

**AREA COURT LAW**

***AND***

**AREA COURT**

**CIVIL**

**PROCEDURE**

**RULES**

AREA COURTS

A LAW TO PROVIDE FOR THE CONSTITUTION OF AREA COURTS AND TO MAKE FURTHER PROVISION FOR THE ADMINISTRATION OF JUSTICE

NN6 of 1956  
NCS 2 of 1967  
NCS 8 of 1969  
KDS 14 of 1979  
No 15 of 1975  
KDSL N 5 of 1982

[1 April 1968] Date of commencement.

PART I—PRELIMINARY

This Law may be cited as the Area Courts Law.

Title and commencement.

In this Law, unless the context otherwise requires:—

Interpretation.

“area court” means a court established under or in pursuance of this Law or deemed to have been so established and shall include an upper area court;

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

“Chief Judge” means a Chief Judge of the State;

“Chief Registrar” means Chief Registrar of the High Court

“District Court” means a District Court established under the District Courts Law; Cap. 46

“High Court” means the High Court of Justice established under the High Court Law; Cap. 67. □

“inspector of area courts” or “inspector” means an officer appointed under section 45 to exercise the powers vested in

him under this Law and shall include the Chief Registrar, any senior inspector and any assistant inspector;

"land cause" and "land matter" mean a cause or matter relating to the ownership, occupation or possession of land;

s. of 1975

"legal practitioner" shall have the same meaning as in the Legal Practitioners Act, 1975;

ap. 43.

"magistrate's court" means a magistrate's court established under or in pursuance of the Criminal Procedure Code Law, or deemed to have been established;

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

"Governor" means the Governor of the State;

"mixed cause" and "mixed civil cause" mean a cause in which two or more of the parties are normally subject to different systems of native law and custom;

ip. 91.

"local government" means a local government established or deemed to have been established under the Local Government Law of 1976;

p. 141.

"Islamic personal law" has the same meaning as it has in the Sharia Court of Appeal Law;

"Judicial Service Commission" means the Judicial Service Commission established for the State;

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

p. 141.

"State" means the Kaduna State of Nigeria;

"State matter" means any matter which is within the legislative competence of the Governor.

## PART II—ESTABLISHMENT AND CONSTITUTION OF AREA COURTS

abli-  
sh-  
ment of area  
courts sus-  
tained by  
warrants.

3.—(1) By warrant under his hand, the Chief Judge may establish such area courts as he shall think fit.

(2) Every area court shall exercise the jurisdiction conferred upon it by or under this Law within such area and to such extent as may be specified in its warrant.

(3) The Chief Judge shall assign to each area court established in pursuance of this section such name as he may think fit.

(4) All warrants shall be operative and of effect from the date specified therein.

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

(6) The Chief Judge shall cause the jurisdiction of each area court to be notified from time to time in the Kaduna State Gazette.

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

(a) an area judge sitting alone; or

(b) an area judge sitting with members.

(c) an area judge sitting with one or more members and the upper area court shall consist of three judges any two of whom sitting together shall form a quorum.

Constitution  
and mem-  
bership of  
area court.

KDS 14 of  
1979

(2) All questions of Islamic personal law shall be heard and determined by the area judge or any member learned in Islamic law sitting alone.

(3) Subject to the provisions of sub-section (2) of this section where an area court consists of an area judge sitting with members:—

(a) the area judge shall be the president: Provided that if he is unable through absence to exercise the powers and duties of his office, the members of that court shall, pending the appointment of an acting president, appoint one of themselves to preside during the hearing of any case; and

(b) the president and not less than two members shall be present at the hearing of any case unless otherwise directed by the Chief Justice, and the opinion of the majority shall, in the event of disagreement be deemed and taken to be the decision of the court and the president shall have a casting vote.

(4) All area judges and members shall be public officers in the public service of the State.

Assessors in  
area courts.

5.—(1) An area court may sit with or without assessors.

(2) Assessors for each area court shall be approved by the Chief Judge or by such person as he may appoint for such purpose.

(3) Assessors shall act in an advisory capacity and shall have no vote in the decision of the court.

Discipline of  
members of  
area courts.

6.—(1) Subject to the provisions of any written law, the Judicial Service Commission may dismiss, suspend or exercise disciplinary control over any area judge or other member of an area court:—

(a) who shall appear to have abused his power or to be unworthy or incapable of exercising the same justly; or

(b) for other sufficient reason.

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

Sessions.

7.—(1) Subject to the provisions of any written law, an area court shall hold sessions at such times and places as may be necessary for the convenient and speedy dispatch of the business of the court.

(2) The Chief Judge may direct:—

(a) that sessions shall be held at such times and places as he may think fit;

(b) that, where the court consists of more than one member, the court shall for the more convenient dispatch of business sit in two or more divisions.

Revenue of  
area courts.

8. All revenue of an area court shall be paid to the Government of the State.

Indemnity of  
members of  
area courts.

9. No area judge or member of an area court shall be liable for any act done by him or ordered by him to be done in the discharge of his judicial duty whether or not within the limits of his jurisdiction, provided that he at the time, in good faith, believed himself to have jurisdiction to do or to order to be done the act in question.

## PART III—STAFF AND AREA COURTS

10.—(1) All staff of area courts shall be public officers in the public service of the State. Staff of the court.

(2) A registrar or clerk may be appointed to every area court and such registrar or clerk shall perform such duties in the execution of the powers and authorities of the court as may be assigned to him by rules of court or by any special order of the court and in particular he shall:—

- (a) prepare for issue all warrants and writs;
- (b) record all proceedings of the area court which are not recorded by the area judge or other court member;
- (c) register all orders and judgments of the area court; and
- (d) enter an account of all moneys received or paid by the area court.

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

12.—(1) Such bailiffs or messengers as may be required shall be appointed to every area court. Bailiffs and messengers.

(2) It shall be the duty of any person appointed under the provisions of subsection (1):—

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

(3) An area court may authorise a police officer to perform all or any of the duties mentioned in subsection (2) in so far as they

relate to the criminal jurisdiction of the court and any officer who shall be in possession of any criminal process shall be presumed to be authorised to execute such process unless the contrary be proved.

(4) Subject to the provisions of subsection (3) no person other than a duly appointed bailiff or messenger shall carry out or purport or attempt to carry out any of the duties mentioned in subsection (2).

Indemnity of staff of area courts.

13. No member of the staff of any area court or other person bound to execute lawful warrants or orders issued or made in the exercise of jurisdiction conferred this Law shall be liable to be sued in any court for the execution of any warrant or order which he would be bound to execute if the person issuing the same had been acting in the exercise of lawful authority.

#### PART IV—JURISDICTION OF AREA COURTS

Institution of proceedings in area courts.

14.—(1) Subject to the provisions of this Law and of any other written law, any person may institute and prosecute any cause or matter in an area court.

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

Persons subject to jurisdiction of area courts.

15.—(1) Subject to the provisions of this Law and of any other written law, the following persons shall be subject to the jurisdiction of area courts:—

- (a) any person whose parents were members of any tribe or tribes indigenous to some part of Africa and the descendants of any such person;
- (b) any person one of whose parents was a member of such tribe; and
- (c) any other person in a cause or matter in which he consents to the exercise of the jurisdiction of the area court.

(2) The Governor may by order direct that the powers conferred by this Law shall not be exercised by any area court over any persons or classes of persons designated in such order or that such

powers shall not be exercised without the consent of the persons concerned.

(3) No area court shall exercise, in contravention of any order made under subsection (2), any jurisdiction conferred by this Law.

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

Inquiry by High Court as to whether person is subject to jurisdiction of area courts.

(2) Upon such determination as is mentioned in subsection (1), the High Court shall make such order for the trial of the proceedings in the High Court, in a magistrate's court or District Court or in an area court as in all the circumstances of the case may seem just.

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

17.—(1) There shall be three grades of area court, namely, upper area courts and area courts, grade I and grade II and the jurisdiction and powers of an area court shall not, subject to the provisions of subsection (2), exceed those prescribed in the First Schedule in respect of each such grade.

Grade and jurisdiction of area courts. KDS 14 of 1979

(2) The Chief Judge may by order:-

- (a) vary the grade of any area court; and
- (b) confer on any court of any particular grade such additional powers or jurisdiction as he may think fit.

