditions.
- Service of notice.*
4. (1) The summons or notice of motion aforesaid shall be served on the person against whom the order is sought and on such other persons as the Judge may direct.
 - (2) Unless the Judge otherwise directs, there shall be at least 2 clear days between the service of the notice and the date named for the hearing of the application.
- Copies of affidavits.*
5. Every party to the application shall supply to the other party or parties copies of the affidavits which he proposes to use at the hearing of the application.

High Court of Borno State (Civil Procedure) Rules, 2017

Service of order to release.

6. (1) The order or notice of motion may be served personally or by courier on a jailer where the person is confined or restrained or on any other public official and copies of the order or motion may be served in like manner on each person connected with or having authority over the place of confinement or restraint.

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

Statement and Verifying affidavit.

7. Upon service of the order or notice of motion on the jailer, he shall within 2 days file a statement stating the reasons for the detention, the period of the detention and any other matter that may be directed by the Judge. The statement shall be verified by an affidavit deposed to by the jailer.

Procedure at hearing.

8. (1) Where the prisoner is not brought up in accordance with the order, his Legal Practitioner shall be heard first, then the Legal Practitioner for the State and then the Legal Practitioner for the prisoner in reply.

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

II - Attachment for Contempt

Procedure for attachment.

9. (1) The procedure in application for attachment for contempt of court in cases to which this rule applies shall be the same as for applications for an order for judicial review under Order 45 as far as may be applicable.

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

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

- (a) in connection with proceedings to which this Order relates;
- (b) in connection with criminal proceedings;
- (c) subject to the provisions of the Sheriffs and Civil Process Act, any proceedings in the High Court or where the contempt consists of disobedience to an Order of the Court;
- (d) in connection with the proceedings in an inferior Court:

Provided that this rule shall not apply where the contempt is committed in facie curiae.

Procedure on disobedience of court.

10. Where an order enforceable by committal has been made against a judgment debtor, and if the order is for delivery of goods within the option of paying their value or is in the nature of an injunction the Registrar shall when the order is drawn up immediately endorse it as follows:

Notice of Consequence of disobedience to Court Order.

To.....of.....
TAKE NOTICE that unless you obey the direction(s) contained in this order you will be guilty of contempt of court and will be committed to prison.

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

.....
Registrar

Response.

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

Return.

12. Every order of attachment issued in a case to which Rule 9 of this Order applies shall be made returnable before the Judge. If a return of non est investus (not found) is made, a subsequent order or orders may be issued on the return of the previous order.

ORDER 48**Interpleader**

When relief by interpleader is granted.

1. Relief by way of Interpleader may be granted where the person seeking relief (“the applicant”) is under liability for any debt, money, goods, or chattels, or landed property for or in respect of which he is, or expects to be used by two or more parties (“the claimants”) making adverse claims thereto;

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

Matter to be proved by applicant.

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

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

Adverse titles of claimants.

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

When application to be made by a defendant.

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

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

Summons by applicant.

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

Stay of action.

7. If the claimants appear in pursuance of the summons, the Judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject matter in dispute in lieu of or in addition to the applicant or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be claimant and which is to be defendant.

Order upon summons.

Questions of law.

8. Where the question is a question of law and the facts are not in dispute, the Judge may either decide the questions without directing the trial of an issue or order that a special case be stated for the opinion of the Judge. If a special case is stated, Order 32 shall as far as applicable apply thereto.

High Court of Borno State (Civil Procedure) Rules, 2017

*Failure of
claimant to
appear, or
neglect to
obey
summons.*

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

Costs, etc.

10. The Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just.

ORDER 49**Computation of time**

*Rules for
computation.*

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;

(c) where the act is required to be done within a period which does not exceed 6 days, holidays shall be left out of account in computing the period.

Holiday.

2. In this order holiday means a day which is a Sunday or a public holiday.

*Time of
service.*

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

*Court may
extend time.*

4. The Judge may, as often as he deems fit, and either before or after the expiration of the time appointed by these rules or by any judgment or order of the court, extend or adjourn the time for doing any act or taking any proceedings;

Provided that any party who defaults in performing an act within the time authorized by the Judge or under these rules, shall pay to the Court an additional fee of N200.00 (two hundred naira) for each day of such default at the time of compliance.

ORDER 50
Miscellaneous Provisions:
Court Sittings and Vacation.

- Days of sittings.* **1.** Subject to the provision of the Law, the Judge may, in his discretion, appoint any day or days and any place or places from time to time for the hearing of causes as circumstances require.
- Public or private sitting, etc.* **2.** The sittings of the Judge for the hearing of causes shall ordinarily be public but subject to the provisions of the Constitution of the Federal Republic of Nigeria, the Judge may for special reasons, hear any particular cause or matter in the presence only of the parties, with the Legal Practitioners, if any, and the officers of Court.
- Office hours.* **3.** The several offices of the Court shall be open at such times as the Chief Judge shall direct.
- Days of Vacation.* **4.** Subject to the directions of the Chief Judge, sittings of the High Court for the despatch of civil matters will be held on every week day except:
- (a) on any public holidays;
- (b) during the period beginning on Christmas eve and ending on the 2nd January next following;
- (c) during annual leave when each Judge shall be entitled to 30 working days as may be approved by the Chief Judge.
- Vacation.* **5.** (1) Notwithstanding the provisions of Rule 4, any cause or matter may be heard by a Judge during any of the periods mentioned in paragraphs (b), (c) or (d) of Rule 4 (except on a Sunday or public holiday) where such cause or matter is urgent or a Judge, at the request of all the parties concerned, agrees to hear a cause or matter.
- (2) An application for an urgent hearing shall be made by motion *ex parte* and the decision of the Judge on such an application shall be final.
- Vacation not reckoned in time for pleadings.* **6.** (1) The time for filing and service of pleadings shall not run during the annual vacation unless otherwise directed by the Judge.
- (2) No business shall be transacted in Chambers on Sundays and public holidays.
- Chambers. Recovery of penalties and costs.* **7.** All fines, forfeitures, pecuniary penalties and costs ordered to be paid may be levied by distress, seizure and sale of the movable and immovable property of the person making default in payment.

High Court of Borno State (Civil Procedure) Rules, 2017

- Notice.* **8.** When the publication of any notice is required the same may be made by advertisement in the Gazette, unless otherwise provided in any particular case by any rule of Court or otherwise ordered by the Judge.
- Filing.* **9.** A document shall not be filed unless it has endorsed on it the name and number of the cause, the date of filing and whether filed by claimant or defendant; and on being filed such endorsement shall be initialed by the Registrar and recorded in the Process Register.
- How process addressed.* **10.** All warrants and orders of whatever description shall be sufficiently addressed for execution by being directed to the Sheriff, but this provision shall not prevent any order or warrant from being addressed to a person by name or to a person named and to officers of Court generally or to a Local Government Authority.
- No fees where Proceedings by Government Department.* **11.** No fees are to be taken in respect of any proceedings where such fees would be payable by any Government Department;
- Provided however that when any person is ordered to pay the costs of the State or of any Government Department in any case, whether criminal or civil, all fees which would have been payable but for the provisions of this rule shall be taken as paid and shall be recoverable from such person.
- Regulations.* **12.** The Regulations regarding fees shall govern the payment and disposal of fees and the duties of Court officers in regard thereto.
- Saving.* **13.** Where no provision is made by these rules or by any other written law, the Court shall adopt such procedure as will in its view do substantial justice between the parties concerned.

High Court of Borno State (Civil Procedure) Rules, 2017

*Cost of
subsistence
of person
arrested.*

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

ORDER 52**Proceedings in Forma Pauperis**

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

High Court of Borno State (Civil Procedure) Rules, 2017

*Payment to
Legal
Practitioner.*

7. The Judge may order payment to be made to the Legal Practitioner out of any money recovered by the applicant or may charge in favour of the Legal Practitioner upon any property recovered by the applicant, such sum as in all the circumstances may deem fit.

*Duty of Legal
Practitioner.*

8. Every order, notice or application on behalf of the applicant, except an application for the discharge of his Legal Practitioner, shall be signed by his Legal Practitioner, who shall take care that no application or notice is made or given without reasonable cause.

Appeals.

9. No person shall be permitted to appeal in *forma pauperis* except by leave of the trial or the appellate Court and then only on grounds of law; but if so permitted the provisions of this Order shall apply *mutatis mutandis* to all proceedings on the appeal.

ORDER 53**Withdrawal of Counsel.**

- Legal Practitioner to conduct Cause or matter to final Judgment.*
- 1.** Every Legal Practitioner who shall be engaged in any cause or matter shall be bound to conduct same on behalf of the claimant or defendant as the case may be, by or for whom he shall have been so engaged until final judgment, unless allowed for any special reason to cease acting therein.
- Application for change of Legal Practitioner or withdrawal.*
- 2.** Notice for change of Legal Practitioner or withdrawal may be made by the claimant or defendant or the Legal Practitioner as the case may be, not less than 3 days before the date fixed for hearing. Such notice must be accompanied by affidavit.
- Service of application by Legal Practitioner.*
- 3.** Where the application is made by a Legal Practitioner, it shall be served on all parties to the cause or matter where applicable also on the outgoing Legal Practitioner if he is not the applicant.

ORDER 54**Costs**

Principle to be observed to fixing costs.

1. (1) In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been necessarily put in the proceedings, as well as compensated for his time and effort in coming to court. The Judge may take into account all the circumstances of the case.

(2) When costs are ordered to be paid, the amount of such costs shall, if practicable, be summarily determined by the Judge at the time of delivering the judgment, or making the order.

(3) When the Judge deems it to be impracticable to determine summarily the amount of any costs which he has adjudged to be paid, all questions relating thereto shall be referred by the Judge to a taxing officer for taxation.

Security for costs.

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

Security for costs by claimant temporarily within jurisdiction.

3. A claimant ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction.

Action founded on judgment or bill of exchange.

4. In action brought by persons resident out of the jurisdiction, when the claimant's claim is founded on a judgment or order on a bill of exchange or other negotiable instrument, the power to require the claimant to give security for costs shall be exercised at the Judge's discretion.

Bond as security for costs.

5. Where a bond is to be given as security for costs, it shall, unless the Judge otherwise directs, be given to the party or person requiring the security and not to an officer of the Court.

Costs at discretion of Judge.

6. Subject to the provisions of any applicable law and these Rules, the costs of and incidental to all proceedings in the High Court, including the administration of estates and trusts, shall be at the discretion of the Judge, and the Judge shall have full power to determine by whom and to what extent the costs are to be paid.

Costs out of fund or property.

7. The Judge may order any costs, to be paid out of any fund or property to which a suit or proceedings relates.

High Court of Borno State (Civil Procedure) Rules, 2017

Stay of proceedings till costs paid.

8. Where the Judge orders costs to be paid or security to be given for costs by any party, the Judge may order all proceedings by or on behalf of that party in the same suit or proceeding or connected with it, to be stayed until the costs are paid or security given accordingly, but such order shall not supercede the use of any other lawful method of enforcing payment.

Stage of proceedings at which costs to be dealt with.

9. (1) Costs may be dealt with by the Judge at any stage of the proceedings.

(2) Costs when ordered becomes payable forthwith, and shall be paid within 7 days of the order, otherwise the defaulting party or his Legal Practitioner may be denied further audience in the proceedings.

When costs to follow the events.

10. In addition to any penalty payable for default under these rules, the costs of and occasioned by any application to extend the time fixed by the rules or any discretion or order thereunder, for delivering or filing any document or doing any other act, including the costs of any Order made on the application, shall be borne by the party making the application unless the Judge otherwise orders.

Matters to be taken into account in exercising discretion.

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

Costs arising from misconduct or neglect.

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

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

- (a) the omission to do anything the doing of which would have been calculated to save costs;
- (b) the doing of anything calculated to occasion or in a manner or at a time calculated to occasion unnecessary costs;
- (c) any unnecessary delay in the proceedings.

(3) The Judge may instead of giving a direction under 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 a direction as aforesaid should have been given in relation to it, to act as if the appropriate direction has been given.

High Court of Borno State (Civil Procedure) Rules, 2017

Personal liability of Legal Practitioner for costs.

13. (1) Subject to the following provisions of this rule, where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Judge may make against any Legal Practitioner whom he considers to be responsible (whether personally or through a servant or agent) an order:

- (a) disallowing the costs as between the Legal Practitioner and his client, and
- (b) directing the Legal Practitioner to pay to his client costs which the client has been ordered to pay to other parties to the proceedings; or
- (c) directing the Legal Practitioner personally to indemnify such other parties against costs payable by them.

(2) The provisions of Rule 13, sub-rule 1 shall apply where proceedings in court cannot conveniently proceed or fails or are adjourned without useful progress being made:

- (a) because of the failure of the Legal Practitioner to attend in person or by a proper representation; or
- (b) because of the failure of the Legal Practitioner to deliver any document for the use of the Court which ought to have been delivered or to be prepared with any proper evidence or account or otherwise to proceed.

(3) No order under this rule shall be made against a Legal Practitioner unless he has been given a reasonable opportunity to appear before the Judge to show cause why the order should not be made.

(4) The Judge may direct that notice of any proceedings or order against a Legal Practitioner under this rule shall be given to his client in such manner as may be specified in the direction.

(5) If, on the taxation of costs to be paid out of a fund, one sixth or more of the amount of the bill for those costs is taxed off, the Legal Practitioner whose bill it is shall not be allowed the fees to which he would otherwise be entitled or drawing the bill and or attending the taxation.

Taxation of costs.

14. Every bill or costs (other than a bill delivered by a Legal Practitioner to his client which falls to be taxed under the Legal Practitioners Act) shall be referred to the Registrar for taxation and may be taxed by him or such other taxing officer as the Chief Judge may appoint.

Notice to other party.

15. The party applying for taxation shall file the bill and give notice to any other parties entitled to be heard on the taxation, and shall at the same time, if he has not already done so, supply them with a copy of the bill.

High Court of Borno State (Civil Procedure) Rules, 2017

Power of taxing officer.

16. A taxing officer shall have power to tax any costs the taxation of which is required by any law or directed by order of a Judge.

Supplementary powers of taxing officers.

17. A taxing officer may, in the discharge of his functions with respect to the taxation of costs:

- (a) take an account of any dealings in money made in connection with the payment of the costs being taxed, if the Judge so directs;
- (b) require any party represented jointly with any other party in any proceedings before him to be separately represented;
- (c) examine any witness in those proceedings;
- (d) direct the production of any document which may be relevant in connection with those proceedings.

Extension of time.

18. (1) A taxing officer may:

- (a) extend the period within which a party is required by or under these rules to begin proceedings for taxation or to do anything in or in connection with proceedings before that officer;
- (b) where no period is specified by or under these rules or by the Judge for the doing of anything in or in connection with such proceedings, specify the period within which the thing is to be done.

(2) Where an order of the Court specifies a period within which anything is to be done by or before a taxing officer, then unless the Judge otherwise directs, the taxing officer may from time to time extend the period so specified on such terms as he deems fit.

(3) A taxing officer may extend any such period as is referred to in the foregoing provisions of this Rule although the application for extension is not made until after the expiration of that period.

Power of taxing officer where party liable to be paid and to pay costs.

19. Where a party entitled to be paid costs is also liable to pay costs, the taxing officer may:

- (a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or
- (b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

Mode of beginning proceedings for taxation.

20. (1) A party entitled to require any costs to be taxed shall begin proceedings for the taxation of those costs by filing in the registry a bill of costs and obtain a day and time for the taxation thereof. Such party shall give at least 7 days notice to every other party of the day and time appointed for taxation proceedings and at the same time serve a copy of his bill of costs to the other party if he has not already done so.

High Court of Borno State (Civil Procedure) Rules, 2017

(2) A notice under sub-rule 1 of this rule need not be given to any party who has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.

Provisions as to bills of costs.

21. (1) In any bill of costs the professional charge and the disbursements shall be entered in separate columns and every column shall be cast before the bill is left for taxation.

(2) Before a bill of costs is left for taxation it shall be endorsed with:

- (a) the name or firm and business address of the Legal Practitioner whose bill it is; and
- (b) if the Legal Practitioner is the agent of another, with the name or firm and business address of that other Legal Practitioner.

Provisions as in taxation proceedings.

22. (1) If any party entitled to be heard in any taxation proceedings does not attend within a reasonable time after the time appointed for the taxation, the taxing officer, if satisfied by affidavit or otherwise that the party had due notice of the time appointed, may proceed with the taxation.

(2) The taxing officer by whom any taxation proceedings are being conducted may, if he deems it necessary, adjourn those proceedings from time to time.

Scale of fees.

23. (1) Subject to Rule 20, and the following provisions of this rule, the scale of fees, allowances, etc contained in paragraph II of the High Court of Borno State (Fees Law) together with the notes and general provisions contained in that Appendix, shall apply to the taxation of all costs incurred in relation to contentious business done after the commencement of these rules.

(2) Where the amount of a Legal Practitioner's remuneration in respect of non-contentious business connected with sales, purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is regulated, in the absence of agreement to the contrary, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything in the scale contained in the said appendix of these rules.

Certificate of taxing officer.

24. Upon the completion of the taxation of any bill of costs the taxing officer shall certify the result of his taxation including the costs thereof.

Fees on taxation.

25. The fees payable on taxation shall be paid by the party on whose application the bill is taxed and shall be allowed as part of the bill.

Application.

26. Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by a taxing officer or with the amount allowed by a taxing officer in respect of any item, may apply to a Judge for an order to review the taxation as to that item.

High Court of Borno State (Civil Procedure) Rules, 2017

- Application by summons.* **27.** (1) An application under the preceding rules shall be made by summons at anytime within 14 days after the taxing officer's certificate.
- (2) Unless the Judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on taxation but, save as aforesaid, on the hearing of any such application the Judge may exercise all such powers and discretion as are vested in the taxing officer in relation to the subject matter of the application.
- (3) On an application under this rule that the Judge may make such order as the circumstances require and in particular may order the taxing officer's decision to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another taxing officer for taxation.

ORDER 55

1 Business in Chambers

Representation in Chambers.

1. The business of Court in chambers shall be limited only to signing of Court processes.

Matter to be disposed of in Chambers.

2. Unless the opposite party or his counsel objects, the Judge may, on application, conduct any proceeding, except actual trial, in Chambers, and may also on application, adjourn any such proceeding from Court to Chambers or vice versa.

II Proceeding Relating to Persons under Legal Disability

Evidence upon application for appointment of guardians and for maintenance.

3. Upon application for the appointment of guardians of infants and allowances for maintenance, the evidence shall show:

- (a) the ages of the infants;
- (b) the nature and amount of the infants' fortunes and incomes; and
- (c) what relations the infants have.

Guardian with reference to proceeding in Chambers.

4. At any time during the proceeding under any judgment or order, the Judge may, if he deems fit, require a guardian to be appointed for any person under legal disability not adjudged a lunatic, who has been served with notice of such judgment or order.

III Further Consideration

Further consideration of matter originating in chambers.

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

“That this matter, the further consideration whereof was adjourned by the order of the.....on.....day of20.....may be further considered:, and shall be served 7 clear days before the return:

Provided that this Rule shall not apply to any matter, the further consideration whereof shall, at the original or any subsequent hearing, have been adjourned in Court.

**IV Registering and Drawing up of Orders in Chambers
Costs**

*Notes of
Proceeding
in Chambers.*

6. Notes shall be kept of all proceeding in the Judge's Chambers with proper dates so that all such proceeding in such cause or matter may appear consecutively and in chronological order, with a short statement of the question or points decided or rules at every hearing.

*Drawing up
any entry of
orders made
in Chambers.*

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

Costs.

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

*Decisions
given in
Chambers,
how set aside or
varied.*

9. (1) Where any party to proceeding in chambers does not intend to accept the decision of the Judge in Chambers as final, he shall forthwith request to have the summons adjourned into Court for argument. If such request is refused, the party may proceed by way of motion with notice in Court to discharge, set aside or vary the order made by the judgment given in chambers.

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

(3) This rule shall apply to decisions given by a Judge in Chambers on appeal from the Chief Registrar under Rule 4 of Order 46.

ORDER 56**FORECLOSURE AND REDEMPTION**

Originating summons for foreclosure.

1. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a Legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out an originating summons, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require, that is:

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

Civil Forms 35,36,37.

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

Service and execution of judgment.

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

ORDER 57**1. Summons to Proceed**

Bringing in judgment, etc directing accounts and inquiries.

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

Summons to proceed with accounts and inquiries: Directions.