18. Every area court shall have jurisdiction and power to the extent set forth in the warrant establishing it, and subject to the provisions of this Law and of the Criminal Procedure Code Law,

Criminal and civil jurisdiction.

in all civil and criminal cases in which all the parties are subject to the jurisdiction of such area court.

power to  
as sen-  
nce on cer-  
in offences  
the penal  
de.  
ap. 110.

18A. Notwithstanding anything contained in this Law and in the Criminal Procedure Code Law, an Upper Area Court and Area Courts grade I and II shall have power to try and to award the punishment prescribed for any offence under sections 181, 287, 288, 317 and 319 of the Penal Code.

place of  
trial.  
ap. 43.

19.—(1) The place of trial of all criminal causes shall be determined in accordance with the provisions of the Criminal Procedure Code Law.

(2) All civil causes or matters other than land causes shall be tried and determined by an area court which has jurisdiction over the area:—

- (a) in which the defendant is ordinarily resident; or
- (b) in which the defendant was at the time when the cause of action arose.

(3) Subject to the provisions of any written law, all land causes shall be tried and determined by an area court having jurisdiction over the area in which the land, which is the subject matter of the dispute, is situated and to the extent of the jurisdiction and power of such court.

law to be  
administered  
civil  
causes and  
matters.

20.—(1) Subject to the provisions of this Law, and in particular of section 21, an area court shall in civil causes and matters administer:—

- (a) the customary law prevailing in the area of the jurisdiction of the court or binding between the parties;
- (c) the provisions of any written law which the court may be authorised to enforce by any order made under section 24;
- (c) the provisions of all rules and orders made under the Local Government Law or under any legislation repealed or superseded by that Law, and the provisions of all rules, orders, and by-laws made by a Local Authority under any

ap. 91.

other written law, and in force in the area of the jurisdiction of the court.

(2) Nothing contained in this section shall be deemed to authorise the application by an area court of any customary law or part thereof is so far as it is repugnant to natural justice, equity or good conscience or incompatible either directly or by necessary implication with any written law for the time being in force.

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

21.—(1) In mixed civil causes, other than land causes, the customary law to be applied by an area court shall be:—

Law to be applied by area courts in particular classes of causes.

(a) the particular customary law which the parties agreed or intended, or may be presumed to have agreed or intended, should regulate their obligations in connection with the transactions which are in controversy before the court;

(b) that combination of any two or more customary laws which the parties agreed or intended, or may be presumed to have agreed or intended, should regulate their obligations as aforesaid; or

(c) in the absence of any agreement or intention or presumption thereof:—

(i) the particular customary law; or

(ii) such combination of any two or more customary laws; which it appears to the court, ought, having regard to the nature of the transaction and to all the circumstances of the case, to regulate the obligations of the parties as aforesaid,

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

(2) In land causes or matters the customary law to be applied by an area court shall be the customary law in force in relation to land in the place where the land is situated:

Provided that no customary law prohibiting, restricting or regulating the devolution on death to any particular class of persons of the right to occupy any land shall operate to deprive any person of any beneficial interest in such land (other than the right to occupy the same) or in the proceeds of sale thereof to which he may be entitled under the rules of inheritance of any other customary law.

- Law to be administered in criminal causes.  
Cap. 110.
22. In criminal causes an area court shall administer the provisions of:-
- Cap. 43.
- Cap. 91.
- (a) the Penal Code Law, the Criminal Procedure Code Law and any subsidiary legislation made thereunder;
  - (b) any written law which the court may be authorised to enforce by any order made under section 24;
  - (c) all rules and orders made under the Local Government Law or under any legislation repealed or superseded by that Law, and all rules, orders and by-laws made by a local government under any other written law, and in force in the area of the jurisdiction of the court.

Guardianship of children.

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

(2) Whenever it shall appear to an area court that an order made by such court, should, in the interests of a child, be reviewed, the court may, of its own motion or upon the application of any interested person, vary or discharge such order.

Governor may confer jurisdiction to enforce written laws in State matters.

24. The Governor may by order confer upon all or any area courts jurisdiction to enforce in respect of State matters and within the local limits of the jurisdiction of such courts all or any of the provisions of any written laws specified in such order and to impose penalties on persons subject to the jurisdiction of the court who offend against such provisions, subject to such restrictions and limitations, if any, as may be specified in the order.

25. The Governor may by order confer and impose upon all or any area courts in respect of State matters any of the powers conferred or any of the duties imposed upon any other court or upon any High Court Judge, District Judge or magistrate by any Act or Law specified in such order.

Governor may give area courts powers and duties of other courts.

#### PART V—PRACTICE AND PROCEDURE IN AREA COURTS

§ 26.—(1) Subject to the provisions of this Law and of any other written law and to any rules which may be made under section 65, the provisions of sections 20 and 21 shall apply in the regulation of the practice and procedure of area courts in civil causes and matters.

Practice and procedure generally.

(2) The practice and procedure of area courts in criminal causes shall be regulated in accordance with the provisions of the Criminal Procedure Code Law.

Cap. 43.

27. Where an area court has jurisdiction in or over any cause or matter or over the parties thereto it shall not be necessary:—

Jurisdiction of area court not required to be shown on the record.

- (a) for such court to state on the face of the record of its proceedings in such cause or matter that the court has jurisdiction in or over such cause or matter or over the parties thereto; or
- (b) for the jurisdiction of such court in or over such cause or matter or over the parties thereto to appear on or from the face of the record of its proceedings in such cause or matter.

28.—(1) No legal practitioner may appear to act for or assist any party in any civil proceedings before an area court.

Appearance and representation of parties.

(2) An area court may permit:—

- (a) the husband, wife, brother, sister, son, daughter, guardian, servant, master or any inmate of the household of any party, who shall give satisfactory proof that he or she has authority in that behalf; or
- (b) a relative of a person administering the estate of a deceased person who was subject to the jurisdiction of an area court, to appear for any party before an area court.

(3) Subject to the provisions of subsections (1) and (2) in the case of a prosecution by or on behalf of a local government or in

any proceedings pending before an area court a local government may be represented in court at any stage of the proceedings by any member or officer of the native authority who shall satisfy the court that he is duly authorised in that behalf.

proceedings  
to be in  
open court.

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

(2) Provision may be made by rules of court under section 65 for the exclusion of the public from any area court in cases:—

- (a) in which persons under the age of seventeen years are involved; or
- (b) where the administration of justice would be rendered impracticable by the presence of the public.

#### PART VI—TRANSFERS BY AREA COURTS

power of  
transfer by  
area court.

30. An area court may order the transfer of any cause or matter either before trial or at any stage of the proceedings before judgment is given to any other area court of competent jurisdiction and such other area court may take any course with regard to the cause or matter which it considers that justice requires.

remission  
of case to  
lower grade  
area court.

31. An area court may either of its own motion or upon the application of either party to a cause or matter remit to a lower grade area court of competent jurisdiction which is within the territorial jurisdiction of such other lower grade area court any cause or matter before it which in its opinion can for purposes of convenience or otherwise be more appropriately or expeditiously dealt with by such lower grade area court and upon such order being made the lower grade area court specified therein shall hear and determine the cause or matter.

transfer to  
higher grade  
area court.

32. An upper area court may either of its own motion or upon the application of either party whenever it is satisfied that a cause or matter before an area court of a lower grade within the territorial jurisdiction of such upper area court is from its nature beyond the jurisdiction of such lower grade area court, order that

such hearing be stayed and thereupon such cause or matter shall be discontinued in such lower grade area court accordingly and such upper area court shall either hear or determine the cause or matter or shall order the transfer of such cause or matter to such other lower grade area court within its territorial jurisdiction as the upper area court may think fit and thereupon such lower grade court shall hear and determine the cause or matter.

33. Where any cause or matter is transferred to an area court under the provisions of this Part such court may take any course with regard to the cause or matter which it considers that justice requires subject nevertheless to any directions which may be given by the court by which the order of transfer is made.

Powers of courts to which cases transferred. KDS 2 of 1975

#### PART VII—ANCILLARY POWERS OF AREA COURTS

34. Every person sentenced or committed by an area court to imprisonment shall be detained in a place established as a prison under any written law.

Places of imprisonment.

35. Every area court shall have power to summon before it for the purpose of giving evidence any person within the State.

Power to summon witnesses.

36. Any person present at an area court, whether a party or not to any cause or manner before the court, may be required by the court to give evidence as if he had been summoned to attend and give evidence.

Person present may be required to give evidence.

37. If in any cause or matter an area court considers that the interests of justice require that the evidence of a person not within the area of jurisdiction of the area court should be obtained before any other court or any officer thereof, the area court may make an application to a Judge of the High Court requesting that the evidence of such person may be taken before any other court or officer thereof in the place in which such person is and the Judge, if in his discretion he thinks fit so to do, may make such order in respect of taking of the evidence of such person as he thinks fit.

Evidence of person not within jurisdiction.

38. Any judgment or order given or made by an area court in a civil cause or matter may be enforced by seizure and sale of the property of the person condemned therein, or by such other

Execution of judgments.

methods of enforcing judgments and orders as may be prescribed by rules made under section 65.

Execution of orders of other courts. KDS 14 of 1979

39. Area courts shall carry into execution any decrees or orders of:-

- (a) the Supreme Court;
- (b) the Federal Court of Appeal;
- (c) any High Court;
- (d) any magistrate's court;
- (e) the Sharia Court of Appeal;
- (f) any District Court;
- (g) any area court established under or in pursuance of this Law or deemed to have been so established; and
- (h) any other court of any other part of the Federal Republic of Nigeria,

which may be lawfully directed to them, and shall execute all warrants and serve all process issued by any such courts as aforesaid and directed to such area courts for execution or service, and shall generally give such assistance to any of the aforesaid courts as may be required.

Power to grant interim injunction or impound property.

40. In any cause or matter before an area court in which, pending final determination thereof, it shall be shown to the satisfaction of the area court that any property which is in dispute in the cause or matter is in danger of being wasted, damaged, alienated or otherwise injuriously dealt with by any party to the cause or matter, the area court may issue an injunction to such party commanding him to refrain from doing the particular act complained of, or alternatively, may take and keep such property in custody pending the determination of such cause or matter.

Power to appoint receiver and manager.

41.—(1) An area court may, whenever it shall think it necessary so to do for the preservation, proper custody, or management of any property in dispute in a cause or matter, appoint any person as a receiver or manager to receive and take charge of the property and to deal with it in such manner as shall be directed by such area court.

(2) Any person or persons appointed as receiver or manager under subsection (1) shall be responsible to the area court for all

things done as receiver or manager, and shall account for or pay to the area court all moneys received in respect of any property referred to in subsection (1).

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

42. In any cause or matter it shall be lawful for an area court, <sup>Inspection</sup> on the application of either party or on its own motion:-

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

#### PART VIII—CONTROL OF AREA COURTS

43.—(1) Subject to the provisions of section 27 of the High Court Law, all area courts shall be subject to the general supervision of the Chief Judge.

General supervision of area courts. Cap. 67.

(2) Without prejudice to the generality of subsection (1), if it shall appear to the Chief Judge that:-

- (a) it is necessary for the purpose of securing, as far as possible, a fair and impartial trial; or
- (b) it is expedient in the interests of justice generally,

that a particular cause or matter which is within the jurisdiction of an upper area court should not be tried at first instance by any other area court having jurisdiction to do so, the Chief Judge may order that such cause or matter shall be tried by such upper area court.

(3) The powers of the Chief Judge under this section may be exercised by it either on its own motion or on the application of any party to a cause or matter in an area court.

Appointment and functions of Chief Registrar in relation to Area Courts.

NCS 8 of 1969.

- 44.—(1) A Commissioner for Area Courts shall be appointed.
- (2) The functions of the Chief Registrar for the purpose of this Law shall include:—
- (a) the advising of the Chief Judge in respect of the constitution, jurisdiction and membership of area courts;
  - (b) subject to the general or special directions of the Chief Judge; the organization, guidance and supervision of area courts;
  - (c) the powers of an inspector under this Law; and
  - (d) such other functions as may from time to time be conferred upon him by the Chief Judge.

Appointment of inspectors. KDS 14 of 1979

45. There shall be appointed for the purpose of this Law the following grades of inspectors:—
- (a) inspectors;
  - (b) senior inspectors;
  - (c) principal inspectors; and
  - (d) chief inspectors.

Reports of cases tried.

46. An inspector may require an area court to submit a report to him of any case tried in such court.

Inspector's right of access to area courts. KDS 14 of 1979

47. An inspector shall at all times have access to all area courts within the State and to the records and proceedings of such courts provided that no inspector of a grade less than that of principal inspector shall have access to an upper area court or to the records and proceedings of such court.

Supervisory powers of inspectors.

- 48.—(1) An inspector shall have power at any stage of the proceedings before final judgment, either of his own motion or on the application of any party to a cause or matter before an area court, by order to stay the hearing of any cause or matter on such terms as he may consider just.
- (2) Where an order under subsection (1) has been made, the inspector may in his discretion adopt one or other of the following courses:—

- (a) if the cause or matter appears to be within the jurisdiction of an area court other than that referred to in subsection (1) he

may by the same or another order direct that the cause or matter be inquired into, tried and determined by such area court as shall appear to have jurisdiction over the same;

- (b) he may direct in like manner that such cause or matter shall be inquired into, tried and determined by a magistrate's court or a District Court; or;
- (c) if the cause or matter be one which in his opinion ought for any reason to be transferred from an area court to the High Court, he may report the case to the High Court:

Provided that no cause or matter which has been transferred by the High Court or a magistrate's court or a District Court to an area court may be reported to the High Court or transferred to the same or any other magistrate's court or a District Court under the provisions of this section and further that no inspector of a grade less than that of principal inspector shall have the power to transfer any cause or matter from an area court.

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

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

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

49.—(1) Every order of transfer shall operate as a stay of proceedings before the area court from which the proceedings are ordered to be transferred in any cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and a certified copy of the record shall be transmitted to the court to which the same shall be transferred and

Effect of  
order of  
transfer.

thenceforth all proceedings in the cause or matter shall be taken in such court as if the cause or matter had been commenced therein.

(2) Every report made under paragraph (c) of subsection (2) of section 48 shall operate to suspend the proceedings the subject of such report until the directions of the High Court have been given under subsection (4) of the same section.

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

Review by  
appeal court  
on report of  
inspector.

50.—(1) An inspector, if in his opinion there has been a miscarriage of justice in any case before an area court to which he has access under the provisions of section 47, may of his own motion or in his absolute discretion on the application of any person concerned, report that case to the court to which an appeal in such case would lie.

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

(3) The court to which the case has been reported shall review it, and may:—

- (a) (i) reverse, vary or confirm the decision given;
- (ii) make such order or pass such sentence in such proceedings as the lower court could have made or passed; and
- (iii) make such further order, which may include an order that a person sentenced to imprisonment therein be released on bail, as may be necessary or as the justice of the case may require:

Provided that no sentence of fine or imprisonment or other sentence in a criminal proceeding shall be increased, and no order in a civil proceeding to the prejudice of any party thereto shall be made without an opportunity being given to the convicted person or such party of being heard;

- (b) (i) set aside the conviction and sentence or judgment or other order of the lower court; and
- (ii) when it considers desirable, order the case to be retried either by the same court or any other area court of competent jurisdiction or by any magistrate's court or District Court, or if the case is one that appears proper to be heard by the High Court, report the case to the High Court.

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

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

(6) A person aggrieved by a decision of the High Court in a review under this section may appeal therefrom as if it were a decision in an appeal to the High Court from some other court.

51. Where any proceedings are quashed and an order for rehearing is made under the provisions of this Part no plea of *res judicata* or *autrefois acquit* or *autrefois convict* shall be entertained in respect of such proceedings in any subsequent proceedings.

Special plea in bar not admissible on hearing.

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

Powers of inspector not exercisable where appeal instituted.

#### PART IX—APPEALS

53.—(1) Any party aggrieved by a decision or order of any area court grade I or II may appeal therefrom to the upper area court having jurisdiction in the area in which such area court is situated.