2. Upon a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries directed, and upon the return of such summons the Judge, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to:

- (i) the manner in which each of the accounts and inquiries is to be prosecuted;
- (ii) the evidence to be adduced in support thereof;
- (iii) the time within which each proceeding is to be taken and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied by addition thereto or otherwise, as may be found necessary.

Settling deed where parties differ.

3. Where by a judgment or order a deed is directed to be settled by a Judge in case the parties differ, a summons to proceed shall be issued, and upon the return of the summons the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the Judge shall deem fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the party a statement in writing of his objections within 8 days after the delivery of such copy, and the proceeding shall be adjourned until after the expiration of the said period of 8 days.

Where service of notice of judgment or order dispensed with.

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

Stoppage of proceedings where all necessary parties have not been served with notice of judgment or order.

5. If on the hearing of the summons to proceed it shall appear that all necessary parties are not parties in the action or have not been served with notice of the judgment or order, directions may be given for advertisement for creditors, and for leaving the accounts in Chambers. Adjudication on creditors' claims and the accounts are not to be proceeded with and no other proceeding is to be taken, except for the purpose of ascertaining notice of the parties to be served, until all necessary parties shall have been served and until directions shall have been given as to the parties who are to attend the proceedings.

*Documents:
copies for the
use of Judge.*

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

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

II Summons to Proceed Book

*Entry in
summons
to proceed.*

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

ORDER 58Summary Proceedings for Possession of Landed Property
Occupied by squatters or without the owner's consent.*Application of
this Order.*

1. (1) This Order shall be used where the claim includes:
 - (a) A possession claim brought by a:
 - (i) Landlord or former Landlord
 - (ii) Mortgagee or
 - (iii) Licensor or former Licensor;
 - (b) A possession claim against trespassers; or
 - (c) A claim by a Tenant seeking relief from forfeiture.

(2) Where a person claims possession of land which he alleges is occupied solely by a person listed in sub-rule (1) above, proceedings may be brought by originating summons in accordance with the provisions of this Order.

(3) This part of this order;

- (a) is subject to any enactment or practice directions which sets out special provisions with regards to any particular category of claim; and
- (b) does not apply where the claimant seeks an interim possession under this order except where the court orders otherwise

*Proceedings
to be brought
by originating
summons.*

2. The originating summons shall be in Form 38 and no acknowledgment of service shall be required.

*Affidavit in
support.*

3. The claimant shall file in support of the originating summons an affidavit stating:
 - (a) his interest in the land;
 - (b) the circumstances in which the land has been occupied without License or consent and in which his claim to possession arises; and
 - (c) that he does not know the name of any person occupying the land who is not named in the summons.

*Service of
originating
summons.*

4. (1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit in support shall be served on him:

- (a) personally or in accordance with Order 10, Rule 1, sub-rule 2; or
- (b) by leaving a copy of the summons and of the affidavit or sending them to him at the premises; or
- (c) in such other manner as the Judge may direct.

(2) The summons shall, in addition to being served on the named defendants, if any, in accordance with sub-rule 1 of this rule be served, unless the Judge otherwise directs by:

- (a) affixing a copy of the summons and a copy of the affidavit to the

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main door or other conspicuous part of the premises; and

(b) if practicable, inserting through the letter box at the premises, a copy of the summons and a copy of the affidavit enclosed in a sealed envelope addressed to “the occupiers.”

(3) Every copy of an originating summons for service under sub-rule 1 or 2 of this Rule shall be sealed with the seal of the Court out of which the summons was issued.

*Application
by occupier
to be made
a party.*

5. Without prejudice to rule 16 of Order 17, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant.

*Order for
possession.*

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

(2) The Judge may forthwith order a writ of possession to issue.

(3) Nothing in this Order shall prevent the Judge from ordering possession to be given on a specified date, in the exercise of any power which could have been exercised if possession had been claimed in an action began by writ.

*Writ of
possession.*

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

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

*Setting aside
of order.*

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

(2) In this Order “landed property” means land with or without building thereon.

ORDER 59**Stay of Execution Pending Appeal to the Court of Appeal**

Stay of execution pending appeal.

1. Where any application is made to a Judge for a stay of execution of proceedings under any judgment or decision appealed from such application shall be made by notice of motion supported by affidavit setting forth the grounds upon which a stay of execution or of proceedings is sought.

Compilation of record.

2. An applicant for stay of execution of a Judgment shall compile the records of appeal within 90 days from the date of filing a notice of appeal and where the record is not so compiled, the respondent may apply to strike out the application or discharge the order if already granted.

Court may grant or refuse order for stay.

3. (1) Application for stay of execution shall be regarded as an urgent matter.

(2) Where a Judge has struck out an application for stay, no further application for stay of execution shall be made in the same matter.

Formal order to be drawn up.

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

ORDER 60**Probate and Administration:****1. Grant of Probate or Administration in General**

Petition to be made to probate.

1. (1) Subject to the provisions of Rules 44 and 45 of this Order when any person subject to the jurisdiction of the Court dies, all petitions for the granting of any Letter of Administration of the deceased person, with or without a Will attached, and all applications on other matters connected therewith shall be made to the Probate Registrar of the Court.

(2) The Chief Judge shall request a Judge of any Judicial Division to take measures and make such orders as may appear necessary or expedient for the interim preservation of the property of the deceased within such Judicial Division, for the discovery or preservation of the Will of the deceased or for any other purposes connected with the duties of the Judge under this Order, and every Judge shall carry out any such request as far as practicable and report to the Chief Judge.

(3) No grant of administration with the Will annexed shall issue within 7 days of the death of the deceased; and no grant of administration, without the Will annexed, shall issue within 14 days of such death.

Preservation of property.

2. The Judge shall, when the circumstances of the case appear so to require, forthwith on the death of a person, or as soon after as may be, appoint and authorize an officer of the Court, or some other fit person, to take possession of his property within its jurisdiction, or put it under seal and so keep it until it can be dealt with according to law.

Unauthorized persons intermeddling with property.

3. If any person other than the named executor or administrator, or an officer of the Court, or person authorized by the Judge, takes possession of and administers or otherwise deals with the property of any deceased person, he shall, besides the other liabilities he may incur, be liable to a fine of not less than N50,000.00 (fifty thousand naira) as the Judge, having regard to the condition of the person so interfering with the property and the other circumstances of the case, may deem fit to impose.

Production of testamentary papers.

4. Any person having in his possession or under his control any paper or writing of any deceased person, being or purporting to be testamentary, shall forthwith deliver the original to the Probate Registrar of the Court. If any person fails to do so within 3 months after having had knowledge of the death of the deceased, he may be liable to a fine of N5,000.00 (five thousand naira) as the Judge having regard to the condition of such person in default and other circumstances of the case deem fit to impose.

Judge may order production.

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

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Examination respecting papers.

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

Notice to executor to come in and prove.

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

Liability of executor neglecting to apply for probate.

8. If any named executor in the Will of the deceased takes possession and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within 3 months after the death of the deceased or after the termination of any suit for or dispute in respect of probate or administration, he may, independent of any other liability be deemed to be in contempt of court, and shall be liable to such fine of not less than N50,000.00 (fifty thousand naira), as the Judge deems fit to impose.

Evidence of identity.

9. The Judge shall require evidence, in addition to that offered by the applicant, where additional evidence in that behalf seems to the Judge necessary or desirable, in regard to the identity of the deceased or of the applicant, or in regard to the relationship of the applicant to the deceased, or in respect to any person or persons in existence with a right equal or prior to that of the applicant to the grant of probate or administration sought by the applicant or in respect of any other matter which may be considered by the Judge relevant to the question whether the applicant is the proper person to whom the grant should be made:

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

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

10. Where it appears to the Judge that some person or persons other than the applicant may have at least an equal right with the applicant to the grant sought, the Judge may refuse the grant until due notice of the application has been given to such other or persons and an opportunity given for such person or persons to be heard in respect of the application:

Provided that the Judge may in his discretion refuse the grant unless and until all persons entitled to the grant in priority to the applicant shall have expressly renounced their prior right.

Value of property.

11. Every applicant for a grant of Letters of Administration shall file in the Court a true declaration of all the personal property of the deceased and the value thereof:

Provided that for the purpose of the fees payable on Letters of Administration, the value of the property in respect of which the grant is made shall be deemed not to include:

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- (a) any gratuity payable by the Government of the Federation of Nigeria, or a State, to the estate of any person formerly employed by either of such Governments or by a Statutory Corporation;
- (b) any sum of money payable to an estate from a Provident Fund established under the provisions of any applicable law.

Answers required before grant.

12. All inquiries a Judge sees fit to institute shall be answered to his satisfaction before the issuance of Letters of Administration. The Judge shall afford as great a facility for the obtaining of Letters of Administration as is consistent with due regard to the prevention of error and fraud.

Form of suits.

13. Suits in respect of administration shall be instituted and carried on as nearly as may be in the like manner and subject to the same rules of procedure as suits in respect of ordinary claims.

Testator may deposit Will.

14. Any person may deposit his Will for safe custody in the Probate Registry, sealed under his own seal and the seal of the Court.

Custody of Wills of which Probate is granted.

15. Every original Will, of which probate or administration with Will annexed is granted, shall be filed and kept in the Probate Registry in such manner as to secure at once its due preservation and convenient inspection. A copy of every such Will and of the Probate or administration shall be preserved in the Registry.

Will not given out without order of Judge.

16. No original Will shall be given out for any purpose without the direction in writing of a Judge. A certified transcript under the seal of the Court of the probate or administration with the Will annexed may be obtained from the Court.

Examination of Will as to its execution.

17. (1) On receiving an application for administration with Will annexed, a Judge shall inspect the Will, and see whether it appears to be signed by the testator or by some other person in his presence, and by his direction, and subscribed by two witnesses according to the applicable law, and shall proceed further if the Will does not appear to be so signed and subscribed.

(2) If the Will appears to be so signed and subscribed, the Judge shall refer to the attestation clause and consider whether the wording thereof states the Will to have been in fact executed in accordance with those enactments.

Evidence as to due execution of Will.

18. (1) Where a Will contains no attestation clause or the clause is insufficient or where it appears to the Judge that there is some doubt about the due execution of the Will, he shall before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the Will was executed.

(2) If no affidavit can be obtained in accordance with the foregoing paragraph, the Judge may, if he deems fit having regard to the desirability of protecting the interest of any person who may be prejudiced by the Will, accept evidence on affidavit from any person he may deem fit to show that the signature on the Will is the handwriting of the deceased, or of any other matter which may raise a presumption in favour of the due execution of the Will.

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(3) If the Judge, after considering the evidence is satisfied that the Will was not duly executed, he shall refuse probate and mark the Will accordingly.

Evidence on failure of attesting witnesses.

19. Where both subscribing witnesses are dead or if from other circumstances such an affidavit cannot be obtained from either of them, resort for such an affidavit shall be had to other persons present at the execution of the Will; but if no such affidavit can be obtained, proof shall be required of that fact, and of the handwriting of the deceased and of the subscribing witnesses, and also of any circumstances raising a presumption in favour of the due execution of the Will.

Evidence as to terms; conditions and date of execution of Will.

20. (1) Where in a Will, there is any obliteration, interlineation or other alteration which is not authenticated in the manner prescribed by law or by the re-execution of the Will or by the execution of a codicil, the Judge shall require evidence to show whether the alteration was present in the time the Will was executed and shall give directions as to the form in which the Will is to be proved:

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

(2) Where from any mark on the Will it appears to the Judge that some other document has been attached to the Will or if a Will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the Will, the Judge may require the document to be produced and may call for such evidence in respect of the attachment or incorporation of the document as he may deem fit.

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

Attempted revocation of a Will.

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

Affidavit as to due execution, terms, etc of Will.

22. The Judge may require an affidavit from any person he may deem fit for the purpose of satisfying himself as to any of the matters referred to in Rules 18, 20 and 21. In any such affidavit sworn by an attesting witness or other person present at the time of the execution of a Will, the deponent shall depose to the manner in which the Will was executed.

Wills of persons in military service and seamen.

23. Where it appears to the Judge that there is *prima facie* evidence that a Will is one to which Section 9 of the Wills Act, 1837 or any provision of the equivalent enactment in force in the State applies, the Will may be admitted to proof if the Judge is satisfied that it was made by the testator in accordance with the provisions of that section or enactment as the case may be.

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Evidence of foreign law.

24. Where evidence of foreign law is required on any application for a grant, the Judge may accept an affidavit from any person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably qualified to give expert evidence of the law in question.

Order of or priority for grant where deceased left a Will.

25. Where the deceased died after the commencement of this Order, the person or persons entitled to a grant of probate or administration with the Will annexed shall be determined in accordance with the following order of priority:

- (a) the executor;
- (b) any residuary legatee or devisee, holding in trust for any other person;
- (c) any residuary legatee for life;
- (d) the ultimate residuary legatee or devisee, including one entitled on the happening of any contingency or where the residue is not wholly disposed of by the Will, any person entitled to share in the residue not so disposed of, or the personal representative of any such person;

Provided that:

- (i) unless the Judge otherwise directs, a residuary legatee or devisee whose legacy or devise is vested in interest shall be preferred to one entitled on the happening of a contingency; and
- (ii) where the residue is not in terms wholly disposed of, the Judge may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made subject to Rule 68 of this Order to any legatee or devisee entitled to, or to a share in the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the Will;
- (e) any specific legatee or devisee or any creditor, subject to sub-rule 3 of Rule 59, the personal representative of any such person or where the estate is not wholly disposed of by Will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion to it;
- (f) any specific legatee or devisee entitled on the happening of any contingency, or any person having no interest under the Will who would have been entitled to a grant if the deceased had died wholly intestate.

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*Joinder of
Administrator.*

26. (1) An application to join with a person entitled to a grant of administration, a person entitled in a lower degree shall, in default of remuneration by all persons entitled in priority to the latter, be made to the Judge and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Judge may require;

(2) An application to join with a person entitled to a grant of administration, a person having no right to it, shall be made to the Judge and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Judge may require:

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

- (a) on the renunciation of all other persons entitled to join in the grant, any kin of the deceased having no beneficial interest in the estate;
- (b) unless the Judge otherwise directs, any person whom the guardian of a minor may nominate for the purpose;
- (c) a trust corporation.

*Will of blind or
illiterate testator.*

27. Where the testator was blind or illiterate, the Judge shall not grant administration with the Will annexed, unless the Judge is first satisfied, by proof or by what appears on the face of the Will, that the Will was read over to the deceased before its execution or that he had at that time knowledge of his contents.

*Interlineations,
erasures or
obliterations.*

28. (1) The Judge, on being satisfied that the Will was duly executed, shall inspect it to see whether there are any interlineations, alterations, erasures, or obliterations appearing in it and requiring to be accounted for.

(2) Interlineations, alterations, erasures, and obliterations are invalid unless they existed in the Will at the time of its execution or unless, if made afterwards, they have been executed and attested in the mode required by the said enactments; or unless they have been made valid by the re-execution of the Will or by the subsequent execution of some codicil thereto.

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

(4) Where no satisfactory evidence is adduced respecting the time when an erasure or obliteration was made and the words erased or obliterated are not entirely effaced, and can, on inspection of the Will, be ascertained, they shall form part of the probate. Where any words have been erased which might have been of importance, an affidavit shall be required.

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Documents referred to in a Will or annexed thereto.

29. (1) Where a Will contains a reference to any document of such a nature as to raise the question whether it ought or ought not to form a constituent part of the Will, the Judge shall require the production of the document, with a view to ascertaining whether or not it is entitled to probate, and if it is not produced, a satisfactory account of its non production shall be given. A document cannot form part of a Will unless it was in existence at the time when the Will was executed.

(2) If there are vestiges of sealing wax or wafers, or other marks on the Will, leading to the inference that some document has been at sometime annexed or attached thereto, a satisfactory account of them shall be required, and if it is not produced, a satisfactory account of its non production shall be given.

Executor dying without proving or not appearing.

30. Where a person appointed executor in a Will survives the testator but either dies without having taken probate or having been called on by the Court to take probate and does not appear, his right in respect of the executorship wholly ceases, and without further renunciation, the representation to the testator and the administration of his property may go and be committed as if that person had not been appointed executor.

Making of Wills.

31. Every Will in respect of which an application for a grant is made shall be marked by the signatures of the applicant and the person before whom the oath is sworn, and shall be exhibited to any affidavit which may be required under this Order as to the validity, terms, condition or date of execution of the Will;

Provided that where the Judge is satisfied that compliance with this Rule might result in the loss of the Will, he may allow a photocopy to be marked or exhibited in lieu of the original document.

Viva voce examination of persons making affidavits.

32. In every case where evidence is directed or allowed to be given by affidavit, the Judge may require the personal attendance of the deponent if within the jurisdiction, before the Court, to be examined *viva voce* representing the content of his affidavit. The examination may take place before any affidavit has been sworn or prepared if the Judge deems fit.

Letters of administration.

33. (1) A Judge in granting Letters of Administration shall proceed as far as may be as in cases of probate.

(2) The Judge shall ascertain the time and place of the deceased's death and the value of the property to be covered by the administration.

Administration bond.

34. (1) The person to whom administration is granted shall give a bond with two or more responsible sureties to the satisfaction of the Judge. The bond shall affirm that the administrator shall be duly conditioned to collect, getting in and administering the personal property of the deceased.

(2) The Judge may if he deems fit take one surety only where the gross value of the estate does not exceed N250,000.00 (two hundred and fifty thousand naira) or where a corporation is proposed as a surety.

(3) The bond shall be in form of a penalty which is twice the sum value of the estate of the deceased unless the Judge deems it expedient to reduce the amount.

(4) The Judge may also in any case direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the Court deems reasonable.

Guarantee.

35. (1) The Judge shall not require a guarantee as a condition of making a grant where it is proposed to make it:

- (a) by virtue of Rule 25 (e) to a creditor or the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;
- (b) under Rule 61 to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate be entitled to his estate;
- (c) under Rule 63 to the attorney of a person entitled to a grant;
- (d) under Rule 64 for the use and benefit of a minor;
- (e) under Rule 66 for the use and benefit of a person who by reason of mental or physical incapacity is incapable of managing his affairs;
- (f) to an applicant who appears to the Judge to be resident elsewhere than in the State; or
- (g) except where the Judge considers that there are special circumstances making it desirable to require a guarantee.

(2) Notwithstanding that it is proposed to make a grant as aforesaid, a guarantee shall not be required, except in special circumstances, on an application for administration where the applicant or one of the applicants is the Administrator-General or a trust corporation.

(3) Every guarantee entered into by a surety for the purpose of the Order shall be in Probate Form 1 with such variations as circumstances may require.

(4) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an authorized officer, commissioner for oaths or other person authorized by law to administer an oath.

(5) Unless the Registrar otherwise directs:

(a) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed N250,000.00 (two hundred and fifty thousand naira) or a corporation is a proposed surety, and in those cases one will suffice;

(b) no person shall be accepted as a surety unless he is resident in the State;

(c) no officer of the judiciary shall be a surety;

(d) the limit of the liability of the surety or sureties under a guarantee shall be the gross amount of the estate as sworn on the application for the grant;

(e) every surety other than a corporation, shall justify his eligibility.

(6) Where the proposed surety is a corporation, there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed the guarantee in the manner prescribed by its constitution, and containing sufficient information as to the financial position of the corporation to satisfy the Judge that its assets are sufficient to satisfy all claims which may be made against it under any guarantee which it has given or is likely to give.

Assignment of bond.

36. The Judge may, on being satisfied that the condition of the bond has been broken, assign to some person, and that person may thereupon sue on the bond in his own name as if it had been originally given to him, and may recover thereon, as trustee for persons interested, the full amount recoverable in respect of any breach of the bond.

Administration.

37. Any person claiming to be a creditor or legatee or the next of kin of a deceased, may apply for and obtain a summons from the Court requiring the executor or administrator, as the case may be, of the deceased to attend the Court and show cause why an order for the administration of the property of the deceased should not be made.

Order for administration.

38. (1) On proof of service of the summons or on appearance of the executor or administrator, and on proof of all such other things as the Judge may direct, the Judge may, if he deems fit, make an order for the administration of the property of the deceased.

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

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

Order relating to property.

39. Where the Judge makes such an order or at any time afterwards, he may, if he deems fit, make any further or other order which may appear requisite to secure the proper collection, recovery for safe-keeping and disposal of the property or any part thereof.

Administration may be granted to officer.

40. In a case of intestacy, where the special circumstances of the case require, the Judge may, if he deems fit on the application of any person having interest in the estate of the deceased or of his own notion, grant Letters of Administration to an officer of the Court, to a Consular Officer or to a person in the service of the Government.

Officer to act under the direction of Judge.

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

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

Court may appoint person to be administrator.