Appeals from grades I and II area courts to upper area courts.  
KDS 14 of 1070

- Appeals from upper area courts. (2) Any party aggrieved by a decision or order of an upper area court may appeal to:—
- (a) the Sharia Court of Appeal in cases involving questions regarding Islamic personal law; and
  - (b) the High Court in all other cases.
- Criminal Appeals for area courts. KDS 14 of 1979  
Definition of aggrieved party. 54. Any party aggrieved by a decision or order from any area court in a criminal case, may appeal to the High Court.
55. For the purposes of sections 53 and 54 a party aggrieved shall include the prosecutor in a criminal cause.
- Restriction on right of appeal. 56. Subject to the provisions of the Constitution, no appeal shall lie from the lower court at the instance of any person at whose request a case has been reported to a court under section 50.
- Appeals out of time. 57. Leave to appeal out of time to any court may be given by such court upon such terms as to such court shall seem just.
- Powers of appellate court in criminal matters. 58.—(1) Any court exercising appellate jurisdiction in criminal matters under the provisions of this Law may, while the appellant is the person who was accused before the court of first instance, in the exercise of that jurisdiction:—
- (a) if such court considers that there is no sufficient ground for interfering with the decision appealed against, confirm the decision and dismiss the appeal;
  - (b) if such court considers that there is sufficient ground for interfering with the decision appealed against, set aside the decision, and either:—
    - (i) acquit the appellant;
    - (ii) order the retrial of the appellant before a court of competent jurisdiction on the same charge or accusation or on any charge or accusation which might have been laid on the facts as disclosed by the evidence; or
    - (iii) after hearing the whole case or not and whether in whole or in part substitute any other decision which the court of first instance could have made but so that, by the decision so substituted, the appellant shall not be found guilty of any offence of which he was not accused

before the court of first instance, unless the appellate court is satisfied that the defence of the appellant before the court of first instance could not have been substantially affected if he had been so accused.

(2) Any court exercising appellate jurisdiction in criminal matters under the provisions of this Law, may, where the appellant is a person other than the person who was accused before the court of first instance, in the exercise of that jurisdiction:—

(a) if such court considers that there is no sufficient ground for interfering with the decision appealed against, confirm that decision and dismiss the appeal;

(b) if such court considers that there is sufficient ground for interfering with the decision appealed against, set aside that decision, and either:—

(i) order the retrial of the respondent before a court of competent jurisdiction on the same charge or accusation which might have been laid on the facts as disclosed by the evidence; or

(ii) after hearing the whole case or not and whether in whole or in part substitute any other decision which the court of first instance could have made but so that, by the decision so substituted, the respondent shall not be found guilty of any offence of which he was not accused before the court of first instance, unless the appellate court is satisfied that the defence of the respondent before the court of first instance would not have been substantially affected if he had been so accused.

59.—(1) Any court exercising appellate jurisdiction in civil matters under the provisions of this Law may in the exercise of that jurisdiction:—

Powers of  
appellate  
courts in  
civil matters.

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

(b) quash any proceedings and thereupon where it is considered

desirable, order such case to be retried before the court of first instance or before any other court of competent jurisdiction.

(2) In the exercise of its powers under this subsection, (1)(a) a court may hear such additional evidence as it considers necessary for the just disposal of the case and the court shall record its reasons for exercising its power under this subsection.

Powers of courts of appeal to inspect records.

60. Where an appeal lies from an order or decision of an area court the court to which the appeal is brought shall have power to inspect the records of books of such area court relative to the appeal.

Substantial justice to be done without undue regard to technicalities.

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

#### PART X—OFFENCES

Adjudication without authority.

62.—(1) Any person who shall exercise or attempt to exercise judicial powers within the area of the jurisdiction of a duly constituted area court, except in accordance with the provisions of any written law or who shall sit as a member of such court without due authority, shall be liable on conviction before the High Court, a magistrate's court of competent jurisdiction, an upper area court or an area court grade I to a fine not exceeding two hundred naira or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

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

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

63.—(1) Any officer of an area court who has a duty to perform under the provisions of subsection (2) of section 12 and who wilfully or by neglect or omission loses the opportunity of performing such duty shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred naira or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Neglect or misconduct of officers in relation to duties under section 12 and unauthorised performance of duties thereunder.

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

(3) Any person (not being a duly appointed bailiff or messenger or a police officer acting under the provisions of subsection (2) of section 12) who shall carry out or purport or attempt to carry out any of the duties specified in subsection (2) of section 12 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred naira or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

64. Subject to the provisions of section 63 any proceedings arising under the provisions of this Part may be brought in the High Court, a magistrate's court or an area court of competent jurisdiction.

Jurisdiction of courts under Part X.

#### PART XI—RULES OF COURT

65.—(1) The Chief Judge may make rules providing for any or all of the following matter:—

Power to make rules.

(a) prescribing and providing for:—

(i) the maximum fees which may be charged:—

(a) in area courts of first instance and of appeal;

(b) for appeals from such area courts and generally;

(ii) the reduction of such maximum fees in respect of all or any area courts or in respect of all or any proceedings;

- (iii) the remission in whole or in part of any maximum or reduced fee and the manner in which the persons or area courts by whom or by which such remission may be made;
- (b) the disposal and application of fines and fees received by area courts;
- (c) the practice and procedure of area courts in their original jurisdiction, on review and on appeal;
- (d) the time within which any act, matter or thing shall be carried out or performed for the purpose of this Law and the time within which notice of appeal shall be given from the decision of any area court;
- (e) the recording and perpetuation of the decisions of area courts in land cases by reference to plans and the fixing of land marks;
- (f) prescribing the fees which may be charged by surveyors for any work done for the purposes of any rules made under paragraph (e);
- (g) providing for:-
  - (i) the carrying into execution of the decrees or orders of area courts or any class of area courts, whether such area courts are established under this Law or under any other written law; and
  - (ii) the execution of the warrants and the service of the process of such courts or class of courts, where such decrees or orders are made or such warrants or process are issued in respect of persons or property not within the area of the jurisdiction of the area court making or issuing the same;
- (h) prescribing the courts or authority by which the decrees, orders, warrants or process mentioned in sub-paragraph (ii) of paragraph (g) shall be carried into execution, executed or served;
- (i) the exclusion of the public from an area court in accordance with the provisions of subsection (2) of section 29;
- (j) the procedure of area courts in relation to applications for the interpretation of the Constitution; and

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(k) generally for the carrying into effect of the provisions of this Law.

(2) Any rules made under this section may apply to all area courts or to any class of area courts or to any particular area court or to such area courts or particular area courts as may be determined under the rules.

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**SCHEDULE**  
**LIMITS OF JURISDICTION OF GRADES OF AREA COURTS**  
**PART I—CRIMINAL CAUSES**

	<i>Area Court Grade I</i>	<i>Area Court Grade II</i>
<i>Upper Area Court</i>		

Limited only by the absence of jurisdiction in homicide cases and for the following offences:

PENAL CODE SECTION	NAME OF OFFENCE	
94 (b)	Administering unlawful Oath.	Imprisonment for three years or a fine of two thousand naira.
97 (1)	Punishment for Criminal Conspiracy.	Imprisonment for three years or a fine of two thousand naira.
115	Public Servant taking gratification in respect of official act.	Imprisonment for eighteen months or a fine of one thousand naira.
116	Taking gratification in order to influence Public Servant.	
125	Public Servant in judicial proceedings acting contrary to law.	
127 (a and b)	Public Servant omitting to arrest or aiding escape.	
158	Giving or fabricating of false evidence in judicial proceeding.	
171 (b)	Resistance or obstruction to lawful arrest of another person.	
248 (2)	Voluntarily causing hurt or grievous hurt by dangerous means.	
249	Causing hurt by means of poison with intent to commit an offence.	
250 (2)	Voluntarily causing hurt to extort property or to constrain an illegal act.	
274	Kidnapping or abducting in order to commit culpable homicide.	
279	Buying or disposing of slave.	
282	Rape.	
284	Unnatural offences.	
294	Extortion by putting a person in fear of death or grievous hurt.	
295	Extortion by threat of accusation of an offence punishable with death.	
301	Bribe and etc.	

	Upper Area Court	Area Court Grade I	Area Court Grade II
	NAME OF OFFENCE		
PENAL CODE SECTION	Robbery or brigandage with attempt to cause death or grievous hurt.		
303	Making preparation to commit brigandage.		
304	Belonging to gang of brigands.		
305	Dishonestly receiving property stolen in the commission of brigandage.		
318	Mischief by fire or explosive with intent to destroy houses.		
337	Mischief to vessel.		
338	Mischief by fire to vessel.		
330	Running vessel aground or ashore with intent to commit theft.		
340	House trespass to commit offence punishable with death.		
350	Joint liability for lurking house trespass or house breaking by night where death or grievous hurt is caused.		
357	Forgery.		
364	Making or possessing counter-feit seal with intent to commit forgery.		
365	Possession of forged record.		
368	Counterfeiting device or mark used for authenticating documents.		
369	Fraudulent cancellation or destruction of documents.		
370	Falsification of accounts.		
371	Incest.		
390			

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

PART II—CIVIL CAUSES

Type of Causes	Upper Area	Area Court	Area
	Court	Grade I	Court Grade II
1. Matrimonial causes and matters between persons married under customary law or arising from or connected with a union contracted by customary law other than those arising from or connected with a Christian marriage as defined in section 1 of the Criminal Code (Chapter 42 of 1958 Laws) . . . . .	Unlimited	Unlimited	Unlimited
2. Suits relating to the custody of children under customary law . . . . .	Unlimited	Unlimited	Unlimited
3. Civil actions in which the debt demand or damages do not exceed the amounts specified in the respective columns hereof . . . . .	Unlimited	₦5,000	₦1,000
4. Causes and matters relating to the succession to property and the administration of estates under customary law where the value of the property does not exceed the amounts specified in the respective columns hereof . . . . .	Unlimited	Unlimited	₦1,000
5. Causes and matters concerning the ownership possession or occupation of land under a customary right of occupancy in which the value of the subject matter does not exceed the amounts specified in the respective columns hereof . . . . .	Unlimited	₦5,000	₦1,000

Where the court is of competent jurisdiction under section 19(3).

THE AREA COURT (CIVIL PROCEDURE) RULES, 1971  
ARRANGEMENT OF RULES

*Order*

1. Citation, application and interpretation.
2. Institution of causes.
3. Service of process.
4. Service and execution out of the jurisdiction of an Area Court.
5. Interlocutory applications.
6. Transfers.
7. Constitution of the court.
8. Power of area courts to exclude members of the public.
9. Non-attendance of parties at hearing of cause.
10. Presentation of case to defendant.
11. Proceedings at the hearing subsequent to presentation.
12. Reference to arbitration.
13. Evidence and witnesses.
14. Orders.
15. Injunctions and their enforcement.
16. Costs.
17. Execution generally.
18. Execution against the person.
19. Execution against property.
20. Garnishee proceedings.
21. Interpleader proceedings.
22. Writ of possession.
23. Alteration of parties.
24. Forms.
25. Fees.
26. Accounts.
27. Records.
28. Revocation.

FIRST SCHEDULE  
FORMS

SECOND SCHEDULE  
FEES

THE AREA COURTS EDICT  
THE AREA COURTS (CIVIL PROCEDURE) RULES, 1971

*Date of Commencement: 1st July, 1971*

In exercise of the powers conferred upon him by section 65 of the Area Courts Edict, 1967, the Chief Justice has made the following rules:—

ORDER 1.—CITATION, APPLICATION AND INTERPRETATION

Title,  
commence-  
ment and  
application.

1. (1) These rules may be cited as the Area Courts (Civil Procedure) Rules, 1971, and shall be deemed to have come into operation on the 1st day of July, 1971.

(2) These rules shall apply to all area courts.

(3) The principles of any native law and custom shall be abrogated or varied to the extent only (if at all) to which any Order or rule may make specific provision in a sense contrary to any particular part of such native law and custom and subject thereto such native law and custom shall remain in full force and effect.

Interpreta-  
tion.

2. In these rules unless the context otherwise requires—

“area court of origin” means an area court from which a cause or matter is transferred;

“area court of transfer” means an area court to which a cause or matter is transferred;

“Chief Registrar” means the Chief Registrar of the High Court;

“clerk” means the registrar, clerk or scribe of an area court;

“court” means an area court established under the Edict or deemed to have been so established;

Cap. 33.

“District Court” means District Court established under the provisions of the District Courts Law;

“Edict” means the Area Courts Edict, 1967;

Cap. 49.

“High Court” means the High Court of Justice established under the High Court Law;

“immediate family” means the—

(i) wife or wives;

(ii) husband;

(iii) parent, which shall include father and mother, grandfather and grandmother, and stepfather and stepmother;

(iv) child which shall include son and daughter, grandson and granddaughter, and stepson and stepdaughter; and

(v) brother and sister, which shall include stepbrother and step-sister;

“immovable property” means land, buildings and everything attached to the earth or permanently fastened to anything which is attached to the earth, including leaseholds and other interests in land, but not including minerals, mineral oils, standing crops and the fruits of trees of economic value;

“inspector” means an officer appointed under section 45 of the Edict to exercise the powers vested in him under the Edict and shall include the Chief Registrar, any senior inspector and any assistant inspector;

“judge” means an area judge appointed under the Edict and shall include a member of the court who for the time being is the president of the court;

“judgment” means a judgment of a court;

“order” means an order of a court;

"prescribed fee" in relation to any particular matter means—

- (a) where the fees chargeable by an area court are specified in writing by the Chief Registrar or by his direction, the fee, if any, so specified as chargeable in respect of such matter; or
- (b) where the fees chargeable by an area court are not so specified in writing, the fee specified in the Second Schedule as chargeable in respect of such matter;

"process" includes any writ, summons, warrant, order, notice, or other document issued by a court;

"proper officer" means the registrar, clerk or scribe of a court or such other officer of a court as the area judge or the president, as the case may be, may appoint, either generally or in a particular case, to discharge a particular duty;

"State" means the North-Central State of Nigeria.

## ORDER 2.—INSTITUTION OF CAUSES

1. No court shall entertain a cause or matter which it considers that it has no jurisdiction or not sufficient powers to try, but shall transfer or obtain the transfer of the cause or matter to a court of appropriate and competent jurisdiction or powers.

Refusal of cases where no jurisdiction.

2. Every civil cause shall be commenced by a complaint made in person or by the authorised representative of the person making the complaint.

Commencement of a cause.

3. On the institution of a cause or matter made under the provisions of these rules before a court, the court shall cause the clerk to enter the substance of such cause or matter in books to be kept for the purpose as prescribed in Order 27.

Entries in case or cause book.

4. A court shall refuse to entertain a cause or matter if the said cause or matter fails to disclose any cause of action, and any refusal under the provisions of this rule together with the grounds therefor shall be entered in the appropriate record:

Refusal of case which discloses no cause of action.

Provided that the refusal to entertain a complaint under this rule shall not by reason only of such refusal preclude the plaintiff from presenting a fresh complaint in respect of the same cause of action.

5. The court may if all the necessary parties are present dispense with the requirements of these rules or the rules contained in Order 3 as to issue and service of process or as to any steps to be taken before the case is ready for trial and proceed forthwith to the trial of the case.

Power of court to dispense with requirements of rules if all parties present.

6. Upon a complaint in any cause or matter being made to a court such court shall ascertain the details thereof, and if the court decides to issue a summons in the first instance such summons shall be directed to the person against whom the complaint is made requiring him to appear at a certain time and place before the court to answer the complaint.

Issue of summons.

7. Any fee paid in respect of the issue of a summons shall be entered thereon by the clerk and a court receipt shall be issued to the complainant.

Fees to be entered on summons.

8. The court may, if it thinks fit and with the consent of the parties hear and determine a complaint notwithstanding that the time within which the defendant was required to appear may not have elapsed.

Complaint may be heard before return date of summons.

9. Every summons issued by a court under these rules shall be in writing, in duplicate, signed by the judge of such court and in the form prescribed by these rules.

Form of summons, Form I.