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

Remuneration of administrators.

43. The Judge may direct that any administrator (with or without the Will annexed) shall receive out of the personal and real estate of the deceased such reasonable remuneration as he shall deem fit not exceeding 10% per centum on the amount of the realized property, or, when not converted into money, on the value of the property duly administered and accounted for by him:

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

Securing and collection of estate.

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

Application officer or person authorized by him to administer estate.

45. Application may be made to the Court by any such Consular Officer or by any person authorized by him in writing and under the consular seal, for leave to administer the estate of the deceased, and the Judge may make such order as to security for payment of debts and the method of administration as the Judge shall deem fit, and vary such order when and so often as it is expedient.

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

Accounts to be filed.

(2) Any executor or administrator who fails to file his accounts within the prescribed period as aforesaid shall be liable to a penalty of N100.00 (one hundred naira) for every day of default. A fine for non-payment shall be enforceable by distress, and failing sufficient distress, by imprisonment for a term not exceeding 6 months.

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- (3) When an account is filed in Court under this rule, the Judge shall scrutinize such account and if it appears to the Judge that by reason of improper, unvouched or unjustifiable entries or otherwise such account is not a full and proper account, the Judge shall require the person filing the account to remedy such defects as there may be within such time as the Judge may deem reasonable for the purpose; and on failure to remedy such defects within such time, the person who filed such defective account shall be deemed to have failed to file an account within the meaning of this rule and proceedings may be taken against such person accordingly.
- (4) The Registrar shall bring to the notice of the Judge the fact that any executor or administrator had failed to file his accounts as required by this Rule.
- (5) The Judge may, on the motion of any party interested, or *suo motu*, summon any executor or administrator failing as aforesaid, to show cause why he should not be punished.
- (6) The Judge may for good cause shown extend the time for such filing of accounts.
- (7) Any executor or administrator who has been granted an extension of time to file such account, shall be liable to the penalty set out above, and the procedure for bringing him before the Court shall be as set out above.
- (8) The accounts shall be open to the inspection of any person who satisfies the Registrar that he is interested in the administration.
- (9) In this rule, the word “accounts” shall mean and include an inventory, an account of the administration, the vouchers, in the hands of the executor or administrator relating thereto and an affidavit in verification.

Court may refuse application to review.

47. The Judge may refuse to entertain any application under Rule 2 of this Order if he considers that there has been unreasonable delay by the applicant in making the application.

Grant to be signed by Probate Registrar.

48. The grant of Letters of Administration under this Order shall be signed by the Registrar on behalf of the Court.

II Probate (Non-Contentious) Procedure

Application.

49. In this Part, Rules 1,4,5,6,7,8,11,12,14,15,16,17,19,26,27,28,29,30,31,71(1) and 72 (1) or (4) of this Order shall also apply.

Application for grants through Legal practitioners.

50. Every Legal Practitioner through whom an application for a grant is made shall give the address of his place of business within the jurisdiction.

Personal application.

51. (1) An applicant for a grant may apply in person.

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- (2) A personal applicant may not apply through an agent, whether paid or unpaid, and may not be represented by any person acting or appearing to act as his adviser.
- (3) No personal application shall be received or proceeded with if:
- (a) It becomes necessary to bring the matter before the Court by motion or by action;
 - (b) an application has already been made by a Legal Practitioner on behalf of the applicant and has not been withdrawn;
 - (c) the Judge otherwise directs.
- (4) After a Will has been deposited in the Registry by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the Judge so directs.
- (5) A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as the Judge may approve.
- (6) A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared in the Registry or may himself prepare such papers and lodge them unsworn.
- (7) Unless the Judge otherwise directs, every oath, affidavit or guarantee required of a personal application shall be sworn or executed by all the deponents or sureties before an authorized officer.

Duty of Registrar on receiving application for grant.

- 52.** (1) The Judge shall not allow any grant to issue until all inquiries which he may deem fit to make have been answered to his satisfaction.
- (2) The Judge may require proof of the identity of the deceased or of the applicant for the grant beyond those contained in the Oath.
- (3) No grant of probate or of administration with the Will annexed shall issue within 3 months of the death of the deceased; and no grant of administration (not with the Will annexed) shall issue within 3 months of such death.

Oath in support of grant.

- 53.** (1) Every application for a grant shall be supported by an oath in the form applicable to the circumstances of the case, which shall be contained in an sworn by the applicant, and by such other papers as the Judge may require.
- (2) Unless otherwise directed by the Judge, the oath shall state where the deceased was domiciled at the time of death.

Grant in additional name.

- 54.** Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the oath the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name; or as to any other reason that there may be for the inclusion of the other name in the grant.

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*Engrossment
for purposes
of record.*

55. (1) Where the Judge considers that in any particular case a photocopy of the original Will would not be satisfactory for purposes of record, he may require that an engrossment suitable for photo reproduction be lodged.

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

(3) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the Will and, if it is one to which sub-rule 2 of the rule applies, it shall be made book-wise on durable paper following continuously from page to page.

(4) Where any pencil writing appears on a Will, there shall be lodged a copy of the Will or of the pages or sheets containing the pencil writing in which there shall be underlined in red ink those portions which appear in pencil in the original.

*Grant to
attesting
witnesses, etc.*

56. Where a gift to any person falls by reason of the fact that he is an attesting witness or the spouse of an attesting witness, such person shall not have any right to a grant as a beneficiary named in the Will, without prejudice to his right to grant in any other capacity.

*Right of
assignee to a
grant.*

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

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

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

*Additional
personal
representatives.*

58. (1) An application to add a personal representative shall be made to the Judge and shall be supported by an affidavit by the personal applicant, the consent of the person proposed to be added as personal representative and such other evidence as the Judge may require.

(2) On any such application the Judge may direct that a note shall be made on the original grant of the addition of a further personal representative, or he may impound or revoke the grant or make such order as the circumstances of the case may require.

*Grants where
two or more
persons.
entitled in the
same degree.*

59. (1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same degree.

(2) A dispute between persons entitled to a grant in the same degree shall be brought by application before the Judge.

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

(4) Unless the Judge otherwise directs, administration shall be granted to a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same degree and to a person not under disability in preference to an infant entitled to the same degree.

Prevention of grant.

60 (1) Nothing in Rules 57, 60 or 62 shall operate to prevent a grant being made to any person to whom a grant may, or may require to be made under any enactment.

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

Grants to person having spes successionis.

61. When the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant of administration with the Will attached and has consented to such administration being granted to the parties or persons who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or one or more but not exceeding four of such persons:

Provided that a surviving spouse shall not be regarded as person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate, whatever its value may be.

Grants where deceased Domiciled outside State.

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

(a) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the deceased died domiciled;

(b) to the person entitled to administer the estate by the law of the place where the deceased died domiciled;

(c) if there is no such person as is mentioned in paragraph (a) or (b) of this rule or if in the opinion of the Judge the circumstances so require, to such person as the Judge may direct;

(d) If a grant required to be made to, or if the Judge in his discretion considers that a grant should be made to, not less than two administrators, to such person as the Judge may direct jointly with any such person as is mentioned in paragraph (a) or (b) of this rule or with any other person;

Provided that without any such order as aforesaid:

probate of any Will which is admissible to proof may be granted:

(i) where the Will is in English or in the local language, to the executor named therein;

(ii) Where the Will described the duties of a named person in terms sufficient to constitute him executor according to the tenor of the Will, to that person;

(iii) where the whole of the estate in the State consists of immovable property, a grant limited thereto may be made in accordance with the law that would have been applicable if the deceased had died domiciled in the State.

Grant made to attorney.

63. (1) Where a person entitled to a grant resides outside the State, a grant may be made to *his* lawful attorney for his use and benefit, until such person shall obtain a grant or in such other way as the Judge may direct;

Provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any.

(2) Where the Judge is satisfied by affidavit that it is desirable for a grant to be made to the lawful attorney of a person entitled to a grant and resident in the State, he may direct the grant to be made to the attorney for the use and benefit of such person, until such person obtains a grant or in such other way as the Judge may direct.

Grants on behalf of minors.

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

(a) to both parents of the minor jointly or to any guardian appointed by a Judge;
or

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

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

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

(4) Where a grant is required to be made to not less than two persons and there is only one person competent and willing to take a grant under the foregoing provisions of this rule, a grant may, unless the Judge otherwise directs, be made to such person jointly with any other person nominated by him as a fit and proper person to take the grant.

(5) Where a minor who is sole executor has no interest in the residuary estate of the deceased, administration with the Will attached for the use and benefit of the minor until he attains the age of 18 years shall, unless the Judge otherwise directs, be granted to the person entitled to the residuary estate.

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

Grants where minor is co-executor.

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

(2) A minor executor's right to probate on attaining the age of 18 years shall not be renounced by any person on his behalf.

Grants in cases of mental or physical incapacity.

66. (1) Where the Judge is satisfied that a person entitled to a grant is by reason of mental or physical infirmity incapable of managing his affairs, a grant for his use and benefit, during his incapacity may be made:

(a) in the case of mental incapacity, to the person authorized by the Judge to apply for the grant;

(b) where there is no person so authorized or in the case of physical incapacity:

(i) if the person incapable is entitled as executor and has no interest in the residuary estate of the deceased, to the person entitled to such residuary estate;

(ii) where the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate, or to such other person as the Judge may by order direct.

(2) Unless the Judge otherwise directs, no grant shall be made under this rule unless all persons entitled in the same degree as the person incapable have been considered and excluded.

(3) Where disability arises out of unsoundness of mind or insanity notice of intended application for a grant under this rule shall, unless the Judge otherwise directs, be given to his guardian.

Renunciation of probate and administration.

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

(2) Unless the Judge otherwise directs, no person who has renounced a grant in one capacity may obtain a grant in some other capacity.

(3) A renunciation of probate or administration may be retracted at any time on the order of the Judge:

Provided that only in exceptional circumstances may leave be given to an executor to retract a renunciation of probate after a grant has been made to such other person entitled in a lower degree.

*Notice to
State of
intended
application
for grant.*

68. Where the State is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Borno State Attorney-General and the Judge may direct that no grant shall issue without a specified time after the notice has been given.

Resealing.

69. (1) An application for the resealing of probate or administration with the Will attached by a Court outside the State shall be made by the person to whom the grant was made or by any person authorized in writing to apply on his behalf.

(2) On any such application;

(a) an Inland Revenue Affidavit shall be lodged as if the application were one for a grant in the State;

(b) the application shall be advertised in such manner as the Judge may direct and shall be supported by an oath sworn by the person making the application.

(3) On an application for the resealing of such a grant:

a) the Judge shall not require sureties except where it appears to him that the grant is made to a person or for a purpose mentioned in paragraphs (a) to (f) of Rule 35(1) or except where he considers that there are special circumstances making it desirable to require sureties;

b) Rules 35(2), (4), (5), (6) and 51 (4) shall apply with any necessary modifications; and

c) a guarantee entered into by a surety shall be in Probate Form 2 with such variations as circumstances may require.

(4) Except by leave of the Judge, no grant shall be resealed unless it was made to such a person as is mentioned in paragraph (a) or (b) of Rule 62 or to a person to whom a grant could be made under a proviso to that rule.

(5) No limited or temporary grant shall be released except by leave of the Judge.

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(6) Every grant lodged for resealing shall include a copy of any will to which the grant relates or shall be accompanied by a copy certified as correct by or under the authority of the Court by which the grant was made.

(7) The Registrar shall send notice of the resealing to the Court which made the grant.

(8) Where notice is received in the Registry from outside the State of the resealing of a grant made in the State, notice of any amendment or revocation of the grant shall be sent to the Court by which it was resealed.

*Amendment
and revocation
of grant.*

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

Provided that except in special circumstances no grant shall be amended or revoked under this rule except on the application or with the consent of the person to whom the grant was made

*Notice to
prohibit
grant.*

71. (1) A notice to prohibit a grant of administration may be filed in Court.

(2) Any person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat in the Registry.

Civil Form 3.

(3) Any person who wishes to enter a caveat, in this rule called “the caveator”, may do so by completing Probate Form 3 in the appropriate book at the Registry and obtaining an acknowledgment of entry from the proper officer, or by sending through the post at his own risk a notice in Probate Form 3 to the Registry in which he wishes the caveat to be entered.

Civil Form 4.

(4) Where the caveat is entered by a Legal Practitioner on behalf of the caveators the name of the caveator shall be stated in Probate Form 4.

(5) Except otherwise provided by this rule, a caveat shall remain in force for 3 months from the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

(6) The Registrar shall maintain an index of caveats entered in the Registry and on receiving an application for a grant in the Registry he shall cause the index to be searched and shall notify the applicant in the event of any caveat having been entered against the sealing of a grant for which application has been made.

(7) The Registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect thereof:

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

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Civil Form 5.

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

Civil Form 6.

(9) A caveator having an interest contrary to that of the person warning may, within 8 days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under sub-rule 12 of this rule, enter an appearance in the Registry by filing Probate Form 6 and making an entry in the appropriate book, and shall forthwith serve on the person warning a copy of Probate Form 6 sealed with the seal of the Registry.

(10) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice to the Registry and the caveat shall then cease to have effect and if he has been warned, the caveator shall forthwith give notice of withdrawal of the caveat to the person warning.

(11) A caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to that person may, within 8 days of service of the warning upon him inclusive of the day of such service, or at anytime thereafter if no affidavit has been filed under sub-rule 12 of this rule, issue and serve a notice, which shall be returnable before the Registry.

(12) If the time limited for appearance has expired and the caveator has not entered an appearance the person warning may file in the Registry an affidavit showing that the warning was duly served and that he has not received a summons for directions under the last foregoing sub-rule, and thereupon the caveat shall cease to have effect.

(13) Upon commencement of a probate action the Probate Registrar shall, if a caveat is in force, other than a caveat entered by the claimant, give to the caveator notice of the commencement of the action and, upon the subsequent entry of a caveat at any time when the action is pending, shall likewise notify the caveator of the existence of the action.

(14) Unless the Judge otherwise directs:

(a) any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to sub-rule 9 of this rule, remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such proceedings, and upon such application any caveat entered by a party who had notice of the proceedings shall cease to have effect;

(b) Any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;

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(c) the commencement of a probate action shall whether or not any caveat has been entered, operate to prevent the sealing of a grant until application for a grant is made by the person shown to be entitled thereto by the decision of the Judge in such action, and upon such application any caveat entered by a party who had notice of the action, or by a caveator who was given notice under sub-rule 13 of this rule, shall cease to have effect.

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

Citations.

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

(2) Every citation shall be settled by the Registrar before being issued.

(3) Every averment in a citation and such other information as the Registrar may require shall be verified by an affidavit sworn to by the person issuing the citation, in this Order called "the citor", or, if there are two or more citors, by one of them:

Provided that the Registrar may in special circumstances accept an affidavit sworn to by the citor's Legal Practitioner.

(4) The citor shall enter a caveat before issuing a citation.

(5) Every citation shall be served personally on the person cited unless a Judge, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

(6) Every Will referred to in a citation shall be lodged in the Registry before the citation is issued, except where the Will is not in the citor's possession and the Judge is satisfied that it is impracticable to require it to be lodged.

(7) A person who has been cited to appear may, within 8 days of service of the citation upon him inclusive of the day of such service, or at any time thereafter if no application has been made by the citor under sub-rule 5 of Rule 35 or sub-rule 2 of Rule 69 of this Order enter an appearance in the Registry by filing Probate Form 6 and making an entry in the appropriate book, and shall thereafter serve on the citor a copy of Form 5 sealed with the seal of the Registry.

Citation to accept or refuse.

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

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the Will or the executors of the last survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of 6 months from the death of the deceased:

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Provided that no citation to take a grant shall issue while proceeding as to the validity of the Will is pending.

(4) A person cited who is willing to accept or take a grant may apply *ex parte* to the Judge for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may:

(a) in the case of a citation under sub-rule 1 of this rule apply to the Judge for an order for a grant to himself;

(b) in the case of a citation under sub-rule 2 of this rule, apply by summons to the Judge for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (b) of sub-rule 5 of this rule;

(c) in the case of a citation under sub-rule 3 of this rule, apply by summons to the Judge for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons and the summons shall be served on the person cited in such case.

Citation to propound a Will.

74. (1) A citation to propound a Will shall be directed to the executors named in the Will and to all persons interested thereunder, and may be issued at the instance of any citor having any interest contrary to that of the executors or such other persons.

(2) Where the time limited for appearance has expired, the citor may:

(a) where no person cited has entered an appearance, apply to the Judge for an order for a grant as if the Will were invalid;

(b) in the case of a citation under sub-rule 2 of Rule 73 of this Order apply by summons to the Judge for an order striking out the appearance and for endorsement on the grant of such a note as mentioned in paragraph (b) of sub-rule 5 of Rule 73 of this Order;

(c) in the case of a citation under sub-rule 3 of Rule 73 of this Order apply by summons to the Judge for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons.

Address for service.

75. All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

High Court of Borno State (Civil Procedure) Rules, 2017

Application for order to bring or to attend for examination.

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

(2) An application for the issue by the Judge of a *subpoena* to bring a Will shall be supported by an affidavit setting out the grounds of application, and if any person served with the *subpoena* denied that the Will is in his possession or control he may file an affidavit to that effect.

Limited grants.

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

(a) whether the application is made in respect of the real estate only or any part thereof, or real estate together with personal estate, or in respect of a trust estate only;

(b) whether the estate of the deceased is known to be insolvent;

(c) that the persons entitled to a grant in respect of the whole estate in priority to the applicant have been considered and excluded.

Grants and colligenda bona.

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

Application for leave to swear to the death of a person.

79. An application for leave to swear to the death of a person in whose estate a grant is sought may be made to the Judge and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance on the life of the presumed deceased.

Grants in respect of codicils and copies of Wills.

80. (1) An application for an order admitting to proof a codicil or a Will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original Will is not available may be made to the Judge:

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

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

(a) the due execution of the Will;

(b) its existence after the death of the testator; and

(c) the accuracy of the copy or other evidence of the contents of the Will, together with any consent in writing to the application given by any person not under disability who would be prejudiced by the grant.

High Court of Borno State (Civil Procedure) Rules, 2017

*Grants
Durants
absentia.*

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

*Notice of
election by
surviving
spouse to
redeem life
interest.*

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

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

Civil Form 7.

*Photocopy
of Wills or
other
documents
may be
certified and
sealed.*

83. (1) Where copies are required of original Wills or other documents deposited under the provisions of any written law such copies may be photocopies sealed with the seal of the Registry and issued as office copies and where such office copies are available copies certified under the hand of a Registrar to be true copies shall be issued only if it is required that the seal of the Court be affixed thereto.

(2) Copies, not being photocopies of original Wills or other documents deposited as aforesaid shall be examined against the documents of which they purport to be copies if so required by the person demanding the copy, and in such case the copy shall be certified under the hand of a Registrar to be a true copy and may in addition be sealed with the seal of the Court.

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

84. The Registrar may require any application under this Order to be made by motion or summons to a Judge.

*Service of
notice of
motion and
summons.*

85. (1) A Judge may direct that a notice of motion or summons for the service of which no other provision is made in this Order shall be served on such person or persons as the Judge may direct.

(2) Whereby the provisions of this Order or by any direction given under sub-rule 1 of this rule a notice of motion or summons is required to be served on any person, it shall be served not less than 5 days, before the hearing of the motion or summons.

*Service of
Notices, etc at
the person's
address.*

86. Unless the Judge otherwise directs or this Order provides, any notice or other document required to be given or served on any person may be given or served by leaving it at, or by sending it by courier to that person's address for service, or if he has no address for service, his last known address.

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- Affidavit.* **87.** Every affidavit used in non-contentious probate business shall satisfy the requirements of Order 33.
- Time.* **88.** The provisions of Order 44 shall apply to the computation, enlargement and abridgement of time under this Order.
- Application.* **89.** Subject in any particular case to any direction given by a Judge, this Order shall apply to any proceeding which is pending on the date on which these Rules come into operation as well as to any proceeding commenced on or after that date:

Provided that where the deceased died before the commencement of these rules, the right to a grant shall, subject to the provisions of any enactment, be determined by the principles and rules in accordance with which the Court would have acted at the date of the death.

- Contentious probate; form of suits.* **90.** Suits in respect of probate shall be instituted and carried on as nearly as possible in the like manner and subject to the same rules of procedure as suits in respect of civil claims.