## ORDER 3.—SERVICE OF PROCESS

- Service of process. 1. Service of process shall be effected by any person authorised under the provisions of section 12 of the Edict.
- Method of service. 2. Save as is hereafter provided service shall be effected by handing the duplicate copy of the document to the person to be served.
- Service on local authority. Cap. 77. 3. Service on a local authority shall be effected in accordance with the provisions of section 117 of the Local Authority Law.
- Service on Government officer or corporation servant. 4. (1) Service on a Government or local authority officer or on a servant of a corporation established by any written law may be effected by sending the duplicate copy of the document by registered post to the senior representative of the Ministry or Department or local authority or corporation in which the said officer serves or the servant is employed and by such representative delivering the document to such officer or servant.  
(2) The written statement of such representative that the document has been so served shall be proof of service.
- Substituted service. Forms 2 and 3. 5. Where it appears to the court either with or without an attempt at service in accordance with the provisions of rule 2 hereof that for any reason such service cannot conveniently be effected the court, after being satisfied by affidavit that it is necessary so to do, may order that service be effected—
- By delivery to agent. (a) by delivery thereof to some person being an agent of the person to be served, or to some other person on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or other person, come to the knowledge of the person to be served;
- By advertisement. (b) by advertisement in the Federal Gazette or in the State Gazette or in some newspaper circulating within the jurisdiction;
- By notice. (c) by notice put up at the court house or some other place of public resort of the district wherein proceedings in respect of which the service is made have been instituted, or at the usual or last known place of abode, or of business, of the person to be served; or
- By affixing summons to premises. (d) by affixing the document to the usual or last known place of abode or business of the person to be served;  
and upon compliance with such order such service shall be deemed to be good and sufficient service of the said document upon the person to be served.
- Time of service. 6. A document may be served on any day between the hours of 6.30 in the morning and 8.30 in the evening.
- Proof of service. 7. Service may be proved by evidence which may be on oath or affirmation or by a certificate of service endorsed on the back of the original document and signed by the person effecting service.
- Proof of service before action proceeds. 8. No court shall take any action which is dependent upon a document being served upon any person unless service is admitted by such person or service upon him has been proved in accordance with these rules.
- Record of service. 9. A book shall be kept at every court for recording service of documents, in such form as may be prescribed, in which shall be entered by the officer serving the document, or by the clerk, the names of the plaintiff and the defendant, the court issuing the document, the method, whether personal or otherwise, of the service, and the manner in which the person serving

ascertained that he served the document on the right person, and where any document shall not have been duly served, then the cause of failure shall be stated.

10. No court shall issue a warrant for the arrest of a defendant:  
 . Provided that a court may issue a warrant where it is satisfied that—
- (1) the defendant has been served with a summons and he does not appear at the time and place appointed in such summons; and
  - (2) the cause or matter cannot be disposed of under native law and custom without the appearance of the defendant.

Arrest of  
defendant  
Form 4.

ORDER 4.—SERVICE AND EXECUTION OUT OF THE  
 JURISDICTION OF AN AREA COURT

1. (1) When it is necessary that—
- (a) a summons shall be served;
  - (b) a warrant shall be executed; or
  - (c) an order shall be enforced,
- outside the limits of the jurisdiction of a particular area court but within the State such court shall forward such summons, warrant or order to the court within whose jurisdiction the summons, warrant or order is to be served, executed or enforced.

Process to be  
forwarded.

(2) Where it is necessary that a summons, warrant or order shall be forwarded to a court outside the State such summons, warrant, or order shall be sent to such court by such authority as the Chief Registrar shall prescribe.

2. (1) When a court in the State receives a summons or warrant forwarded under the provisions of paragraph (1) of rule 1 it shall forthwith endorse thereon an order for its due service or execution and shall arrange therefor without delay.

Service of  
process.

(2) Every witness summons issued under Order 13 shall be forwarded with such a sum as the court shall consider sufficient to cover the cost of the witness's travelling and subsistence expenses.

(3) Every warrant of arrest shall be forwarded with an escort and a sum sufficient to cover the cost of the travelling and subsistence expenses of the escort and person arrested.

3. (1) When a court in the State receives an order forwarded under the provisions of paragraph (1) of rule 1 it shall—

Enforcement  
of orders.

- (a) enter the same as a civil case in the case register;
- (b) on the application of the person entitled to enforce the order enforce it in the same manner as if it had been an order made in a case tried or decided by the court so receiving the order;
- (c) inform the court which issued the order of any moneys or property recovered as a result of its enforcement;
- (d) return to the issuing court the order when satisfied or, if the order is not satisfied, return it after the expiration of twelve months from the date of its issue.

(2) Any court forwarding an order to another court shall note thereon particulars of any payment already made to it in part satisfaction of such order.

4. Any summons, warrant or order forwarded by one court to another under the provisions of these rules shall state fully the address or whereabouts of the persons or property mentioned therein.

Particulars to  
be noted in  
process.

## ORDER 5.—INTERLOCUTORY APPLICATIONS

- Interlocutory applications.** 1. Interlocutory applications may be made by motion at any stage of the proceedings in a cause or matter and by any of the parties thereto.
- Form of motion.** 2. Unless the court shall otherwise order, no motion shall be entertained by the court until the party moving has filed a motion paper or made verbal application to the proper officer. In either case the party seeking the order shall state clearly the terms of the order sought.
- Notice of motion.** 3. Motions shall only be heard after notice of motion has been served on all the parties likely to be affected.
- Oral evidence may be heard.** 4. A court hearing a motion may in its absolute discretion receive oral evidence in support of or in opposition to the motion.
- Orders not to be made if applicant absent.** 5. Where any party has filed a notice of motion and is not present at the subsequent hearing of the motion, the court shall not make an order in favour of such party.
- Adjournment.** 6. The hearing of any motion may from time to time be adjourned upon such terms as the court may think fit.

## ORDER 6.—TRANSFERS

- Procedure on transfer under Part VI of the Edict.** 1. Where an order for the transfer of any cause or matter has been made under Part VI of the Edict the area court making such transfer shall forward or cause to be forwarded a copy of the order to the clerk of the area court of transfer.
- Procedure on transfer by Inspector.** 2. Where an inspector has—  
 (a) stayed any proceedings in a court under the provisions of section 48 of the Edict; and  
 (b) under the provisions of subsection (2) of section 48 of the Edict—  
 (i) made an order transferring the case concerned to any other area court, to a magistrate's court or to a District Court; or  
 (ii) reported the case to the High Court,  
 he shall transmit a copy of his order of transfer or report to the clerk of the area court of origin and to the clerk of the area court of transfer or the registrar of the magistrate's court, District Court or of the High Court as the case may be.
- Duty of area Court on transfer.** 3. It shall be the duty of any area court of transfer to hear and adjudicate afresh upon any cause or matter transferred to it.
- Duty of area court to which cause or matter transferred or returned.** 4. (1) It shall be the duty of an area court to which any cause or matter has been transferred or returned by the High Court in accordance with the provisions of subsection (2) of section 16 of the Edict to hear and adjudicate upon such cause or matter afresh:  
 Provided that such area court shall not entertain any allegation by the person against whom the proceedings have been instituted that he is not subject to the jurisdiction of area courts.  
 (2) Where an area court has heard and adjudicated upon a cause or matter in accordance with paragraph (1) it shall transmit to the appropriate registrar of the High Court a copy of the order made by it upon such adjudication.

## ORDER 7.—CONSTITUTION OF THE COURT

1. The Chief Registrar may approve assessors for each court. Assessors.
2. The court shall sit with assessors in cases involving any native law and custom with which the judge and members, if any, are not fully conversant and may sit with or without assessors in all other cases. When court is to sit with assessors.

## ORDER 8.—POWER OF AREA COURTS TO EXCLUDE MEMBERS OF THE PUBLIC

1. In any cause or matter a court may, where it appears that the administration of justice would be rendered impracticable by the presence of the public, at any stage of the proceedings order that no member of the public shall have access to or be or remain in the court without the express permission of the court. Exclusion of public from court where administration of justice impracticable.
2. Where a court has made an order in accordance with rule 1 such court may order any person failing to comply with such order to be arrested and ejected from the court. Power of arrest and ejection.