III Proceeding Generally

- Probate actions.* **91.** In probate actions, the originating process shall state whether the Claimant claims as creditor, executor, administrator, beneficiary, next of kin or in any other capacity.
- Service of Writ of Summons.* **92.** In probate actions service of a writ of summons may by leave of a Judge be allowed out of Nigeria.
- Pleadings and further actions.* **93.** In probate actions a party shall state with regard to every defence which is pleaded, what is the substance of the case on which it is intended to rely; and further where it is pleaded that the testator was not of sound mind, memory and understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial and except by leave of a Judge no evidence shall be given of any instances at the trial.
- Where Claimant disputes defendants interest.* **94.** In probate actions where the claimant disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.
- Notice of opposition to Will.* **95.** In probate actions the party opposing a Will may, with his defence, give notice to the party setting up the Will that he merely insists upon the Will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the Will, and he shall thereupon be at liberty to do so and shall not in any event be liable to pay the costs of the other side unless the Judge finds that there was no reasonable ground for opposing the Will.

High Court of Borno State (Civil Procedure) Rules, 2017

Inquiry as to outstanding personal estate.

96. Every Judgment or Order for a general account of the personal estate of a testator or intestate shall contain a direction for any inquiry as to what parts of such personal estate are outstanding or undisposed of, unless the Judge shall otherwise direct.

Discretion to order costs.

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

Originating summons relating to deceased person.

98. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, beneficiary, next of kin, heir-at-law of a deceased person, or as *cestui qui trust* under the trust of any deed or instrument, or as claiming by assignment or administration otherwise under any such creditor or other person as aforesaid, may take out, an originating summons and as the circumstances of the case may require, that is, the determination without an administration of the estate or trust of any of the following questions or matters:

- (a) any question affecting the rights or interests of the person claiming to be creditor, beneficiary, next of kin, or heir-at-law or *cestui qui trust*;
- (b) the ascertainment of any class of creditors, beneficiary, next of kin, or others;
- (c) the furnishing of any particular accounts by the executors or administrators or trustees and the vouching, when necessary, of such accounts.
- (d) the payment into Court of any money in the hands of the executors or administrators or trustees;
- (e) directing executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;
- (f) the approval of any sale, purchase, compromise, or other transaction;
- (g) the determination of any question arising in the administration of the estate or trust.

Order for administration of estate of deceased and of trust.

99. Any of the persons named in Rule 98 of this Order may in like manner apply for and obtain an order for:

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

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*Persons to
be served.*

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

Where the summons is taken out by an executor or administrator or trustee:

- (a) for the determination of any question, under paragraph (a), (c), (f) or (g) of Rule 98 of this Order, the persons, or one of the persons, whose rights or interests, are sought to be affected;
- (b) for the determination of any question, under paragraph (b) of Rule 98 of this Order any member or alleged member of the class;
- (c) for the determination of any question under paragraph (c) of Rule 98 of this Order, any person interested in taking such accounts;
- (d) for the determination of any question under paragraph (d) of Rule 98 of this Order, any person interested in taking such money;
- (e) for relief under paragraph (a) of Rule 99 of this Order, the residuary legatee, or next of kin, or some of them, or the residuary devisees, or heirs, or some of them, as the case may be;
- (f) for relief under paragraph (b) of rule 99 of this Order, the *cestui que trust* or some of them;
- (g) if there are more than one executor or administrator or trustee and they do not all concur in taking out the summons, those who do not concur;
- (h) where the summons is taken out by any person other than the executors, administrators or trustees, the executors, administrators or trustees, or some of them must be served.

*Where
summons
taken out by
any other
person.*

*Judge not
bound to
order
administration.*

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

Order which may be made on application for administration or execution of trusts, where no account or insufficient accounts have been rendered.

- 102.** Upon an application for administration or execution of trusts by a creditor or under a Will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the Judge may, in addition to the powers already existing:
- (a) order that the application shall stand over for a certain time, and that the executors, administrators or trustees in the meantime shall render to the applicant proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings;
 - (b) when necessary, to prevent proceedings by other creditors, or by persons beneficially interested, make the usual judgment or order for administration with a proviso that no proceedings are to be taken under such judgment or order without leave of the Judge;

Interference with discretion of trustee.

103. The issue of a summons under Rule 98 of this Order shall not interfere with or control any power or discretion vested in any executor, administrator or trustee except so far as such interference or control may necessarily be involved in the particular relief sought.

Application by summons.

104. Any of the following applications may be made by summons:

Appointment of new trustee and vesting order.

- (a) an application for the appointment of a new trustee with or without a vesting or other consequential order;
- (b) an application for a vesting order or other order consequential on the appointment of a new trustee where the appointment is made by a Judge;

Vesting order on sale, etc.

- (c) an application for vesting or other consequential order in any case where a judgment or order has been given or made for the sale, conveyance, or transfer of any land or stock or the suing for or recovering any chose in action;

Payment out of Court.

- (d) an application relating to a fund into Court in any case coming within the provisions of Rule 8 of this Order.

Interpretation Law Cap.70, Vol.2, Laws of Borno State, 1994.

105. (1) The provisions of the Interpretation Law shall apply to the interpretation of this Order.

(2) In this Order, unless the context otherwise requires:

“authorized officer” means any officer of the Registry who is for the time being authorized by law to administer any oath or to take any affidavit required for any purpose connected with his duties;

“gross value” in relation to any estate means the value of the estate without deduction for debts, encumbrances, funeral expenses or estate duty;

“oath” means the oath required by this Order to be sworn by every applicant for grant;

“personal applicant” means a person other than a trust corporation who seeks to obtain a grant without employing a Legal Practitioner, and

“personal application” has a corresponding meaning;

“Registrar” means the Probate Registrar;

“Registry” or “Probate Registry” means the Probate Registry of the Court;

“Will” inclusive a codicil and any testamentary document or copy or reconstruction of it.

(3) Unless the context otherwise requires, any rule or enactment shall be construed as a reference to that rule or enactment as amended, extended or applied by any other rule or enactment.

ORDER 61
APPEALS TO HIGH COURT

Notice of appeal.

1. (1) Every appeal shall be brought by Notice of Appeal which shall be lodged at the High Court Registry within 30 days of the decision in respect of a final decision and within 14 days in respect of an interlocutory decision appealed from and served on all other parties affected by the appeal within that period.

(2) The appellant shall serve a copy of the Notice of Appeal on the lower court within 15 days after lodging the Notice of Appeal as provided in Rule 1 (1) of this Order.

Contents, etc of notice of Appeal.

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

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

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

(4) The notice of appeal shall be in accordance with the Forms designated for appeals and may be varied to suit the circumstances of the case except that no variation of substance shall be made.

Copies of proceedings.

3. (1) It shall be the duty of the Registrar of the Court below after being served with the Notice of Appeal and request for the record of proceedings by the Appellant to produce and transmit to the Appeal Registry the record of the Court to the Appellate Court within 21 days.

(2) If the Registrar of the Court below fails to transmit the record of proceedings of the Court within 21 days as aforesaid the Appellant shall apply to the High Court Appeals' Registrar to prepare and transmit the Record within 14 days.

Appeal to High Court, copy of proceedings to Division appealed against.

4. The Registrar of the lower court shall within 7 days of preparing the copies aforesaid send the same to the Registrar of the Court in the Judicial Division in which the lower court is situated, and the appeal shall be decided by the Judge of that Division.

Respondent to be supplied with copy of proceedings.

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

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Proceedings to enlarge time.

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

Where time expires.

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

Constitution of Court hearing appeal.

8. The High Court in the exercise of its appellate jurisdiction shall be constituted by two Judges provided that a single Judge of a panel shall have powers to hear and determine interlocutory matters which emanate from the appeal.

Time and place for hearing.

9. The appeal shall come on for hearing at such time and at such place as the Registrar of the Court shall notify the parties.

Where appellant fails to appear.

10. (1) If, on the day of hearing or at any adjournment of the case, the appellant does not appear, the appeal shall be struck out and the decision shall be affirmed, unless the Court thinks fit, for sufficient cause, to order otherwise.

(2) If in any such case the respondent appears, the judgment shall be with costs of the appeal against the appellant, unless the Court expressly orders otherwise; but if the respondent does not appear, the cost of the appeal shall be at the discretion of the court.

Where Appellant appears.

11. (1) If, on the day of hearing and at any adjournment of the case, the appellant appears the court shall, whether the respondent appears or not, proceed to the hearing or further hearing and determination of the appeal, and shall give judgment according to the merits of the case without regarding any imperfection or defect of form.

(2) Where it appears or is proved to the Court that the appellant has not complied with the requirements precedent to the hearing of an appeal hereinbefore contained, the Court shall dismiss the appeal and affirm the decision, with or without costs of appeal against the appellant.

Appeal limited to grounds given in notice.

12. (1) On the hearing, it shall not be competent for the appellant to go into any other issue than those set forth in his notice of grounds for appeal.

(2) Notwithstanding the provisions of sub-rule (1) of this Rule where in the opinion of the Court, other grounds of appeal than those set forth in the memorandum of grounds of appeal is defective, the Court, in its discretion, may allow such amendments of the memorandum of grounds of appeal upon such conditions as to service upon the respondent and as to costs as it may think fit.

Request to confirm judgment on other grounds.

13. (1) The respondent may give notice that he intends at the hearing to ask the Court to confirm the judgment of the lower court on grounds other than those stated by that court.

(2) The notice shall be accompanied by a clear statement of the grounds on which the respondent intends to ask the Court to confirm the judgment of the lower court.

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(3) Such notice and grounds shall be filed in Court within 14 days of service on the respondent of the appellant's notice and grounds of appeal, and shall be served on appellant or his legal practitioner.

Cross appeal.

14. (1) The respondent may file grounds of appeal against any part of the judgment of the lower court.

(2) Such grounds shall be filed by the respondent within 14 days of service on him of the appellant's notice and grounds of appeal, and shall be served on the appellant or his legal practitioner before the hearing.

Objection to form of ground of appeal.

15. (1) No objection on account of any defect in the form of setting forth any ground for appeal shall be allowed, unless the Court is of opinion that the ground of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the respondent to enquire into the subject matter thereof or to prepare for the hearing.

(2) Notwithstanding the provisions of sub rule 1, a Court may allow an amendment to the Notice of Appeal.

Defects in proceedings under appeal.

16. (1) On any appeal from a decision of a lower court, no objection shall be taken or allowed to any proceeding in such Court of any defect or error which might have been amended by that Court, or to any complaint, summons, warrant, or other process to or of such Court for any alleged defect therein in substance or in form, or for any variance between any complaint or summons and the evidence in support thereof in such Court.

(2) However, if any error, defect, or variance mentioned in this rule appears to the Court at the hearing of any appeal to be such that the appellant has been thereby deceived or misled, it shall be lawful for the Court either to refer the case back to the lower court with directions to re-hear and determine the same or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.

No objection to defect.

17. No objection shall be taken or allowed, on any appeal, to any notice of appeal, which is in writing or to any recognizance entered into under this Order for the due prosecution of such appeal for any alleged error or defect thereon but if any such error or defect appears to the Court to be such that the respondent on such appeal has been thereby deceived or misled, it shall be lawful for the Court to amend the same and, if it is expedient to do so, also to adjourn the further hearing of the appeal, the amendment and the adjournment, if any, being made on such terms as the Court may deem just.

Additional evidence.

18. The Court may, in any case where it may consider it necessary that evidence should be adduced, either –

(a) order such evidence to be adduced before the court on some day to be fixed in that behalf; or

(b) refer the case back to the lower court to take such evidence, and may in such either direct the lower court to adjudicate afresh after taking such evidence and subject

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to such directions in law, if any, as the Court may think fit to give, or direct it, after taking such evidence, to report specific findings of facts for the information of the Court, and on any such reference the case shall, so far as may be practicable and necessary, be dealt with as if it were being heard in the first instance.

Mode of taking evidence.

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

(2) The appellant or his legal practitioner shall be present when the additional evidence is taken.

(3) Evidence taken in pursuance of rule 18 shall be taken as if it were evidence taken at the trial before the lower court.

(4) When forwarding to the court any additional evidence taken by a lower court in pursuance of rule 18, the lower court may express its opinion on the demeanour of the witness and of the value of their evidence and may also, if it is the same court against whose decision the appeal has been made, state whether or not it would have come to a different decision had the additional evidence been brought forward at the trial.

Fees: Appendix II.

20. The fees in Appendix II to these Rules shall be chargeable in civil appeals save where the same would have to be paid by a Government officer acting in his official capacity or the Court waives or remits the same on the ground of the poverty of the person chargeable therewith where it appears that there are substantial grounds of appeal.

Allowance to witness Appendix II.

21. Allowances may be made to witnesses in accordance with the provisions of Appendix II to these Rules.

Stay of execution.

22. (1) On application being made for stay of execution under any enactment establishing the lower court, the lower court may impose one or more of the following conditions:

- (a) that the appellant shall deposit a sum fixed by the Court not exceeding the amount of money or the value of the property affected by the decision or judgment appealed from, or give security to the satisfaction of the Court for the said sum;
- (b) that the appellant shall deposit a sum equal to the amount of the costs allowed against him or give security to the satisfaction of the Court for the said sum;
- (c) that the appeal shall, when the decision or judgment appealed from relates to possession of lands or houses, give security to the satisfaction of the Court for the performance of the decision or judgment in the event of the appeal being dismissed;

(d) that the appellant's property shall be seized and attached pending the making of a deposit or the giving of security as aforesaid including a deposit or security for the expenses incidental to the seizure and attachment;

(e) that the appellant's property shall be seized, and attached and sold and the net proceeds deposited in court pending determination of the appeal.

(2) Any order made on any such application shall limit the time (not being more than thirty days) for the performance of the conditions imposed, and direct that in default of such performance within the time so limited execution may issue or proceed.

(3) An application for stay of execution under the enactment establishing the lower court may be made at any time after lodging of the notice of appeal and shall in the first instance be made to the lower court; Provided that where execution has been ordered by the lower court the application shall not be made to the lower court but to the High Court.

(4) The application may be *ex parte* but the Court may direct notice thereof to be given to the other party to the appeal. Where an order is made *ex parte* the Registrar of the Court shall notify the other party of the order made.

(5) Where the appellant proposes to give security instead of making a deposit, the application shall state the nature of the security and the name of the surety proposed (if any).

(6) Any party dissatisfied with an order made by the lower court may apply to the Court by motion (original or interlocutory, as the case may require) with notice to the other party for a review of the order, and the Court may thereupon make such order as may seem just.

(7) An appeal shall not operate as a stay of execution under the decision or judgment appealed from except so far as the lower court or the Court may order; and no intermediate act or proceeding shall be invalidated except so far as either court may direct.

Costs.

23. The Court may make such order as to the payment of costs by or to the appellant as it may deem to be just and such order may be made also in any case where an appeal has not been entered into or prosecuted.

Security for costs.

24. (1) The Court may, in special circumstances, upon application on notice by motion (original or interlocutory as the case may require) supported by affidavit, order the appellant to deposit such sum or give such security as may seem fit for the respondent's costs of appeal including the costs incidental to the application.

(2) The order shall limit the time (not exceeding thirty days) within which the deposit or security shall be made or given and may direct that in default of its being made or given within the time so limited the appeal shall without further order stand dismissed.

(3) Where an appeal so stands dismissed the respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such costs may be stated in the order in anticipation or may be assessed at any time by the Court of its own motion or on application made *ex parte* or on notice as the Court may see fit.

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(4) Where an appeal so stands dismissed the appellant shall take no further step or proceeding therein save by leave of the Court for reinstatement of the appeal, which may be granted on such terms (if any) as may seem fit upon application by motion on notice given within a month of such dismissal (but not otherwise).

(5) Subject and without prejudice to the discretion of the Court to grant costs where it seems proper on an application made under sub-rule (1), costs shall not normally be granted to the applicant save where the net proceeds of execution levied on the appellant's goods are insufficient to satisfy the amount payable under the judgment or decision appealed from.

Orders of High Court to be certified to the lower court.

25. (1) When a case is decided on appeal the Court shall certify its judgment or order to the lower court in which the decision appealed against was pronounced.

the lower court.

(2) The lower court to which the Court certified its judgment or order shall there-upon make orders as are confirmable to the judgment or order of the Court, and, if necessary the records shall be amended in accordance therewith.

Enforcing of judgment.

26. After the pronouncement of the judgment of the Court, the lower court from which the appeal came shall have the same jurisdiction and power to enforce, and shall enforce, any decision which may have been affirmed, modified, amended, or substituted by the Court or any judgment which may have been pronounced by the court, in the same manner in all respects as if such decision or judgment had been pronounced by itself.

High Court may enlarge time.

27. The Court may, if it deems fit, enlarge any period of time prescribed by this Order.

Interpretation.

28. In this Order____
 “the lower court” means a Court where judgment is appealed against, but does not include an arbitrator, a referee or an auditor;
 “judgment” includes an order or a ruling.

ORDER 62
APPEALS TO THE HIGH COURT FROM
DECISIONS OF AUDITORS.

- Application.* **1.** This Order shall apply to any appeal to the Court from a decision of an auditor made under the provisions of any written law which confers the right to appeal to the High Court against any such decision.
- Method of appeal.* **2.** An appeal to the Court from a decision of an auditor shall be by notice of motion.
- Evidence.* **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.
- Service.* **4.** The notice of motion shall be served, before the expiration of six weeks after the date of the decision to which it relates, upon the auditor in charge of the audit in respect of which the decision has been made and also upon the local government or other body in relation to whose accounts or to the accounts of whose officer the decision was given, if that local government or other body is not the appellant.
- Contents of notice, date of hearing.* **5.** The notice of motion shall state the grounds of appeal, and the date mentioned in the notice for the hearing of the appeal shall be not less than twenty-eight days after the service of the notice.
- Reasons for appeal to be filed.* **6.** (1) The appellant shall within seven days after service on the auditor or the notice of motion, file with the Registrar a copy of such notice and an affidavit or affidavits setting out the reasons stated by the auditor for his decision and the facts upon which the appellant intends to rely at the hearing and thereupon the motion shall be set down for hearing.
- (2) If the notice of motion is not set down in accordance with this provision, either the local government or other body or the auditor may apply to the Court, upon notice to the appellant, for an order discharging the notice of motion and for the costs of the application.
- Copy of affidavits to be served on the parties.* **7.** The appellant shall deliver forthwith to the local government or other body and to the auditor a copy of any affidavit filed under rule 6 in support of the motion and any person intending to oppose the motion shall within four days at least before the hearing, deliver to the appellant a copy of any affidavit intended to be filed by him in opposition to the motion.
- Service on auditor other than the auditor who gave decision.* **8.** Where under rule 4 notice of motion is served on an auditor other than the auditor who gave the decision, that auditor may appear in opposition thereto in all respects as if he were the auditor by whom the decision was given and these provisions shall apply accordingly.

ORDER 63**APPEALS TO THE HIGH COURT FROM
PROFESSIONAL BODIES***Application.*

1. This Order shall apply to any appeal to the Court from decision of professional bodies made under the provisions of any written law which confers the right to appeal to the Court against any such decision.

Method of appeal.

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.

Evidence.

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.

Service.

4. The notice of motion shall be served, before the expiration of six weeks after the date of the decision to which it relates, upon the professional body.

Contents 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 be not less than twenty-eight days after the service of the notice.

Reasons for appeal to be filed.

6. (1) The appellant shall within seven days after service on the professional body of the notice of motion, file with the Registrar a copy of the notice and an affidavit or affidavits setting out the reasons stated by the professional body for its decision and the facts upon which the appellant intends to rely at the hearing and thereupon the motion shall be set down for hearing.

(2) If the notice of motion is not set down in accordance with this provision, the professional body may apply to the Court, upon notice to the appellant, for an order discharging the notice or motion and for the costs of the application.

Copy of affidavits to be served on the parties.

7. The appellant shall deliver forthwith 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, four days at least before the hearing, deliver to the appellant a copy of any affidavit intended to be filed by him in opposition to the motion.

ORDER 64
INTERLOCUTORY APPLICATION
1 – MOTIONS GENERALLY

- Time to apply.* **1.** Interlocutory applications may be made at any stage of an action.
- Application by motion.* **2.** (1) Whereby these rules any application is authorized to be made to the Court or a Judge in Chambers such application, if made to a Judge in Court, shall be made by motion and shall state under what Rule or Law the application is brought.
- Motion list.* (2) The Registrar shall make up, for each day on which there are motions to be heard, a motion list, on which he shall enter the names of each cause in which a motion is made, the party moving and the terms of the order sought by him.
- Affidavits.* **3.** Every motion shall be supported by affidavit setting the grounds on which the party moving intends to rely; and no affidavit shall be heard at the hearing unless it is duly filed.
- Affidavit to be served with motion.* **4.** Where service of a motion is required by these rules or directed by the Court or Judge, such motion shall be served together with affidavits on which the party moving intends to rely.
- Hearing of Motion.* **5.** A motion may be heard at anytime while the Court is sitting upon such terms as the Court may deem fit.
- Adjournments.* **6.** The hearing of any motion may vary from time to time and may be adjourned upon such terms as the Court may deem fit.
- Motion to be on Notice.* **7.** (1) No motion shall be made without previous notice to the parties affected thereby.
- Except in emergency.* (2) Notwithstanding sub-rule (1) of this rule, the court, if satisfied that to delay the motion till after notice is given to the parties affected would entail irreparable damage or serious mischief to the party moving, may make an order *ex parte* upon such terms as to costs or otherwise and subject to such undertakings, if any, as the justice of the case demands.

11 - EX-PARTE MOTIONS

- Affidavit in support of ex-parte motion.* **8.** A motion *ex-parte* shall be supported by affidavit which, in addition to the requirements of rule 3 of this order, shall state sufficient grounds why delay in granting the order sought would entail irreparable damage or serious mischief to the party moving.
- Arguments on motion.* **9.** Any party moving the court *ex-parte* shall support his motion by argument addressed to the court on the facts put in evidence, and no party to the suit or proceedings although present, other than the party moving shall be entitled to be then heard.

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Order on ex-parte Motion.

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

Party affected may apply for discharge of order.

11. Where an order is made on a motion *ex-parte*, any party affected by it may, within seven days after service of it, or within such further time as the court shall allow, apply to the Court by motion to vary or discharge it; and the Court may, on notice to the party obtaining the order, either refuse to vary or discharge it, or may vary or discharge it with or without imposing terms as to costs or security, or otherwise, as seems just.

Court may vary or discharge order.

12. (1) No order made on a motion *ex-parte* shall last for more than 14 days after the party affected by the order has applied for the order to be varied or discharged or last for another 14 days after application to vary or discharge it has been concluded.

(2) If 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 automatically lapse.

III – ORDER TO SHOW CAUSE

Return-day to be specified.

13. 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 three days after service.

Counter-evidence.

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

Further service.

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

Appearance or proof of service.

16. If 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 orders.

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

IV – NOTICE OF MOTION

Copy of affidavit to be served with Notice.

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

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Notice of motion. **19.** Unless the court gives special leave to the contrary, there shall be at least two clear days between the service of a motion and the day named in the notice for hearing the motion.

Service of notice. **20.** Notice of motion may with leave of the Court, be served by any person, notwithstanding that such person is not an officer of the Court.

Service on Solicitor. **21.** Where a party acts by a Solicitor, service of notice of motion on the Solicitor shall be deemed good service on that party.

Order for service. **22.** If at the hearing of any motion, the court is of opinion that any person, to whom notice has not been given, ought to have or to have had such notice, the court may either dismiss the motion, or adjourn the hearing thereof in order that the notice may be given, upon such terms as the Court may deem fit.

Service with writ of summons. **23.** The plaintiff may, by leave of the Court cause any notice of motion to be served upon any defendant with the writ of summons.

V – EVIDENCE IN INTERLOCUTORY PROCEEDINGS

Oral evidence. **24.** Oral evidence shall not be heard in support of any motion unless by leave of the Court. Where the party moving is illiterate, the Court may direct evidence to be taken by the Registrar, or other fit officer of court, and the minutes of such evidence may be used as an affidavit.

Evidence in addition to or in lieu of affidavits. **25.** In addition to or in lieu of affidavits, the Court may, if it thinks it expedient, examine any witness *viva voce*, or receive documents in evidence, and may summon any person to attend to produce documents before it, or to be examined or cross-examined before it in like manner as at the hearing of a suit.

Notice to parties and interested parties. **26.** Such notice as the court in each case, according to the circumstances, considers reasonable, shall be given to the persons summoned and to such persons (parties to the cause or matter or otherwise interested) as the Court considers are entitled to inspect the documents to be produced or to examine the person summoned, or to be present at an examination, as the case may be.

Evidence how taken. **27.** The evidence of a witness on any such examination shall be taken in like manner as nearly as may be as at the hearing of a suit.

Affidavit not filed with motion. **28.** 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 opposite side.

ORDER 65**PETITION: GENERAL PROVISIONS***Application.*

1. This Order shall apply to petitions by which civil proceedings in the Court are begun, subject in the case of petitions of any particular class, to any special provisions relating to petitions of that class made by or under any Act or Law.

Contents of petition.

2. (1) Every petition shall include a concise statement of the nature of the claim made or relief or remedy required in the proceedings begun thereby.

(2) Every petition shall include at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served, a statement to that effect.

(3) Where a person brings a petition by a legal practitioner, the petition shall be endorsed with that person's address and the legal practitioner's name or firm and business address of his within the jurisdiction and also, if the legal practitioner is the agent of another, the name or firm and business of his principal.

(4) Where a person brings a petition in person, the petition shall be endorsed with:

(a) the address of his place of residence and; if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent;

(b) his occupation; and

(c) an address for service.

Presentation of petition.

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

Fixing time for hearing petition.

4. (1) A day or time for the hearing of a petition which is required to be heard shall be fixed by the Registrar.

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

Certain applications not to be made by petition.

5. No application in any pending cause or matter may be made by petition.

ORDER 66
ALTERNATIVE DISPUTE RESOLUTION (A.D.R)
A – REFERENCE TO ARBITRATION

*Nomination.
of arbitrators
and appointment.*

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

*Court may
appoint
arbitrator.*

2. If the parties cannot agree with respect to the nomination, or if the persons nominated refuse to act, and the parties are desirous that the nomination shall be made by the Court, the Court shall appoint arbitrators.

*Form of
order of
reference.*

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

*Umpire
where
necessary.*

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

*Attendance
of witness.*

5. When a reference to arbitration is made by an order of Court, the same process to the parties and witnesses, whom the arbitrators or umpire may desire to have examined, shall issue as in ordinary suits; and 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 arbitrators or umpire during the investigations of the suit, shall be subject to the disadvantages, penalties, and punishments, by order of the court on the representation of the arbitration of the arbitrators or umpire, as they would incur for the same offences in suits tried before the Court.

*Extension of
time for
making
award.*

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

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

(3) An award shall not be liable to be set aside only by reason of its not having been completed within the period allowed by the Court, unless on proof that the delay in completing the award arose from misconduct of the arbitrators or umpire, unless the award shall have been made after the issue of an order by the Court superceding the arbitration and recalling the suit.

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

7. (1) If, in any case of reference to arbitration by an order of Court, the arbitrator or umpire dies, or refuses or becomes incapable to act, it shall be lawful for the Court, to appoint a new arbitrator or arbitrators or umpire in the place of the person or persons so dying or refusing or becoming incapable to act.

(2) Where the arbitrators are empowered by the terms of the order or reference to appoint an umpire, and do not appoint an umpire, any of the parties may serve the arbitrators with a written notice to appoint an umpire and if within seven 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 case of appointment under this rule, the arbitrators or umpire so appointed shall have the like power to act in the reference as if their names had been inserted in the original order of reference.

Findings.

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.

(2) The award shall comprehend a finding on each of the several matters referred.

Special case for opinion of the Court.

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

Court may modify or correct awards.

10. The court may, on the application of either party, modify or correct an award where it appears that a part of the award is upon matters not referred to the arbitrators, (provided such a 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 contain any obvious error which can be amended without affecting such decision.

Powers as to costs.

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

Power of court to remit for reconsideration.

12. In any of the following cases the court shall have power to remit the award, or any of the matters referred to arbitration, for reconsideration by the arbitrators or umpire, upon such terms as it thinks proper.

Setting aside award.

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

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

*Filing award;
effect of.*

14. If no application is made to set aside the award, or to remit it or any of the matters referred, for reconsideration, or if the Court has referred any such application, either party may file the award in Court, and the award shall thereupon have the same force and effect for all purposes as judgment.

B. Arbitration Proceedings

*Applications
under
Arbitration
Law
Cap. 8 LBOS;
1994.*

15. Every application in this rule to the Court under the Arbitration Law –

- (a) to revoke an arbitration under section 3 thereof;
- (b) to appoint an arbitrator under section 6 thereof;
- (c) to stay proceedings under section 5 thereof;
- (d) to remove an arbitrator or umpire under section 12 (1) thereof;
- (e) to direct an arbitrator or umpire to state the reasons for an award under section 15;
- (f) to ask that a case on trial is the subject of an arbitration agreement be referred to an arbitration under section 6(1) thereof;
- (g) to set aside an award under section 12 (2) thereof;
- (h) for declaration that an award is not binding on a party to the award on the ground that it was made without jurisdiction or because the arbitrator misconducted himself or that the proceedings was arbitrary or that the award has been improperly procured under section 12(2) thereof;
- (i) generally to determine any question arising in the course of or concerning any arbitration agreement or proceedings referred to the Court;
- (j) to subpoena a witness to attend under section 14(1) thereof, shall be made by originating motion.

*Application
to be made
within 21 days.*

16. The application in respect of rule 1 of this Order must be made on notice and within 21 days after the award or the proceedings has been made or commenced.

C – Enforcement of Arbitration Award

*Mode of
enforcing
award.*

17. (1) An application to enforce an award on an arbitration agreement in the same manner as a judgment or order may be made ex-parte, but the court hearing the application may order it to be made on notice.

(2) The supporting affidavit shall-

- (a) exhibit the arbitration agreement and the original award or in either case certified copies of each;
- (b) state the name, as usual or last known place of abode or business of the applicant and the place against whom it is sought to enforce the award;

(c) state as the case may require either that the award has not been complied with or the extent to which it has not been complied at the date of the application.

D – Registration of Foreign Arbitration Award

Foreign arbitration award. Cap.152, LFN, 1990.

18. Where an award is made in proceedings on an arbitration in a foreign territory to which the Foreign Judgment (Reciprocal Enforcement) Act extends, if the award was in pursuance of the law in force in the place where it was made, it shall become enforceable in the same manner as judgment given by a court in that place and the proceedings of the Foreign Judgment (Reciprocal Enforcement) Act shall apply in relation to the award as it applied in relation to a judgment given by that Court.

E – Alternative Dispute Resolution (A.D.R.)

Application and meaning of Terms.

19. (1) The Alternative Dispute Resolution technique and mechanism are hereby established in this Rule which shall be guaranteed and put into effect by the issue of Practice Direction by the Chief Judge.

(2) Alternative Dispute Resolution, includes the means or methods of resolving dispute short of litigation or outside courtroom.

(3) The processes of Alternative Dispute Resolution which vary in form and substance include, Negotiation, Early Neutral Evaluation, Mediation, Conciliation, Arbitration, Med-arb, Expert Determination and Sharia Mediation or Sulhu Mediation.

(4) (a) “Negotiation”, is the continuous process of bargaining by the parties to a dispute. It is the key to all other consensual Alternative Dispute Resolution procedures.

(b) “Early Neutral Evaluation”, is a quick method of obtaining a neutral advisory opinion. The Evaluation is used to assess the likely outcome of a legal action.

(c) “Mediation”, is a voluntary, non-binding, private dispute resolution process in which a neutral person called, the mediator; helps parties to reach a negotiated settlement.

(d) “Conciliation”, denotes facilitative (non-evaluative) mediation.

(e) “Arbitration”, is devised to overcome some of the problems encountered in litigation. It is however made according to the relevant law and the outcome of the decision is binding and not normally subject to appeal.

(f) “Med-Arb”, is a short form for mediation-arbitration which is a process which gives the parties to a dispute the opportunity to use mediation to reach a settlement.

(g) “Expert Determination”, is generally binding and is not subject to appeal. The expert who is usually selected by the parties investigates and reports on the issue without relying on submissions made by the parties.

(h) “Sulhu Mediation”, is an Islamic process of mediation and conciliation based on the existing Sharia Legal System.

ORDER 67
RECEIVERS

- Application for 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 such order.
- (3) Where the applicant wishes 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) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from signing, charging or otherwise dealing with 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.
- Giving of Security by Receiver. Form 31.* **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 judgment or order until he has given security as in Form 31 in Appendix 1 to these Rules.
- (2). Where by virtue of sub-rule (1) of this rule, or any judgment or order appointing a person named therein to be receiver, a person is required in accordance with this rule, he shall give security as in Form 31 in Appendix 1 to these rules, as may be approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.
- (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 five thousand naira, by an undertaking.
- Remuneration of a receiver.* **3.** A person appointed a receiver shall be allowed such proper remuneration, if any, as may be fixed by the Court.
- Receiver's Account. Form 33.* **4.** (1) A receiver shall submit accounts to the court at such intervals or on such dates as the Court may direct in order that they may be passed.
- (2) Unless the court otherwise directs, each account submitted by a receiver shall be accompanied by an affidavit verifying it. The receiver's account affidavit (if any) shall be left at the Registrar's office, and the plaintiff or party having the conduct or matter shall thereupon obtain an appointment for the purpose of passing such account.
- (3) The passing of a receiver's account shall be certified by the Registrar.
- Payment of balance, etc, by receiver.* **5.** The days on which a receiver shall pay into court the amount shown by his account as due from, or such part thereof as the Court may certify as proper to be paid in by him, shall be fixed by the court.
- Default 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 do, he and any or all of the parties to the cause or matter in which he

was appointed may be required to attend in Chambers to show for the failure, and the Court may, either in Chambers or after adjournment into court, give such direction as it thinks proper including if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to sub-rule (1) of this rule, where a receiver fails to attend for the passing of any account of his or fails to submit any account or fails to pay into account 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 ten per centum per annum on that sum while in his possession as a receiver.

ORDER 68
INTERIM ATTACHMENT OF PROPERTY

In what cases.

- 1.** (a) Where the defendant in any suit with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property, or any part thereof, or to remove any such property from the jurisdiction, or
- (b) where, in any suit founded on contract or for detinue or trover in which the cause of action is within the jurisdiction.
- (i) the defendant is absent from jurisdiction, or there is probable cause to believe that he is concealing himself to evade service; and
- (ii) the defendant is beneficially entitled to any property in the State in the custody or under the control of any other person in the State, or such person is indebted to the defendant, then either such case the plaintiff may apply to the Court either at the time of the institution of the suit or at any time thereafter until final judgment to call upon the defendant to furnish sufficient security to fulfil any decree that may be against him in the suit, and on his failing to give such security, or pending the giving of such security, to direct that any property movable or immovable belonging to the defendant shall be attached to the further order of the Court.

Application for attachment.

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

Form of order.

- 3.** (1) If the Court after making such investigation as it may consider necessary, is satisfied that the defendant is about to dispose of or remove the property with intent to obstruct or delay the execution of the decree, it shall be lawful for the court to order the defendant, within a time to be fixed by the court, either furnish security in such manner as the said property, or the value of the same or such portion thereof as may be sufficient to may be specified in the order or to produce and place at the disposal of the court when required, fulfil the decree, or to 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 cause.

- 4.** (1) If the defendant fails to show cause, or to furnish the required security within the time fixed by the court, the court may direct that the property specified in the application if not already attached, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached until further order.

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

Right of third parties not to be affected.

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

Removal of attachment.

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

In what Courts proceedings may be taken.

7. (1) The application may be made to the Court in the Judicial Division where the defendant resides or in case of urgency, where the property proposed to be attached is situated and the Court may make such order as shall seem just.

(2) In case an order for the attachment of property is issued by a different court than that in which the suit is pending, that Court shall, on the request of either of the parties, transmit the application and evidence therein to the Court in which the suit is so pending, retaining the property in the meantime under attachment or taking sufficient for its value and the Court in which the suit is pending shall thereupon require into and proceed with the application in accordance with the foregoing provisions, in such manner as shall seem just.

ORDER 69
GARNISHEE PROCEEDINGS

Attachment of debt due to judgment debtor.

1. (1) Where a person (in this Order referred to as “the judgment creditor”) has obtained a judgment or order for the payment by some other person (in this order referred to as “the judgment debtor”) of a sum amounting in value to at least one hundred naira, not being a judgment 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 judgment debtor the court may subject to the provision of this order and of any enactment order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or as much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

(2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in sub-rule (1); or so much therefore as may be specified in the order, to answer the judgment or order mentioned in that cause and the costs of garnishee proceedings.

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

Application for order.

2. An application for an order under rule 1 of this order shall be made ex-parte supported by an affidavit:

- (a) stating the name and last known address of the judgment debtor;
- (b) identifying the judgment or order to be enforced and stating the amount of the judgment or order and the amount remaining unpaid under it at the time of the application.
- (c) stating that to the best of the information or belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent’s information or the grounds for his belief; and
- (d) stating, where the garnishee is a deposit-taking institution having more than one place of business, the name and address of the branch at which the judgment debtor’s account is believed to be held and the number of that account or, if it be the case, that all 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 thereby for the further consideration of the matter; and
- (b) on the judgment debtor, at least 7 days after the order has been served on the garnishee and at least 7 days before the day appointed for the further consideration of the matter.

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

High Court of Borno State (Civil Procedure) Rules, 2017

*Non appearance
or dispute of
liability by
garnishee.*

4. (1) Where on the further consideration of the matter, the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may make an order absolute under rule 1 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 of
garnishee.*

5. Where on the further consideration of the matter, the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the court may summarily determine the question 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 parties.

*Claims of
third persons.*

6. If in garnishee proceedings it is brought to the notice of the court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge upon it, the court may order that person to attend before the court and state the nature of his claim with particulars thereof.

*Discharge of
garnishee.*

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

ORDER 70
LEGITIMACY PROCEEDINGS

Definition.

1. In this Order "petitioner" means a person applying for a legitimacy declaration, and "petition" has a corresponding meaning.

Practice and rules. Cap. 79. Matters to be stated.

2. The practice and rules of the Court shall so far as practicable govern all proceedings under the Legitimacy Law, subject nevertheless to the particular provisions of this Order.

3. A petition shall be headed " In the matter of the Legitimacy Law", and "In the matter of (the person to be declared legitimated)", and shall be according to the prescribed form, with such variations and additions as the circumstances may require, and shall state among other matters:

Forms 40, to 46.

- (a) the place and date of the marriage concerned;
- (b) the status and residence of each of the parents and the occupation and domicile of the father of the person whose legitimacy the Court is asked to declare
 - (i) at the date of his birth; and
 - (ii) at the date of the marriage;
- (c) whether there are other living issue of the parents of such person as aforesaid and the respective names and dates of the birth of all such issue;
- (d) the person (if any) affected by the legitimation of such person as aforesaid and the value so far as is known of the property (if any) thereby involved;
- (e) whether any and if so what previous proceedings under the Legitimacy Law, or otherwise with reference to the paternity of such person as aforesaid, or the validity of the marriage leading to his legitimation have been taken in any court;
- (f) that there is no collusion.

Petitioner resident outside the State.

4. If the petitioner does not reside in the State, the petition shall state an address within the State at which the petitioner may be served with any summons, notice, order of Court or other process.

Security for costs by petitioner resident outside the State.

5. Where it appears On the presentation of a petition that the petitioner does not reside in the State, the petition shall not be filed until security for costs, by deposit of money or otherwise, has been given to the satisfaction of the Registrar:

Provided that where the petition is filed through a legal practitioner an undertaking by him, in form to be approved by the Registrar, to be responsible for the costs shall be sufficient.

Persons to be respondents.

6. The respondents to a petition shall be the Attorney-General of the State and all persons whose interests may be affected by the legitimacy declaration asked for, and the Court may at any time direct any persons not made respondents to be made respondents and to be served with the petition and affidavit, and may adjourn the hearing of the petition for that purpose on such terms as to costs or otherwise as may be just.

Affidavit of verification. Form 41.

7. The petition shall be accompanied by an affidavit made by the petitioner, or by his next friend (if any) verifying the facts of which he has personal knowledge and deposing as to his belief in the truth of the other facts alleged in the petition, and the affidavit shall be filed with the petition.

High Court of Borno State (Civil Procedure) Rules, 2017

Copies of petition to be filed.

8. (1) There shall be filed with the petition as many copies of the petition and the affidavit as there are respondents to be served and also two copies for the use of the Court.

(2) There shall be lodged with the petition every birth, death or marriage certificate intended to be relied upon at the hearing.

Copies of papers to be sent to Attorney-General.

9.(1) A copy of the petition and a copy of the affidavit shall be delivered or sent by registered post by the petitioner to the Attorney-General at least two months before the petition is presented or filed.

(2) Any document or notice addressed to the Attorney-General shall be addressed to him at Attorney-General's Chambers, Ministry of Justice, Borno State.

Personal service on other respondents.