## ORDER 9.—NON-ATTENDANCE OF PARTIES AT HEARING OF CAUSE

1. On the day when a cause is called on for hearing or at any adjournment of such hearing if neither party to the cause appears the court shall strike out the cause unless the court sees good reason to the contrary. Any such reason shall be recorded in the Civil Cause Record Book. Non-appearance of both parties.
2. (1) On the day when a cause is called on for hearing or at any adjournment of such hearing if the plaintiff does not appear the court shall strike out the cause unless the court sees good reason to the contrary. Any such reason shall be recorded in the appropriate records. Non-appearance of plaintiff.
- (2) Where a cause has been struck out under paragraph (1) and the defendant has a counterclaim the court may—
  - (a) on proof of service of the process on the plaintiff; or
  - (b) where it considers that the plaintiff had due notice of the hearing, proceed to the hearing and determination of the counterclaim and give judgment for the defendant with or without costs or adjourn the hearing and cause notice to be given to the plaintiff of the date of such adjourned hearing.
- (3) Any sum payable under a judgment or award under paragraph (2) may be recovered by execution on the property of the plaintiff under the provisions of Order 19 and no further step shall be taken in the cause until such execution is completed.
3. (1) When a civil cause is called on for hearing or at any adjournment of such hearing if the plaintiff appears and the defendant does not appear the court may, on due proof of service of the process and upon being satisfied that the time between the date of service and the date of hearing was sufficient for the defendant to have appeared had he wished so to do, proceed to the hearing and determination of the cause on the part of the plaintiff only, and the judgment thereon shall be as valid as if both parties had appeared. Non-appearance of defendant in civil cause.
- (2) When the court has heard and determined any cause in the absence of the defendant under the provisions of paragraph (1) and the defendant has a counterclaim in such cause the counterclaim shall, unless the court sees good reason to the contrary, be struck out and any such reason shall be entered in the appropriate records.

(3) If, when a civil cause is called on for hearing or at any adjournment of such hearing, service of the process on the defendant is not proved to the satisfaction of the court, the court shall fix a new day of hearing and cause the process to be amended accordingly.

4. Any judgment obtained against any party in the absence of such party may on sufficient cause shown be set aside by the court upon such terms as to the court may deem fit.

5. Any cause struck out may, by leave of the court, be replaced on the cause list on such terms as to the court may deem fit.

#### ORDER 10.—PRESENTATION OF CASE TO DEFENDANT

1. At the hearing of any cause or matter before a court where all parties are present the judge or clerk shall read to the defendant the claim or complaint and shall explain to him the meaning and substance thereof to the satisfaction of the court.

2. After the claim or complaint has been read and explained to the defendant in accordance with rule 1 and he has signified that he understands it, the judge or clerk shall then call upon the defendant to reply to the claim or complaint in accordance with the native law and custom applicable thereto, and the defendant's answer shall be entered in the Civil Cause Record Book.

#### ORDER 11.—PROCEEDINGS AT THE HEARING SUBSEQUENT TO PRESENTATION

##### PART I.—MOSLEM CASES

After the provisions of Order 10 have been complied with, then, if the case is one in which Moslem law is to be administered or applied, the court shall continue the hearing in accordance with Moslem practice and procedure.

##### PART II.—NON-MOSLEM CASES

1. After the provisions of Order 10 have been complied with, then, if the case is not one in which Moslem law is to be administered or applied, the court shall continue the hearing in accordance with the following rules of this Part.

2. (1) Upon the application of a party the details of the claim may be amended at any time before judgment if the court is satisfied that no injustice will result.

(2) Such amendment shall be notified to all parties to the cause.

(3) If the facts proved at the hearing differ from the details given in the claim in any minor respect the court may, if it is satisfied that no injustice will result, give judgment and issue its order without amendment of the claim.

3. Where a defendant wishes to plead that—

(a) the court has no jurisdiction (i) over him or (ii) over the cause or matter;

(b) the claim does not disclose any cause of action; or

(c) the subject matter of the claim has already been adjudicated upon, the defendant shall make such plea at any time after he is asked what he has to say in answer to the claim, and his answer shall be written in the Civil Cause Record Book.

4. (1) Where a defendant has made a plea under the provisions of paragraph (a) (i) of rule 3, proceedings shall continue in accordance with the provisions of section 16 of the Edict. Order on a plea to the jurisdiction, etc.
- (2) Where a defendant has made a plea under the provisions of paragraph (a) (ii), (b) or (c) of rule 3 the court shall consider whether such plea has been made out and shall give its decision, which shall then be written in the Civil Cause Book, and thereupon—
- (a) if the court is satisfied that the plea has been made out, the suit shall be dismissed; or
- (b) if the court is not satisfied that the plea has been made out, it shall order that the hearing shall continue.
5. When the defendant admits liability the court shall hear the statements of the parties and thereafter make its order. Admission of liability.
6. When the defendant does not admit liability the plaintiff shall open his case and produce his evidence. Case for plaintiff.
7. At the end of the evidence for the plaintiff the court shall consider whether any case has been made out for the defendant to answer, and if no case has been made out judgment shall be entered for the defendant. No case to answer.
8. (1) If there is a case for the defendant to answer, the court shall call on him to make his defence. Case for defence.
- (2) A defendant shall be entitled—
- (a) to give evidence;
- (b) to call witnesses; and
- (c) to address the court at the conclusion of the evidence for the defence.
9. If anything contained in the preceding rules of this Order shall conflict with the native law and custom applicable to the case under consideration the said native law and custom shall prevail. Native law and custom to prevail.
10. When the cases for both sides have been closed the court shall consider the whole matter and give its decision which shall be put into the form of an order in accordance with Order 14. The order.
11. (1) At any stage of the proceedings the court may of its own motion adjourn the hearing until such time as may be convenient. Adjournment.
- (2) A request by a party to a cause for an adjournment shall not be granted unless there be good reason for granting it.
- (3) If an adjournment is granted under paragraph (2) there shall be payable by the party applying for such adjournment such costs as the court may order.

#### ORDER 12.—REFERENCE TO ARBITRATION

1. A court may, with the consent of the parties to any proceedings, order the proceedings to be referred for arbitration to such person or persons and in such manner and on such terms as it thinks just and reasonable. Order of reference.
2. On consideration of the report or award of the arbitrator the court may—
- (a) confirm any award of the arbitrator and enter it as the judgment of the court; or
- (b) set aside the award and fix a date for the hearing of the case by the court and proceed to the hearing of the case accordingly. Powers of court on consideration of report or award.

## ORDER 13.—EVIDENCE AND WITNESSES

- Witness summons Form 5.** 1. (1) A court may of its own motion or on the application of either party summon any person subject to its jurisdiction to attend the court and to give evidence or to produce any document in his possession.  
(2) A court may order that before the issue of a summons to a witness a deposit of money be made in court to cover the expenses of such witness.
- Default of appearance of witness.** 2. If a witness does not appear in answer to a summons after a reasonable sum has been tendered to him to cover his expenses of attending a court may, upon proof of service of the summons which must be recorded in the record book, order the issue of a warrant to bring such witness before the court at such time and place as is convenient.
- Ordering witnesses out of court.** 3. The court shall order witnesses on both sides to be kept out of court except when they are actually giving evidence:  
Provided that this rule shall not apply to the parties themselves even though they intend to give evidence.
- Evidence before courts.** 4. All evidence given before a court and the method by which such evidence may be given and recorded by a court shall be in accordance with the native law and custom applicable to the cause or matter under consideration.
- Recording of evidence.** 5. The judge or clerk shall write in the appropriate record book the oral evidence given before the court.
- Exhibits.** 6. (1) When a document or thing is exhibited to the court and admitted in evidence, the court shall allot to it a distinctive letter or number and shall record the same in the record book; and the clerk shall mark it with the letter or number allotted and the title and number of the case.  
(2) When a document or thing is produced and tendered in evidence but is rejected by the court, the clerk shall mark it as having been so tendered and with the title and number of the case.  
(3) When there is an appeal, the clerk shall forward to the court of appeal together with the certified copy of the record all documents and things admitted in evidence or tendered in evidence and rejected.  
(4) If there is no appeal within the time allowed, the clerk shall at the end of the time allowed for appealing return each document or thing to the party producing it or shall dispose of it in such other manner as the trial court may order.

## ORDER 14.—ORDERS

- Delivery and recording of order.** 1. The order of a court shall be pronounced by the judge and shall be written in precise terms in the Civil Cause Record Book by the clerk or judge and signed by the judge.
- Compliance with order and instalments.** 2. A court when making an order may fix a time for compliance there-with and in particular may direct that any sum of money ordered to be paid may be paid by instalments.
- Formal order, Form 6.** 3. (1) When a party affected by an order of a court has appeared in the proceedings it shall not be necessary to bring the terms of the order to his notice before proceeding to execution.  
(2) When a party affected by an order of a court has not appeared in the proceedings the terms of such order shall be brought to his notice by the service upon him of a formal written order.