10.(1) A sealed copy of the petition and affidavit shall, unless the Court otherwise directs, be served by a bailiff or by a Police Constable fifty-six days at least before the hearing on every respondent (other than the Attorney-General) personally and the petition and every copy to be endorsed with a notice in the prescribed form.

(2) At least fifty-six days' notice of the day whereon the petition will first be heard shall be given by the Registrar to the Attorney-General.

Filing of answers.

11.(1) A respondent may within twenty-eight days after service of the petition upon him file an answer to the petition.

(2) Every answer which contains matters other than a simple denial of the facts stated in the petition shall be accompanied by an affidavit made by the respondent verifying such other matter as far as he has personal knowledge thereof, and deposing to his belief in the truth of the rest of such other matter.

(3) There shall be filed with the answer as many copies of the answer and the affidavit (if any) as there are other parties to be served and also two copies for the use of the Court.

(4) The Registrar shall within forty-eight hours of receiving them send by post one sealed copy of the answer and the affidavit (if any) to the petitioner, the Attorney-General, and any other respondents.

Evidence.

12. Evidence on the hearing of the petition shall be given orally:

Provided that the Court or a Judge in Chambers may, on application made before or at the hearing, for good cause shown, direct that any particular fact or facts alleged in the petition or answer may be proved by affidavit.

Costs.

13. The Court may make such orders as to costs as it shall think just.

Copy of order to be applied.

14. A copy of the order made on the hearing of a petition sealed with the seal of the Court shall be supplied by the Registrar to any party to the proceedings on payment of the prescribed fee.

ORDER 71
FILING OF BRIEFS OF ARGUMENT

Application.

1. This Order shall apply to all appeals coming from any Court or tribunal from which an appeal lies to this Court.

Filing of Appellants' briefs.

2. The appellant shall within 30 days of the receipt of the Record of Appeal from the Court below file in the Court a written brief, being a succinct Statement of his argument in appeal.

Forms of brief.

3.(1) The brief, which may be settled by counsel, shall contain an address or addresses for service and shall contain what are, in the appellant's view, the issues arising in the appeal as well as amended or additional grounds of appeal.

(2) Where possible or necessary, the reasons in the brief shall also be supported by particulars of the titles, dates and pages of cases reported in the Law Reports or elsewhere including the summary of the decisions in such cases, which the parties propose to rely upon. Where it is necessary, reference shall also be made to relevant statutory instruments, law books, and other legal journals.

(3) The parties shall assume that briefs will be read and considered in conjunction with the documents admitted in evidence as exhibits during the proceedings in the court below, and, wherever necessary, reference shall also be made to all relevant documents or exhibits on which they propose to rely in argument.

(4) All briefs shall be concluded with a numbered summary of the points to be raised and the reasons upon which the argument is founded.

(5) Except to such extent as may be necessary to the development of the argument, briefs need not set out or summarize judgments of the lower courts, nor set out statutory provisions, or contain an account of the proceedings below or of the facts of the case.

Filing of Respondent's brief.

4.(1) The respondent shall also within 21 days of the service of the brief of the appellant on him file the respondent's brief which shall be duly endorsed with an address or addresses for service.

(2) The Respondent's brief shall answer all material points of substance contained in the appellant's brief and contain all points raised therein which the respondent wishes to concede as well as reasons why the appeal ought to be dismissed. It shall *mutatis mutandis*, also conform with rule 3(1), (2), (3), (4) and (5) of this Order.

Filing reply brief.

5. The appellant may also, if necessary, within fourteen days of the service on him of the respondent's brief but not later than three days before the date set down for the hearing of the appeal, file and serve or cause to be served on the respondent a reply brief which shall deal with all new points arising from the respondent's brief.

Joint and several briefs.

6. All parties, whose interests are identical or joint shall file joint briefs, and separate briefs may be filed only by those parties whose interests are separate or in conflict.

High Court of Borno State (Civil Procedure) Rules, 2017

*Cross-appeal
or respondent's
notice.*

7. A respondent, may without leave, include arguments in respect of a cross-argument, a cross-appeal argument or in respect of a respondent's notice in his brief for the original appeal and the cross-appeal or respondent's notice.

*Number
and service
of documents.*

8. Twenty copies of all briefs in respect of the appeal shall be filed in Court. All such copies shall be duly endorsed for service on the other side which shall also be duly paid for by the party filing the same.

Oral arguments.

9.(1) Oral argument may be allowed at the hearing of appeal to emphasize and clarify the written argument appearing in the briefs already filed in Court.

(2) The appellant shall be entitled to open and conclude the argument. Where there is a cross-appeal or a respondent's notice, the appeal and such cross-appeal or a respondent's notice shall be argued together with the appeal as one case and within the time allotted to one case, and the court may, having regard to the nature of the appeal, inform the parties which one is to open and close the argument.

(3) Unless otherwise directed, fifteen minutes on each side will be allowed for argument.

(4) Save with the leave of the Court, no oral argument will be heard on behalf of any party for whom no brief has been filed, or in respect of the point not covered by the briefs.

(5) When an appeal is called and the parties have been duly served with the notice of hearing, but if any party or any legal practitioner appearing for him does not appear to present oral argument even though briefs have been filed by all the parties concerned in the appeal, the appeal will be treated as having been duly argued.

*Consequences
of failure
of filings
briefs.*

10. Where an appellant fails to file his brief within the time provided for in rule 2 of this Order, or within the time as extended by the Court, the respondent may apply to the court for the appeal to be dismissed for want of prosecution. If the respondent fails to file his brief, he will not be heard in oral argument except by leave of the Court. Where an appellant fails to file a reply brief within the time specified in rule 5, he shall be deemed to have conceded all the new points or issues arising from the respondent's brief.

*Power of
Court to
accelerate
hearing in
exceptional
circumstances.*

11. The Court may, where it considers the circumstances of an appeal to be exceptional, or where the hearing of an appeal ought to be accelerated in the interest of justice, waive compliance with the provisions of this Order in so far as they relate to the preparation and filing of briefs of argument; whether wholly or in part or reduce the time limits specified in this Order, to such extent as the court may deem reasonable in the circumstances of the case; provided that the court may waive the filing of briefs of argument where all the parties or either of the parties do not wish to employ the services of a legal practitioner.

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

ORDER 72

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

APPENDIX 1: FORMS

**FORM 1
General Form of Writ of Summons
(o.6 r3.)**

20.....

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

In the High Court of Borno State

In the.....Judicial Division

Between

A.B.....Claimant

and

C.D.....Defendant

To C.D. of.....in the.....of.....

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

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

.....

Registrar

Memorandum to be subscribed on the writ.

N.B:

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

Forms of Writs of Summons, etc – continued

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

Endorsements to be made on the writ before issue thereof.

The claimant’s claim is for, etc. (b).....
This writ was issued by G.H. of.....whose address for service (c) is
.....agent for.....
of.....Legal Practitioner for the said claimant who resides at (d)
.....(mention
the city, town or district and also the name of the street and number of the house of the claimant’s residence, if
any)

Endorsement to be made on copy of writ forthwith after service.

This writ was served by me at.....on the defendant (here insert
mode of service) on the.....day of.....20.....
endorsed the.....day of.....20.....

.....
(Signed)

.....
(Address)

Note:

- (a) Heading and Title – if the action is for administration the writ must be headed “In the matter of the Estate of.....deceased. “If it is a debenture holder’s action the writ must be headed in the matter of the company, and in a probate action. “In the Estate of A.B., deceased. “A writ of summons claiming administration of a trust or settlement may be instituted: In the matter of the (Trust or settlement)”.
- (b) Endorsement of Claim – If the claimant sues, or defendant is sued, in a representative capacity, the endorsement must state in what capacity the claimant sues or the defendant is sued. See O.7 r.2. If the claim is for a debt or liquidated demand only, the endorsement, even though not special, must strictly comply with the provisions of O.7,r.4, including a claim for four day’s costs.
- (c) Address for Service – see O.7.r.6. The address must be within the jurisdiction.

High Court of Borno State (Civil Procedure) Rules, 2017

Address of Claimant – In the case of a company in liquidation the claimant’s address should run “.....claimants, who are a company in liquidation. The liquidator is (name of liquidator), of (address of liquidator).”

In the case of a foreign corporation within the meaning of part 10 of the Companies and Allied Matters Act the claimants’ address should run thus:

“.....claimants, who are a foreign corporation within the meaning of the Companies and Allied Matters Act. The registered name and address of the person to be served are (here add registered name and address).”

Endorsement of service – See 0.10, r.13.

(f) Probate Actions – In these actions the endorsement of claim must show the nature of the claimant’s interest, under which he claims (0.7.r.3); and the alleged interest of the defendant.

Before the writ is issued the following certificate must be endorsed on it:

The Registrar, High Court of Borno State

In the.....Judicial Division

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

Signature of Registrar

FORM 2

**Writ for Service out of the jurisdiction.
(0.6.,r.4)**

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 on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the.....Judicial Division of the High Court of Borno State in an action at the suit of A.B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Dated this.....day of.....20.....by order of the court

.....
Registrar

Memorandum to be subscribed on the writ.

N.B:

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

The defendant (or defendants) may appear before hereto by entering appearance (or appearances) either personally or by Legal Practitioner at the Registry of the Judicial Division in which the writ is issued.

This writ was served (as in Form No.1).

Endorsement to be made on the writ before the issue thereof:

N.B:

This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction.

Note:

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

The endorsement "N.B" need not be made on a writ against defendants domiciled abroad, but whom it is intended to serve within the jurisdiction. Endorsement: If the claim is for a debt or liquidated demand only; the endorsement, even though not special, must strictly comply with the provisions of 0,7,r.4(1), including a claim for costs.

See also notes to Form No.1, supra.

FORM 3

**General Form of Originating Summons
(0.6,r.8)**

In the High Court of Borno State

In theJudicial Division

(if the question to be determined arises in the administration of an estate or a trust title it: In the matter of the estate or trust).

In the.....Judicial Division

Between

A.B.....Claimant

And

C.D. and E-F.....Defendants

Let.....of.....in
.....within forty-two days after service of this summons on him, inclusive of the day of 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 Practitioner for the above-named.....

FORM 4

**Originating Summons Under
(O.6,r.8(1))**

No.....of 20.....

In the High Court of Borno State

In theJudicial Division

In the matter of A.B. a Legal Practitioner (Re: Taxation of costs, etc) (or as may be). Let A.B. of.....
.....attend the Court, (or Chief Registrar’s Office) HIGH COURT BORNO, on the.....
.....day of.....20.....At 9 o’clock in the forenoon (on the hearing of an
application on the part of(State relief sought). (If for leave to endorse award
under the Arbitration Law, ap. Add, “And that the respondent do pay the costs of this application to be taxed.”

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

This summons was taken out by.....

Note:

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

FORM 5

**Form of Ex-parte Originating Summons
(0.6, r.8(1))**

In the High Court of Borno State

In the.....Judicial Division

Suit No.....

In the matter of A.B an infant (or, as may be). Let all parties concerned attend before the Judge or (Chief Registrar’s Office), High Court, Borno State, at the time specified in the margin hereof, on the hearing of an application on the part of the above named A.B., an infant, by C.D. his next friend, that etc.

This summons was taken out by.....of

.....agents for.....of

.....Legal Practitioner for the applicant.

FORM 6

**Form of Memorandum for Renewed Originating Process
(0.9,r.6(2))
(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 3 months.

(Copy original Originating Process and the endorsements)

FORM 7**Request to Minister of Foreign Affairs to Transmit
Writ to Foreign Government
(0.11,r.3(a))**

The Chief Judge of Borno State presents his compliments to the Minister of Foreign Affairs, and encloses herewith a notice of a writ of summons issued in an action of.....A.B.....versusC.D.....pursuant to order out of the Judicial Division of the High Court of Borno State for transmission to the Minister 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 who proceedings have been taken in the.....Judicial Division of the High Court of Borno State and with the further request that such evidence of the service of the same upon the said defendant may be officially certified to the High Court of Borno State, or declared upon oath, or otherwise, in such manner as is consistent with the usage or practice of the courts of the (name of country) in proving service of legal process.

The Chief Judge further requests that in the event of efforts to effect personal service of the said notice of writ proving ineffectual the Government or Court of the said country be requested to certify the same to the High Court of Borno State.

FORM 8

**Request for Service Abroad (Title as in Form No.4)
(0.11,r.3(b))**

I (or we) hereby request that the writ of summons in this action be transmitted through the proper channels to (name of country) for service (or substituted service) on the defendant (naming him) at (address of defendant) or elsewhere in (name of country). And I (or we) hereby personally undertaken to be responsible for all expenses incurred by the Ministry of Foreign Affairs in respect of the service hereby requested, and on receiving due notification of the amount of such expenses I (or we) undertake to pay the same into the High Court Registry for transmission to the Permanent-Secretary of the Ministry of Foreign Affairs.

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

.....
Signature of Legal Practitioner

FORM 9**Letter Forwarding Request for Substituted Service
(0.11,r.3(d))**

The Chief Judge of Borno State presents his compliments to the Minister of Foreign Affairs and encloses herewith a writ of summons in the case of.....versus.....in which the claimant has obtained an order of the.....Judicial Division of the High Court of Borno State (which is also enclosed) giving leave to make a request that the said writ may be served by substituted service on the defendant.....at.....in the (name of country).

The Chief Judge requests that the said writ and order may be forwarded to the proper authority in (name of country) with the request that the same may be transmitted by post addressed to the defendant at (the last known place of abode or the place of business) of the said defendant, or there delivered in such manner as may be consistent with the usage or practice of the courts (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 theJudicial Division of the High Court of Borno State, or declared upon oath, or otherwise, in such manner as is consistent with the practice of the courts of the (name of country) in proving service of legal process.

FORM 10**Request to Minister of Foreign Affairs to Transmit
Notice of Writ to a Foreign Government
(0.11,r.4(1)(a))**

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

FORM 11

**MEMORANDUM OF APPEARANCE
(0.12,r.1(1))**

IN THE HIGH COURT OF BORNO STATE

In theJudicial Division

Suit No.....

Between

.....Claimant(s)

and

.....Defendant(s)

Please enter an appearance for 1(a).....sued as 1(b)

In this action.

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

Signed.....

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

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

Notes:-

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

Give name by which the defendant is described in the writ if this differs from defendant’s full name, otherwise delete words, “such as.”

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

High Court of Borno State (Civil Procedure) Rules, 2017

- 2. Where the defendant is a firm, the appearance must be entered by the individual partners by name with the description “Partner in the firm of.....”
- 3. Where the defendant is an individual trading in a name other than his own, the appearance must be entered by him in his own name with the addition of the description “Trading as.....”
- 4. Where the defendant is a limited liability company, the appearance must be entered by a Legal Practitioner.
- 5. Where the appearance is being entered by leave of the court, a copy of the order granting leave must accompany this form.
- 6. Where the defendant has no defence or admits the claimant’s claim, the entry of appearance will delay Judgment and may increase the costs payable by the defendant.
- 7. Acknowledgement of service shall be as follows:-

I,acknowledge that on the.....day of.....20.....
 at (time and place) received the following documents:-

.....

I also acknowledge that I am the person referred to in the sealed copy of the originating process.

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

.....
 Signature

FORM 12

**Notice of Counterclaim
(0.21, r.8)**

In the High Court of Borno State

In theJudicial Division

Between

A.B.....Claimant

and

C.D.....Defendants

To the within-named X.Y.

Take notice that if you do not appear to the counter claim of the within-named C.D., within 8 days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

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

FORM 13

**Concession to Defence
(0.21, r.15)**

In the High Court of Borno State

In the.....Judicial Division

Between

A.B.....Claimant

And

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

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

FORM 14

**Notice of Payment into Court
(0.25, r.1(6))**

In the High Court of Borno State

In the.....Judicial Division

Between

A.B.....Claimant

and

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

Take notice that the defendant.....has paid into Court
₦.....and says that (.....part of) that sum is
enough to satisfy the claimant's claim (for and ₦.....the other
part of that sum is enough to satisfy the claimant's claim for.....)

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

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

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

To be filed by the Cashier, High Court.

Received the above sum of.....naira.....kobo
.....into court in this action.

Dated theday of.....20.....

FORM 15

**Acceptance of Sum Paid into Court
(0.26,r.2(1))**

In the High Court of Borno State

In the.....Judicial Division

Between

A.B.....Claimant

And

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

Take notice that the claimant accepts the sum of N.....paid by the defendant (C.D.) into court in satisfaction of 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. Claimant’s Legal Practitioner.

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

FORM 16

**Acceptance of Sum Paid into Court
One of Several Defendants
(0.25,r.4(2))**

In the High Court of Borno State

In the.....Judicial Division

Between

A.B.....Claimant

And

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

Take notice that the claimant accepts the sum of N.....paid by the defendant C.D. into court in satisfaction of the claim against the defendant C.D.

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

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

To

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

FORM 17

**Hearing Notice for Pre-Trial Conference
(0.29,r.1)**

In the High Court of Borno State

In the.....Judicial Division 20.....

Between

A.B.....Claimant

And

C.D.....Defendant

To (insert name of parties).....

Take Notice that you are required to attend the Court No.....at the High Court of Borno State at the.....Judicial Division, on the..... day of.....20.....at 9 o'clock in the forenoon, for a

1. Pre-Trial Conference for the purposes set out hereunder:-

disposal of non-contentious matters which must or can be dealt with on interlocutory application;

(b) giving such directions as to the future course of the action as appear best adopted to secure its just, expeditious and economical disposal;

(c) promoting amicable settlement of the case or adoption of alternative dispute resolution.

2. Please answer the questions in the attached Pre-Trial Information Sheet (Form 18) on a separate sheet and submit 7 clear days before the above mentioned date.

Take Notice that if you do not attend in person or by Legal Practitioner at the time and place mentioned, such proceedings will be taken and such order will be made as the Judge may deem just and expedient.

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

Signed.....
Chief Registrar

FORM 18

Pre-Trial Information Sheet

In the High Court of Borno State

In the.....Judicial Division 20.....

Between

A.B.....Claimant

And

C.D.....Defendant

This Pre-Trial Information Sheet is intended to include reference to all applications which the parties would wish to make at the Pre-Trial Conference. Applications not covered by the standard questions raised in this Pre-Trial Information Sheet should be entered under item 12 below.

All parties shall, not later than 7 days before the first Pre-Trial Conference, file and serve on all parties:

- (a) all applications in respect of matters to be dealt with before trial including but not limited to the matters listed hereunder.
- (b) written answers to the questions contained in this Pre-Trial Information Sheet.

1. Do you require that this action be consolidated with any other action(s)? If so give particulars.
2. Are amendments to any originating or other process required?
3. Are further and better particulars of any pleading required? If so, specify what particulars are required.
4. Do you object to any interogatories that may have been delivered pursuant to Order 30 rule 1 of the High Court (Civil Procedure) Rule? If so, state the grounds of such objection in compliance with Order 30 rule 4 of the Rules.
5. Do you object to producing any document in respect of which a request for discovery has been made pursuant to Order 30 Rule 8(1) of the High Court (Civil Procedure) Rules? If so, state the grounds of such objection in compliance with Order 30 rule 8 (3) of the Rules.
6. If you intend to make any additional admissions, give details.

High Court of Borno State (Civil Procedure) Rules, 2017

- 7. Will interpreters be required for any witness? If so, state in what language.
- 8. Is this a case in which the use of a single or joint expert might be suitable? If not state reasons.
- 9. Is there any way in which the court can assist the parties or resolve their dispute or particular issues in it without the need for a trial or full trial?
- 10. Have you considered some form of Alternative Dispute Resolution (ADR) procedure to resolve or narrow the dispute or particular issues in it? If yes state the steps that have been taken. if not state reasons.
- 11. State any question or questions of law arising in your case, if any, which you require to be stated in the form of a special case for the opinion of the Judge in accordance with Order 32 of the Rules.
- 12. List the applications you wish to make at the Pre-Trial Conference.

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

Signed:.....

(Legal Practitioner for the.....)

For service on:

.....

FORM 19

**Interrogatories
(0.30,r.2)**

In the High Court of Borno State

In the.....Judicial Division

Between

A.B.....Claimant

And

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

Interrogatories on behalf of the above-named (claimant or defendant C.D.) for the examination of the above-named (defendants E.F. and G.H. or claimant).

- 1. Did not etc.
- 2. Has not, etc.

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

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

FORM 20

**Answer to Interrogatories
(0.30,r.6)**

In the High Court of Borno State

In the.....Judicial Division

Between

A.B.....Claimant

And

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

The answer of the above-named defendant E.F., to the interrogatories for his examination by the above-named claimant.

In answer to the said interrogatories, I the above-named E.F. make oath and says as follows:

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

FORM 21

**Affidavit as to Documents
(0.30, r.8)**

In the High Court of Borno State

In the.....Judicial Division

Between

A.B.....Claimant

and

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

I, the above-named defendant C.D., make oath and say as follows:-

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.
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 now are).
5. To the best of my knowledge, information and belief I have not now, and never had in my possession, custody or power, or in the possession, custody or power of my Legal Practitioner or agent, or in the possession, custody or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract 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 Maiduguri this.....day of.....20.....

(ILLITERATE JURAT)

.....
.....

FORM 22

**Form of Order for Accounts and Inquiries
(0.31, r.11)**

In the High Court of Borno State

In the.....Judicial Division

Between

A.B.....Claimant

and

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

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

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

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

- 5.
- 6.
- 7.
- 8.

And it is ordered that the further consideration of this cause be adjourned and any of the parties are to be at liberty to apply as they may be advised.

FORM 23

**Legal Practitioner’s Undertaking as to Expenses
(0.36, r.7(a))**

(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 on the.....and on receiving due notification of the amount of such expenses undertake to pay the same as directed by the Chief Registrar of the High Court.

The following have been appointed as agents for the parties in connection with the execution of the above letter of request:

Claimant’s Agent:.....of.....

Defendant’s Agent:.....of.....

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

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

FORM 24

**Letter of Request to take Evidence Abroad
(Convention Country)
(0.36, r.7(b))**

To the Competent Judicial authority of.....in the
.....of
.....

Whereas a civil (commercial) action is now pending in the.....Judicial
Division of the High Court of Borno State, Nigeria, in which.....is
the claimant and.....is the defendant.

And in the said action the claimant claims.....

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

Now, I the Chief Judge of the High Court of Borno State, Nigeria, have the honour to request, and do
hereby request, that for the reasons aforesaid and the assistance of the said court, you will be pleased to
summon the said witnesses (and such other witnesses as the agents of the said claimant and defendant shall
humbly request you in writing so to summon) to attend at such time and place as you shall appoint before you,
or such other person as according to your procedure is competent to take the examination of witnesses, and
that you will cause such witnesses to be examined (upon the interrogatories which accompany this letter of
request and viva voce) touching the said matters in question in the presence of the agents of the claimant and
defendant or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will permit the agents of both the said claimant and
defendant or such of them as shall be present to be at liberty to examine (upon interrogatories and viva voce
upon the subject matter thereof or arising out of the answers thereto) such witnesses as may, after due notice
in writing, be produced on their behalf, and give liberty to the other party to cross-examine the said witnesses
(upon cross-interrogatories and viva voce upon the subject-matter thereof or arising out of the answers
thereto) such witnesses as may, after due notice in writing, be produced on their behalf, and give liberty to the
other party to cross-examine the said witnesses (upon cross-interrogatories and viva voce) and the party
producing the witness for examination liberty to re-examine him viva voce.

And I further have the honour to request that you will be pleased to cause the answers of the said
witnesses and all additional viva voce questions, whether on examination, cross-examination or re-
examination the evidence of such witnesses to be reduced into writing and all books, letters, papers and
documents produced upon such examination to be duly marked for identification, and that you will be further
pleased to authenticate such examination by the seal of your tribunal, or in such other ways 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 High
Court of Borno State:

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.....

FORM 25

**Order for Appointment of the Nigerian Diplomatic Agent
As Special Examiner (in Convention Country)
(0.36, r.8)**

(Heading as in Form No.I)

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

.....
It is ordered that the Nigerian diplomatic Agent or his deputy at.....
be appointed as Special Examiner for the purpose of making the examination, cross-examination, and re-
examination, viva voce, on oath or affirmation, of.....witnesses on the part of the.....
at.....aforesaid. The examiner shall be at liberty to invite the
attendance of the said witnesses and the production of documents, but shall not exercise any compulsory
powers, otherwise such examination shall be taken in accordance with the Nigerian High Court Procedure.
The.....days notice in writing of the date on which they propose to
send out this order to.....for execution and that.....days after the
service of such notice the Legal Practitioners for the claimants and defendants respectively do exchange the
names of their parents at.....to whom notice relating to the examination of the said
witnesses may be sent. That.....days (exclusive of Sunday) prior to the examination of any
witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such
witness is to be examined to the agent of the other party unless such notice be dispensed with). That the
depositions when taken together with any documents referred to therein or certified copies of documents, or of
extracts therefrom, be transmitted by the examiner, under seal, to the Chief Registrar of the High Court, Borno
State, Nigeria, on or before the.....day of.....next, or such further or
other days as may be ordered, there to be filed in the proper office. That either party be at liberty to read and
give such depositions in evidence on the trial of this action, saving all just exceptions. That the trial of this
action be stayed until the filing of such depositions. That the costs of and incident to this application and such
examination be costs in the action.

Note:

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

FORM 26

**Forms of Praecipe
(0.36, r.20)**

In the High Court of Borno State

In the.....Judicial Division

Between

A.B.....Claimant

and

C.D. and othersDefendants

Seal of Writ of Subpoena.....on behalf of the.....directed
no.....returnable.

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

(Signed).....

(Address).....

Legal Practitioner for the.....

FORM 27

**Subpoena ad Testificandum
(0.36, r.21)**

In the High Court of Borno State

In the.....Judicial Division

Between

.....Claimant

and

.....Defendant

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

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

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

.....
Judge

FORM 28

**Habeas Corpus Ad Testificandum
(0.36, r.21)**

In the High Court of Borno State

In the.....Judicial Division

Suit No.....20.....

Between

.....Claimant

and

.....Defendant

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

You are commanded in the name of the Governor of Borno State to have.....
who it is said is detained in your custody in Prison, at.....before the court.....at
.....on.....the.....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 29

**Subpoena duces Tecum
(0.36, r.21)**

In the High Court of Borno State

In the.....Judicial Division

Suit No.....20.....

Between

.....Claimant

and

.....Defendant

To:.....of.....
You are commanded in the name of the Governor of Borno State to attend before the Court at.....on
.....the.....day of.....20.....at the hours
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 30

**Form of Guarantee for the Acts and Defaults of a Receiver
(0.43, r.10)**

In the High Court of Borno State

In the.....Judicial Division

PARTIES

Suit No.....

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

This guarantee is made on.....day of.....20.....
Between (XYZ) of.....(hereinafter called “the Reciever”) of the first part, the above
named.....the registered office of which is at.....
in.....(hereinafter called “the surety”) of the second part and.....
The Governor of Borno State. By an Order of the High Court of Borno State.....Judicial
Division dated the.....day of.....20.....and made in the
above mentioned action the reciever has been appointed to receive (and manage) (follow words of the order).
And it was ordered that the Receiver should give security to the satisfaction of the Judge on or before the
.....day of.....20.....

And whereas the surety has agreed at the request of the Receiver to issue this guarantee in consideration of the annual premium above mentioned (the first payment of which the surety hereby acknowledges) which guarantee has been accepted by the Judge as a proper security pursuant to the said order in testimony whereof one of the Registrars of the High Court, has signed an allowance in the margin hereof.

Now in this guarantee witnesses as follows:-

1. The Receiver and the Surety hereby jointly and severally covenant with the Governor of Borno State and his successors that the Receiver shall and will from time to time duly account for what he has already received since the date of the said order appointing him and shall hereafter receive or for what since the date of the said order appointing him he has or shall hereafter be or become liable to pay or account for as such Receiver (and manager) as aforesaid including as well every sum of money or other property so received in respect of any extended period for which he may be appointed and shall and will pay or deliver every such sum of property as the court or a Judge thereof may direct.

High Court of Borno State (Civil Procedure) Rules, 2017

2. Provided always that it is hereby mutually agreed as follows:

- (a) If the Receiver shall not for every successive twelve months to be completed from the date of his appointment as such Receiver as aforesaid or within fifteen days after the expiration of such twelve months pay at the office of the Surety the annual premium or sum of N..... then the Surety shall be at liberty to apply by summons in the said action to be relieved from all further liability as such surety under his guarantee save and except in respect of any damage or loss occasioned by any act or default of the receiver in relation to his duties as such Receiver (and manager) prior to the hearing and determination of such summons.
- (b) A statement under the hand of any Registrar of the High Court of Borno State of the amount which the Receiver is liable to pay and has not paid under this guarantee and that the loss or damage has been incurred through the act or default of the Receiver shall be conclusive evidence in any action or information by the Governor of Borno State against the Receiver and Surety or either of them or by the Surety against the Receiver of the truth of the contents of such statement and shall constitute a binding charge not only against the Receiver and his personal representatives but also against the Surety and his funds and property without being necessary for the Governor of Borno State to take any legal or other proceedings against the receiver for the recovery thereof and without any further or other proof being given in that behalf in any action to enforce his guarantee.
- (c) The liability of the surety under this guarantee is limited to the sum of N..... Provided nevertheless that a Registrar of the High Court may by his signature to the endorsement on this guarantee (in the form printed thereon) reduce the said liability of the Surety still further or (but only with the consent of the surety by an instrument in writing duly executed) increase such liability as may be necessary and upon such endorsement this guarantee shall continue in full force but in that case the premium shall be correspondingly reduced or increased.

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

- a) The Receiver will on being discharged from his office on ceasing to act as such receiver (and manager) as aforesaid forthwith give written notice thereof to the Surety by registered post and also within 7 days of such notice furnish to the surety free of charge an office copy of the order if any of the Judge discharging him.
- b) The Receiver and his personal representatives shall and will at all times hereafter indemnify the Surety and its property and funds against all loss, damage, costs and expenses which the Surety or its funds or property may or might otherwise by reason of the Surety having executed this guarantee at his request.

In witness whereof the Receiver has hereunder set his hand and seal and the surety has caused its Common Seal to be affixed the.....day of.....20.....
In the matter of.....Increased Liability.

To be attached by way of endorsement to Guarantee.

High Court of Borno State (Civil Procedure) Rules, 2017

The liability of the Surety under the within written guarantee has with the consent of the receiver and the Surety been increased from N.....to N..... in respect of any acts or omissions to which the within written guarantee relates committed by the Receiver subsequent to the date hereof the total liability of the surety in respect of both the within written guarantee and his endorsement being limited to the increased sum above stated.

Sealed with the seal of the receiver and also the Common Seal of the Surety this.....day of20.....as evidence of such increased liability and the admission thereof by the Receiver and the Surety respectively.

Signed, sealed and delivered by.....

The Receiver in the presence of:.....

The Common Seal of the surety was:..... hereunto affixed in the presence of:.....

FORM 31

**Receiver’s Security by Undertaking
(0.43, r.10)**

In the High Court of Borno State

In the.....Judicial Division

PARTIES

Suit No.....

Re:.....V.....

I,of.....the Receiver (and manager) appointed by order dated..... or proposed to be appointed) in this action hereby undertake with the court to duly account for all moneys and property received by me as such Receiver (or Manager) or for which I may be held liable and to pay the balances from time to time found from me and to deliver any property received by me as such Receiver (or Manager) at such times in such manner in all respects as the court or a Judge shall direct.

And we,hereby jointly and severally (in the use of guarantee or other Company strike out “jointly and severally”) undertake with the Court to be answerable for any default by the said.....as such receiver (or manager) and upon such default to pay to any person or persons or otherwise as the Court or a Judge shall direct any sum or sums not exceeding in the whole (N..... That may from time to time be certified by a Registrar of the High Court to be due from the said receiver and we submit to the jurisdiction of the Court in this action to determine any claim made under this undertaking.

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

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

FORM 32

**Receiver's Account
(0.43, r.13)**

Suit No:.....of 20.....

TO ACCORD WITH THE ORDER

The (.....) account of A.B., the receiver appointed in this cause (or, pursuant to an order made in this cause, dated the accord.....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 accord with the Order.*

REAL ESTATE – RECEIPTS

No of item	Date when received	Tenant's name	Description of premises	Annual Rent	Arrears due at.....	Amount due at.....	Amount received	Arrears remaining due	Observations
		₦	₦	₦	₦	₦		₦	

High Court of Borno State (Civil Procedure) Rules, 2017

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE

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

SUMMARY

₦

₦

Amount of balance due from receiver on account of real estate on last account

Amount of receipts on the above account of real estate

Balance of last account paid into court

Amount of payments and allowances on the above account of real estate

Amount of Receiver's costs of passing this account as to real estate ₦

Balance due from the Receiver on account of real estate

Amount of balance due from receiver on last account of personal estate

Amount of receipts on the above of personal estate ₦

Balance of last account paid into court.. .. .

Amount of payments and allowances on the above of personal estate.. .. .

Amount of receiver's costs of passing this account as to personal estate

Balance due from the receiver on account of personal estate ₦

FORM 33

**Affidavit Verifying Receiver's Account
(0.43, r.14)**

In the High Court of Borno State

In the.....Judicial Division Borno State,
Nigeria

Between :

A.B:.....Claimant

and

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

I,of.....the Receiver
appointed.....in this cause, make oath and say as follows:

1. The document now shown to me marked A is, as it purports to be specified.

2.and.....my Sureties named
in the guarantee (or undertaking) dated.....20.....are both alive and neither of them has
become bankrupt or insolvent.

3. TheCo. Ltd., my surety named in the.....
Guarantee (or undertaking) dated.....20.....is still carrying on business and no
petition or other proceeding for its winding up is pending).

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

FORM 34

**Certificate of the Chief Registrar
(0.46, r.9(1))**

PARTIES

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

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

N.B:

The above numbers are to correspond with the number in the order after each statement: the evidence produced is to be stated as follows:-

The evidence produced on this account (or, inquiry) consists of the following document..... filed on.....day of.....20..... of the affidavit of C.D., filed.....

FORM 35**Order for Payment of Principal Money or
Interest Secured by Mortgage or Charge.****(o.56,r.2)**

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

And it is ordered that upon the defendant paying to the claimant the moneys ordered to be recovered and all other moneys (if any) secured to the claimant by the said mortgage (or charge) the claimant (subject and without prejudice to the due exercise of any power of sale for the time being vested in him) do release to the defendant the security constituted by the said mortgage (or charge).

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

FORM 36

**Order for Possession of Property Forming a Security for
Payment to the Claimant of any Principal
Money or Interest
(O.56, r.2)**

It is ordered that the defendant do give the claimant possession on or before the.....day of20.....of the land hereinafter described and comprised in a mortgage (or charge) dated theday of.....20.....that is to say(description of the property).

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

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

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

FORM 37**Order for Payment of Principal Money or Interest
Secured by Mortgage or Charge and for
Possession of Property Comprised Therein****(O.56, r.2)**

It is ordered that the claimant do recover against the defendant N.....secured by a mortgage (order charge) dated the.....day of20..... (being the total of the principal sum of N.....and N.....for interest thereon at N.....per cent per annum less tax to the.....day of (date or order), and N.....for costs (or his costs of this summons to be taxed).

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

And it is ordered that upon the defendant paying to the claimant the moneys hereby ordered to be recovered and all other moneys (if any) secured to the claimant by the mortgage (or charge) the claimant (subject and without prejudice to the due exercise of any power of sale for the time being vested in him) do re-deliver to the defendant possession of the property subject to the said mortgage (or charge) and release to the defendant the security constituted by the said mortgage (or charge).

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

FORM 38

**Originating Summons for Possession
(O.58, r.2)**

In the High Court of Borno State

In the.....Judicial Division

Suit No.....

Between

A.B. Claimant

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

(if any) whose name is known to the Claimant

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

Let all persons concerned attend before.....at the

High Court of theJudicial Division,

Borno State on.....the.....day
of

.....20.....at.....9 O'clock in the forenoon for

the hearing of an application by AB for an order that he do recover possession of.....on
the ground that he is entitled to possession and that the person(s) in occupation is (are) in occupation without
his license or consent.

This Summons was taken out by.....of.....Legal
Practitioner for the said Claimant whose address is.....
(or This Summons was taken out by.....

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

High Court of Borno State (Civil Procedure) Rules, 2017

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

Note:

Any person occupying the premises who is not named as a defendant by this Summons may apply to the Court personally or by Legal Practitioner to be joined as Defendant. If a person occupying the premises does not attend personally or by Legal Practitioner at the time and place above mentioned, such order will be made as the Court may think just and expedient.

FORM 39

**Order for Possession
(O.58, r.6(1))**

Upon hearing.....and upon reading the affidavit of.....

Filed on the.....day of.....20.....it is ordered that the Claimant AB.DO recover possession of the land described in the Originating Summons as(and the defendant.....do give possession of the said land on.....) (and that the defendant.....do pay the Claimant N..... costs (or costs to be taxed). (The above costs have been taxed and allowed at N.....as appears by a taxing Officer’s certificate dated the.....day of20.....).

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

.....
Judge

FORM 40
(O.70, r.2,3,4,5,6 etc)
LEGITIMATION PETITION

In the High Court of.....State.
In theJudicial Division

IN THE MATTER OF THE LEGITIMACY LAW
And

In the matter of A.B.....
(State name, address and description of the person whose legitimacy the Court is asked to declare).

The petition of the above-named A.B. showed as follows:

1. Your petitioner resides at.....
2. Your petitioner is of the.....sex, and was born on the.....day of
....., 20.....at.....

The birth of your petitioner is recorded by an entry numbered.....and made on the.....
day of.....20.....in the register of births for etc. (or as the case may be).

3. Your petitioner is the natural child of CD. of.....by E.F of
4. At the date of the birth of your petitioner the said E.F. was residing at.....and domiciled
in.....

5. The said C.D. and E.F. were lawfully married to one another on the.....
day of....., 20.....at.....

The said C.D. and E.F. have had issue.....children and no more, namely:
(STATE NAMES AND DATES OF BIRTH OF SUCH ISSUE)

6. At the date of the marriage the said C.D. was a spinster (or widow or as the case may be) and the said
E.F. was a bachelor (or widower or as the case may be) and was residing at..... and was domiciled
at.....

7. The following persons are affected by the legitimating as aforesaid of your petitioner.
(STATE NAMES AND ADDRESS AND DESCRIPTIONS AND RELATIONSHIP).

8. The value of the property involved by the legitimating of your petitioner. So far as is known to your
petitioner, is N.....

9. Your petitioner is not acting in collusion with or with the connivance of any person for the purpose of
obtaining a decree and declaration of legitimacy contrary to the justice of the case.

10. No previous proceedings under the Legitimacy Law (Cap.79), or otherwise with reference to the
paternity of your petitioner or the validity of the marriage of the said C.D. and E.F. have been taken in
any Court (or as may be).

11. Your petitioner undertakes to pay the costs of the respondents to this petition if the Court so directs.
(Where the petitioner is an infant or person of unsound mind this paragraph should be struck out and the
undertaking of the next friend should be lodged with the petition)

Your petitioner therefore prays:

That it may be decreed and declared that the said C.D. and E.F. were lawfully married at.....on the
day of.....20.....and that by such marriage your petitioner became legitimated as from the date of the
said marriage (or as from the date of the commencement of the legitimacy laws) for the purposes of the
Legitimacy Law (Cap.79).

That the costs of the respondents to his petition may be taxed or otherwise ascertained.

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

It is to deliver a copy of this petition to the Attorney General of.....
State and to serve this petition on.....

NOTICE

(to be endorsed on the petition)

TAKE NOTICE that the within petition will be transferred from the General Cause List to the Hearing paper for.....the.....day of....., 20..... at.....O'clock in the forenoon at.....And will come on to be heard on that day if the business of the Court permits or otherwise on some adjournment day of which you will receive no further notice.

If any party desires to postpone the hearing he must apply to the Court as soon as possible for that purpose, and, if the application is based on any matter or facts, he must be prepared to give proof of such fact.

If you desire to make answer to the within petition you must file your answer in the above Court within twenty-eight days after service of the petition upon you. If your answer contains matter other than a simple denial of the stated in the petition, the answer must be accompanied by the affidavit made by you verifying such other matter as you have personal knowledge of, and deposing to your belief in the truth of the rest of such other matter. You must file with your answer as many copies of the answer and the affidavit (if any) as there are other parties to the petition, and also two copies for the use of the Court.

.....
Registrar

FORM 41
(O.70, r.2)
LEGITIMACY LAW AFFIDAVIT
(Heading as in Form 1)

I,of.....the petitioner (or the next friend of the petitioner)
In the above matter, make oath and say as follows:

1. That the statement contained in paragraphs.....of the petition dated theday of.....20.....are true.
 2. That the statement contained in paragraphs.....of my said petition are true to the best of my knowledge, information and belief.
- Sworn, etc.

FORM 42
(O,70, r.3)
LEGITIMACY LAW undertaking by next friend
(undertaking by next friend of infant to be responsible for respondent’s costs)
(Heading as in Form I)

I, the undersigned G.H. of....., being the next friend of A.B. who is an infant and who is desirous for filing a petition in this court under the Legitimacy Law (Cap.79), hereby undertake to be responsible for the costs of the respondents to such petition in the manner following: namely, if the said A.B., fail to pay to the respondents or to any of them when and in such manner as the Court shall order all such costs as the Court shall direct him to pay to the respondents will forthwith pay the same.

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

.....G.H.

FORM 43
(O.70, r.13)
LEGITIMACY LAW UNDERTAKING FOR COSTS

As legal practitioner for the above-named petitioner I hereby undertake to personally be responsible for any costs which the said petitioner may be ordered to pay to the respondents in this matter or any of them.

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

.....
Legal practitioner for the petitioner

FORM 44
(O.70, r.6)

LEGITIMACY LAW NOTICE TO ATTORNEY-GENERAL OF.....BORNO

TAKE NOTICE that the Petition in the above matter will be transferred from the General Cause List to the Hearing Paper for.....the.....day of.....20.....at.....
'O' clock in the forenoon at.....and will come on to be heard on that day if the business of the Court permits or otherwise on some adjournment of which you will receive on further notice.

.....

Registrar

FORM 45
(O.70, r.6)

LEGITIMACY LAW ANSWER TO PETITION

The respondent L.M. by P.Q. his legal practitioner (or in person) in answer to the petition filed in the above matter says:

1. That the petitioner is not the natural child of E.F. as.....Alleged in the petition (or as may be)
2.

where one of this respondent humbly prays that the prayer of the petitioner may be rejected.

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

FORM 46

LEGITIMACY LAW DECREE

Upon reading the petition of A.B. of.....Presented to this Court in the above matter and upon reading the affidavit (s) ofAnd the several exhibits thereto.
and after hearing.....

and the Court being satisfied that the allegations contained in the said petition are true and that a copy of the said petition was duly delivered to the Attorney-General of.....State and that of all proper persons have been served with the said petition.

IT IS DECREED AND DECLARED that C.D. of.....E.F. of.....in the said petition mentioned were lawfully married at.....on the.....day of.....20.....and then by such marriage the said A.B. was legitimated for the purposes of the Legitimacy Law (Cap.79) as from the day of..... 20.....(being the date of the said marriage) (or as from the 17th day of October, 1929) being the dated of commencement of the said Law).

AND IT IS ORDERED that the said A.B. do pay to the respondents the costs of the said respondents to..... the petition respectively as follows.....

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

.....

Registrar

APPENDIX II

PROBATE FORM 1

(O.60, r.35(3))

Surety's Guarantee

In the High Court of.....State

Probate Registry Suit No.....

In the Estate ofdeceased.

Whereasof.....died on

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

and.....(and.....)
(hereinafter called "the Administrators" is/are the intended administrator(s) of his estate.

Now therefore:-

1. I/WE.....of.....
(and.....of.....(and
.....of.....hereby
(jointly and severally) guarantee that I/WE will, when lawfully required to do so, make good any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of the breach by the administrator(s) of his/her/their duty -

- (a) to collect and get in the estate of the deceased and administer it according to law;
- (b) when required to do so by the Court to exhibit on oath in the Court's full inventory of the estate which is situated in the State and when so required, to render an account of the estate; or

- 2. The giving of time to the administrator(s) or any other forbearance or indulgence shall not in any way affect my/our liability under this guarantee.
- 3. The liability under this guarantee shall be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above, but (my) (our) (aggregate) total liability shall not in any event exceed the sum of N.....

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

Signed, sealed and delivered by the above named in the presence of.....
Commissioner for Oath, (or other person authorized by law to administer an oath).
(The Common Seal of.....was hereunto affixed in the presence of.....)

PROBATE FORM 2

**(O.60, r.69(c))
Surety's Guarantee on
Application for Resealing**

In the High Court of.....State

Probate Registry Suit No.....

In the Estate ofdeceased.

Whereasof.....died on

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

granted by the.....

To.....(and.....) and are about to be sealed in the State under the Succession Law;

now therefore –

1. I/WE.....of.....
(and.....of.....(and
.....of.....hereby
(jointly and severally) guarantee that I/WE will, when lawfully required to do so, make good any loss which any person interested in the administration of the estate of the deceased in the State may suffer in consequence of the breach by the administrator(s) of his/her/their duty.

(a) to collect and get in the estate of the deceased which is situated in the State and administer it according to law;

(b) when required to do so by the Court, to exhibit on oath in the Court a full inventory of the estate which is situated in the State and when so required, to render an account of the estate; or

2. The giving of time to the administrator(s) or any other forbearance or indulgence shall not in any way affect my/our liability under this guarantee.

3. The liability under this guarantee shall be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above, but (my) (our) (aggregate) total liability shall not in any event exceed the sum of N.....

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

Signed, sealed and delivered by the above named in the presence of a Commissioner for Oaths, (or other person authorized by law to administer an oath).

(The Common Seal of.....was hereunto affixed in the presence of.....)

PROBATE FORM 3

(O.60, r.71(3))

Notice to Prohibit Grant

IN THE MATTER OF.....**DECEASED LET**
NOTHING be done in the matter of.....late
of.....deceased, who died on the.....day
of.....20.....at.....and had at
the time of his death his fixed place of abode at.....
.....within jurisdiction of this
Court, without warning being given to.....of.....
.....

DATED thisday of.....20.....

.....
Signature

PROBATE FORM 4

(O.60, r.71(4))

Caveat

In the High Court of.....State

Probate Registry Suit No.....

Let no grant be sealed in the Estate.....

Late of.....who died on the.....day of.....20.....
without notice to.....

DATED this.....day of.....20.....
(Signed).....Legal practitioner for the said caveat or whose
address for service is.....

PROBATE FORM 5

(O.60, r.71(8))

Warning to Caveator

In the High Court of.....State

Probate Registry Suit No.....

To:.....of

.....a party who has entered a caveat in the estate of.....deceased.

You are hereby warned within 8 days after service upon you, inclusive of the day of such service:

1. to enter an appearance either in person or by Legal Practitioner at the Probate Registry.....
.....setting forth what interest you have in the estate of the above named.....
.....late of.....deceased, contrary to that of the party
and serve a summons for direction by the registrar of the said registry.
2. If you have no contrary interest but wish to show cause against the sealing of a grant to such party to issue and serve a summons for direction by the registrar of the said registry.

And take notice that in default of your so doing the Court may proceed to issue a grant of probate or administration in the said estate notwithstanding your caveat.

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

.....
Registrar

Issued at the instance of (here set out the name and interest including the date of the will, if any under which the interest arose) the party warning, the name of his Legal Practitioner and the address for service. If the party warning is acting in person, this must be stated.

PROBATE FORM 6

(O.60, r.71(9))

Appearance to Warning/Citation

In the High Court of.....The Probate Registry
Caveat No.....dated the.....day of.....20.....

Full name and address of person warning (or Citor).....
.....

Full name and address of Caveator (or person
cited).....
.....

Date of Will.....

Interest of Caveator.....

Enter an appearance for the above named caveator (or person cited) in this matter.

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

.....
Legal Practitioner or (“in person”)

PROBATE FORM 7

(O.60, r.82(1))

Notice of Election to Redeem Life Interest

In the High Court of.....State

Probate Registry Suit No.....

In the Estate of.....deceased.

Whereasof.....day of
.....20.....wholly/partially intestate leaving
his/her lawful wife/husband and.....lawful issue of
the said.....

and whereas Probate/Letters of Administration of the Estate of the said.....
were granted to me, the said.....(and to.....of.....)

And whereas (the saidhas ceased to be a
personal representative because.....) I am
now the sole personal representative:

Now, I, the said.....hereby
give notice that I elect to redeem the life interest to which I am entitled in the estate of the.....
Late.....by retaining N.....
its capital value, and N.....the cost of transaction.

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

(Signed).....
(To the Probate Registrar)

**APPENDIX III
FEES PAYABLE**

**PART I
COMMENCEMENT OF CASES OR MATTER
OTHER THAN MATRIMONIAL OR LEGITIMACY CASES**

ITEMS	TITLE	FEES
1.	For recovery of a specified sum	₦
	(a) Not exceeding N20,000	500.00
	(b) Exceeding N20,000; but not above N50,000	750.00
	(c) Exceeding N50,000; but not above N100,000	5,000.00
	(d) Exceeding N100,000; but not above N1,000,000	7,000.00
	(e) Exceeding N1,000,000 or part thereof	12,000.00
	(f) Maximum fee	50,000.00
2.	For the recovery of an unspecified sum, the fee payable is the same as the maximum payable per relief	
3.	For set-off or counter-claim, the same as payable under item 1.	
4.	For an account to be taken and payment of the sum found due-	
	(a) Initial fee	500.00
	(b) Second fee (payable before settling down for judgment)- Per N100 or part thereof found due in excess of N200	500.00
	(c) Maximum fee	2,500.00
5.	Originating summons	
	(a) Originating summons	500.00
	(b) Oaths	100.00
	(c) Filing	100.00
	(d) Double sealing	50.00

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	(e) One exhibit each service as per distance	50.00
6.	Motion on Notice-	
	(a) Motion on Notice	250.00
	(b) Oaths	100.00
	(c) Filing	100.00
	(d) Sealing	50.00
	(e) One Exhibit	50.00
	(f) Service as per distance, but not less than N50 per each	10.00
7.	Motion Ex-parte-	
	(a) Motion Ex-parte-	250.00
	(b) Others	100.00
	(c) Filing	100.00
	(d) Sealing	50.00
	(e) One Exhibit	50.00
	(f) Service as per distance, but not less than N200.00 per each.	10.00
8.	For possession of property, as between landlord and tenant-	
	(a) Where the annual rate of value does not exceed N2,000.00	200.00
	(b) Second fee (payable before setting down for judgment):	
	Per N100 or part thereof	150.00
	(c) Maximum fee	20,000.00
9.	For a declaration of title to land and for possession of land other than land between landlord and tenant:-	
	(a) Per N100 or part thereof of the annual rent of value	100.00
	(b) Where no annual rent of value can be specified from N100 to N200	100.00

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	(c) Maximum fee	5,000.00
10.	For possession of property (other than as between landlord and tenant and other land); as under item 1 on the sum claimed in lieu of the property.	
11.	For the administration of the property of a deceased person where, there is no dispute regarding succession or distribution-	
	(a) where the gross value of the property does not exceed N600, but not less than N1000:	100.00
	(b) Where it exceeds N600, but less than N5,000	200.00
	(c) Maximum for where no value is specified	250.00
	(d) where no gross value can be specified	200.00
12.	For the administration of the property of persons of unsound mind – same as in Item II above.	
13.	For the determination of a question relating to the distribution of, or succession to the property of a deceased person, or to a trust whether the person who created the same be dead or alive:	
	(a) Where the gross value of the property of the deceased person or the property under trust does not exceed N300.00	50.00
	(b) Where it exceeds N300.00, plus N100.00 or part thereof	50.00
	(c) Where no gross value can be specified	250.00
	(d) Maximum fee	2,000.00
14.	For any other relief or assistance not specifically provided for:	100.00

NOTES:

- (a) Item 1-Save where the claim is for an account to be taken the sum claimed as debt or damages shall be specified.
- (b) Item 8- The annual rent or value to be specified shall be that which is payable under the lease granted to the tenant sued or the lease last granted to any person before the bringing of the action other than money, whether wholly or in part, its natural or annual value shall be specified.
- (c) Item 9- If no lease was ever granted in writing, no annual rent or value shall be specified.
- (d) Items 12 and 13- If gross value of the property has not been estimated, no value shall be specified.

GENERAL:-

- (i) Claims (other than claims by creditors) affecting trustee, executors, administrators, heirs, legatees, or other beneficiaries as between any of the aforesaid; but if no question is raised regarding the construction of a deed or will, distribution or succession, the Court may order the fee to be refunded.
- (ii) If a flat fee was paid because no annual rent or value or gross value could be stated, the Court may where the value is small or the time taken, short order a portion of the fee to be refunded to that the balance left shall not fall below N10.00.
- (iii) Where two or more claims are joined, the highest fee under any relevant item shall be charged and in addition, three fifths of the fee under any other, provided that N100.00 only be charged on claim of an injunction joined to any other claim.
- (iv) A set-off or counter-claim shall be charged as if an action therefor were taken.
- (v) If before the hearing begins the claims are admitted or settled the court may order one-half of the fee charged under items 8 to 13 to be refunded except where the fee charged is no more than N100.00.
- (vi) Where a case is adjourned through a party's fault such party may be ordered to pay one-half of the fees charged under items 8 to 13 before the case is set down again,
- (vii) Paragraph (vi) shall apply to setting down of a case which was struck out or to the re-opening of a case in which judgment was given by default.

MATRIMONIAL CASES

1.	For any petition (other than alimony)	250.00
2.	For the first citation	200.00
3.	For any subsequent citation	150.00
4.	For a petition for alimony	250.00
5.	For the Registrar's Certificate	100.00
6.	For any application for decree absolute	100.00
7.	For reducing petition on affidavit to writing	100.00
8.	For setting down the cases for hearing	100.00

LEGITIMACY CASE

1.	For petition.....	250.00
2.	For setting down the cases for hearing.....	100.00

PROBATE ADMINISTRATION

1.	On drawing up an administration decree.....	100.00
2.	On drawing up order on further consideration where the property administered exceed N400.....	250.00
3.	On filing an application for probate or administration.....	250.00
4.	On filing Oath of execution or administration.....	100.00
5.	On filing justification of sureties for each surety.....	50.00
6.	On filing administration bond.....	50.00
7.	On entering a caveat.....	200.00
8.	On every warning to a caveat.....	200.00
9.	On probate or letter of or order for administration; where the value of the property affected by the grant or order:	
	a. From N 1 – N 500,000 = No charge	
	b. From N 501,000 – N 2,000,000 = 2%	
	c. Above N 2,000,000 – N 5,000,000 = 3%	
	d. Above N 5,000,000 – N 10,000,000 = 4%	
	e. Above N 10,000,000 – N 30,000,000 = 5%	
	f. Above N 30,000,000 – N 50,000,000 = 6%	
	g. From N 50,000,000 and above = 7.5%	
10.	For resealing grant so as to bring it into force in Borno State: a fee is reclaimed under item II in part I on the value of the property in Borno State affected by the re-sealing.	
11.	On the inventory taken by a Court Officer:-	
(a)	for the first hour or part thereof.....	100.00
(b)	for every subsequent hour or part thereof.....	50.00
12.	On application to search index to grants of wills to inspect a grant or will.....	100.00
13.	On deposit of will for safe custody.....	100.00
14.	On application for writ of habeas corpus.....	250.00
15.	On filing any other applications:-	
(a)	if alone.....	100.00
(b)	if accompanied by any other persons.....	150.00

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16.	On filing an affidavit.....	100.00
17.	On filing a security bond.....	100.00
18.	On filing any other paper.....	100.00
19.	On justification of sureties for each surety.....	100.00
20.	For the issue of a Warrant to detain an absconding defendant or a ship or a writ of habeas corpus.....	100.00
21.	For the drawing up of any order of judgment.....	100.00

MISCELLANEOUS

1.	For a special interpreter of a language not in common use per day or part thereof, as the court may order but not exceeding.....	250.00
2.	For an inquiry by a court officer where so ordered for each sitting.....	100.00
3.	For an account taken by a court officer so ordered per N100.00 or part thereof found to have received.....	100.00
4.	For making down a person's statement where so ordered as court may direct but not exceeding.....	100.00
5.	For searching the archives: for each period of six months or part thereof.....	100.00
6.	For drawing up a bill of costs where so directed per folio of words.....	100.00
7.	For taxing costs where so ordered per N10.00 or part thereof.....	100.00
8.	For preparing a copy where authorized: per folio of 72 words.....	100.00
9.	For every subpoena.....	100.00
10.	On warrant for prisoner to give evidence.....	100.00

PART II**WITNESS ALLOWANCES**

1.	Attendance allowance per diem-	
(a)	Person earning a minimum of N5,000.00 per annum.....	250.00
(b)	Person earning less than N5,000.00 but not less than N2,000.00 per annum-	200.00
(c)	Persons earning less than N2,000.00 but not less N1,000.00 per annum.....	150.00
(d)	Persons earning less than N1,000,000 but not less than N500.00 per annum-	100.00
(e)	Persons earning less than N500.00 per annum.....	50.00
(f)	Married women gainfully employed, at 50 per cent of rate.....	100.00
2.	Transport Allowances:-	
(a)	By private car, N20 per kilometre.	
(b)	By motorcycle, N20 per kilometre.	
(c)	Other traveling expenses, according to the sums actually and reasonably paid.	

NOTES

- (a) No allowances shall be payable to an officer in the public service who is summoned as a witness by the Government or by any department of Government.
- (b) Allowances payable to an officer in the public services shall be paid into revenue

unless otherwise ordered.

- (c) In respect of Appendices II, III, IV and V: fees payable in civil proceedings and allowances payable to witnesses must be assumed to be subject to adjustment from time to time to reflect the changing value of the Naira.

TRANSFER OF CASES

- | | | |
|----|---|--------|
| 1. | On an application to transfer a civil case before the High Court from a Judge to another, or to an area court save where the application is allowed to be made orally at the hearing of the case..... | 100.00 |
| 2. | On an order transferring a civil case before the High Court from one judge, to another, or to an area court, where the order is made in the application of a party..... | 100.00 |
| 3. | On an application to the Chief Judge or a Judge to transfer civil case from one District Court or another to High Court, or from one district court to another within the same district..... | 100.00 |
| 4. | On an order transferring a civil case from one district court to another district court or the High Court from one district court to another within the same district where the order is made on the application of a party..... | 100.00 |
| 5. | On setting down for hearing a civil case transferred from a district court to the High Court where or not transfer was made on the application of a party, the difference between the fee paid for instituting the case in the district court and the fee which would have been charged had the case been instituted in the High Court in the first instance..... | 100.00 |

APPENDIX IV
REGULATIONS REGARDING FEES

- | | | |
|----|--|--|
| 1. | No process, except by special order of Court, shall be issued until:-
(a) all fees payable thereon as provided shall have been paid, and
(b) an account thereof, initialed as received shall have been set forth by the officer issuing the process both in the margin and in the counterfoil thereof. | <i>Fees to be paid before issue of process.</i> |
| 2. | All such fees shall be carried to account immediately the process is issued. | <i>Fees to be carried to account on process being signed.</i> |
| 3. | Every document, for or in respect of which any fee or fees shall have been paid, shall bear an endorsement initialed by the registrar or other officer showing the amount of the fee or fees as paid and the receipt referred to the payment, provided that when any form of process specified the fees thereof, it shall be sufficient for the number of registrar or other officer to initial the amount of such fees appearing thereon, and to quote the number of the receipt. | <i>Documents to be endorsed with amount of fees and number of receipt.</i> |
| 4. | Every registrar or other officer submitting any writ of summons or other process whatever for signature by a Judge shall at the same time produce the stamp of the receipt given for the fees of such process. | <i>Counterfoil receipt to be produced or signature.</i> |
| 5. | No document in respect whereof a fee is payable in any legal proceeding, unless it shall have been initialed as aforesaid by the registrar or other officer or unless the Court shall be at the same time produce the stamp of the receipt given for the fees of such process. | <i>No document to be used unless fees paid.</i> |
| 6. | All fees for service, execution and mileage shall be paid into revenue. | |
| 7. | No hearing fee or other fee shall be returned, except upon a voucher, payable at the Treasury, in favour of the party entitled to receive the same and prepared at the direction of the Judge before whom the cause or matter is set down and comes on for hearing. | |

APPENDIX V
NOTARIES' FEES OF OFFICE

Noting protest on bill or note.....	500.00
Extending protest on bills of exchange or promissory notes.....	400.00
Should the acceptor or drawer of a bill or note reside out of town and the notary have to present the bill or note, a further charge for the first two kilometres of 100.00 and for additional 2 kilometres.....	100.00
furnishing copy of extended protest.....	150.00
Attesting to any document.....	100.00
Declaration thereto for each additional declarant.....	50.00
Attendance each.....	50.00

TRANSLATIONS

For every folio of seventy-two words.....	50.00
Attestation to translation.....	50.00
Transition of common attestation to power for stocks.....	50.00

APPENDIX VI
FEES FOR REGISTRATION OF JUDGMENT

Registration of a certificate of a judgment of a High Court.....	200.00
Registration of a certificate of a judgment of any Court.....	200.00

**HON. JUSTICE KASHIM ZANNAH,
CHIEF JUDGE,
BORNO STATE.**