ORDER 15.—INJUNCTIONS AND THEIR ENFORCEMENT

1. Where a court has power to require any person to do or abstain from doing any act or thing, other than the payment of money, or to require any act or thing to be done or left undone, other than the payment of money, and no mode is otherwise than by this rule provided for enforcing such requirement, such court may exercise such power by an Injunction and—

- (a) annex to such injunction such conditions as the court may deem just;
- (b) suspend or rescind such injunction on such an undertaking being given or condition being performed as the court may deem just;
- (c) make such arrangements for carrying such injunction into effect as the court may deem expedient.

2. Any person who for the space of fourteen days makes default in complying with an injunction made under rule 1, other than an order for the payment of money, may upon proof of such default be ordered by the court—

- (a) to pay into court a sum not exceeding one pound for each day during which such default is made; or
- (b) to be imprisoned for an indefinite period until he has remedied his default.

3. Any sum ordered to be paid under the provisions of this Order shall be recoverable summarily as a civil debt.

ORDER 16.—COSTS

1. "Costs" means the expenses necessarily and actually incurred by a party on account of the proceedings in a court, and shall include the expenses of summoning and of the attendance of the parties and witnesses and the fees paid during the proceedings and for enforcing an order of the court.

2. A court may in its discretion order the costs or a part of the costs of any proceedings to be awarded to the successful party to such proceedings.

3. If a court makes an order directing that costs shall be paid by one party to another, the court shall wherever possible assess the amount of costs summarily and shall embody the amount so assessed in the order.

4. Where a summary assessment of costs is not possible under rule 3 the court shall appoint a day and time for the detailed assessment of the costs payable in the cause or matter and shall then, on a consideration of such information as the court shall require, assess such costs accordingly.

ORDER 17.—EXECUTION GENERALLY

1. When a person desires to enforce an order that has been made in his favour by a court he may apply to that court for execution.

2. Execution shall not normally be issued until fourteen days after the day of the date of the order:

Provided that the court may if it shall think fit in any case make a special order for immediate execution.

3. Execution shall not be issued after the lapse of two years from the date of the order:

Provided that the court may if it shall think fit in any case grant leave for execution to be issued after the lapse of two years.

Death of person against whom execution issued.

4. If any person against whom an order has been made dies before execution has been fully had thereon, application may be made to the court for execution to be levied against the legal personal representatives or the estate of the deceased person and the court shall make an order accordingly if there shall be no objection in law thereto.

Execution against joint property.

5. (1) Where an order has been made against two or more persons jointly, execution may be levied upon—

- (a) their joint property; or
- (b) the property of any one or more of them.

(2) The writ of execution shall be joint to accord with the order but levy may be made on the property of any person against whom execution has been ordered and who is named in the writ.

#### ORDER 18.—EXECUTION AGAINST THE PERSON

Execution against the person.

1. A judgment or order of a court for the payment of money in a civil cause or matter may be enforced by the arrest and imprisonment of the judgment debtor, which shall be carried out in accordance with the following rules.

Summons to show cause. Form 7.

2. On the application of a judgment creditor for the enforcement of any order for the payment of money by the imprisonment of the judgment debtor, the court shall issue a summons calling upon the judgment debtor to appear before the court on a day and at an hour specified in the summons to show cause why he should not be committed to prison.

Non-appearance to the summons. Form 8.

3. (1) Where appearance is not made in obedience to the summons the court shall, if the judgment creditor so requires, issue a warrant for the arrest of the judgment debtor.

(2) Every such warrant shall direct that the judgment debtor be brought before the court with all convenient speed, unless the amount which he has been ordered to pay and the fees (if any) for which he is liable, be sooner paid.

Subsistence of judgment debtor between arrest and hearing.

4. No judgment debtor shall be arrested in pursuance of rule 3 unless and until the judgment creditor has paid to the court such sum as, in the opinion of such court, is sufficient for the subsistence of the judgment debtor from the time of his arrest until he can be brought before the court.

Discovery of property and production of books and documents.

5. (1) When a judgment debtor appears before the court in obedience to a summons issued under rule 2 or is brought before the court after being arrested under the provisions of rule 3, he may be examined by or on behalf of the judgment creditor and by the court respecting—

- (a) his ability to pay the money ordered to be paid and for the discovery of property, applicable to such payment, and as to what debts are owing by him, and as to the disposal which he may have made of any property; and
- (b) the circumstances in which he contracted or incurred the debt or liability in respect of which the judgment was given and respecting the means or expectation he then had of paying or discharging the debt or liability,

and he shall be bound to produce all books, papers and documents in his possession or power relating to any such matters.

(2) Whether the judgment debtor appears or not the judgment creditor and all other witnesses whom the court thinks requisite may be examined respecting the said matters.

6. While investigation under rule 5 is pending, the court may in its discretion either order the judgment debtor to be detained in prison, or release him on his furnishing security to the satisfaction of the court for his appearance when required by the court.

Detention or  
release  
during inves-  
tigation.

7. The court may upon any such investigation as aforesaid make an interim order for the protection of the property applicable or available in discharge of the judgment as it shall think expedient.

Interim order  
for protection  
of property.

8. At the conclusion of the investigation the court may make such one or more of the following orders as the case may require—

Orders at  
close of in-  
vestigation.

(a) an order for the committal of the judgment debtor to prison in accordance with the provisions of rule 10:

Provided that the judgment debtor shall not be committed to prison unless and until the judgment creditor has paid to the court such sum as, in the opinion of the court, is sufficient for the subsistence of the judgment debtor during the period that he is imprisoned;

(b) an order for the attachment and sale of the judgment debtor's property;

(c) an order for the payment of money by instalments or otherwise by the judgment debtor;

(d) an order for the discharge of the judgment debtor from prison.

9. Before making an order under rule 8, the court may take into consideration any allegation of the judgment creditor touching any of the following matters, namely—

Matters  
relevant to  
inquiry.

(a) that the judgment debtor has then or has had since the making of the judgment or order sufficient means to pay the money directed to be paid by him or part thereof, and he refuses or neglects, or has refused or neglected, to pay the same;

(b) that with intent to defraud or delay his creditors or any of them the judgment debtor has made any gift, delivery or transfer of any property or has removed property from the jurisdiction of the court which has made the judgment or order;

(c) that the debt or liability in respect of which the judgment or order has been made has been contracted or incurred by the judgment debtor by fraud or breach of trust;

(d) that forbearance of the debt was obtained by the judgment debtor by fraud;

(e) that the debt or liability was wilfully and recklessly contracted by the judgment debtor without his having at the same time a reasonable expectation of being able to discharge it.

10. Subject to the provisions hereinafter contained, the court may at the conclusion of any such investigation as aforesaid but not otherwise commit the judgment debtor to prison for default in payment of any debt or instalment of any debt due from him:

Committal  
of judgment  
debtor.  
Form 9.

Provided that such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the judgment or order the means to pay the sum in respect of which he has made default.

11. No person shall be imprisoned in pursuance of the provisions of this Order for a longer period than—

Limitation  
of terms of  
imprison-  
ment.

(a) one month if the decree be for the payment of a sum of money not exceeding fifteen pounds; or

- (b) two months if the decree be for the payment of a sum of mone exceeding fifteen pounds but not exceeding thirty pounds; or  
 (c) three months if the decree be for the payment of a sum of mone exceeding thirty pounds.

Release of debtor.

12. A judgment debtor shall be released at any time—  
 (a) on the judgment or order being fully satisfied; or  
 (b) at the request of the judgment creditor.

Imprisonment not satisfaction of debt.

13. (1) Imprisonment shall not in any case operate as satisfaction or extinguishment of the debt or deprive the judgment creditor of—

- (a) his right of execution against the property of the judgment debtor, or  
 (b) his right to make a fresh application under rule 2 for the committal of the judgment debtor if he can prove that the judgment debtor has, or has had, since his release from prison the means to pay the judgment debt in whole or in part and has made default.

(2) Where a judgment debtor has been arrested and is detained in custody or where a warrant has been issued for the arrest of a judgment debtor no sale of any of his property shall, except with his written consent, be made until—

- (a) one month has elapsed from the date of his arrest; and  
 (b) at least fifteen days notice has been given to the judgment debtor specifying the property which has been seized and is intended to be sold:

Provided that this rule shall not apply to perishable articles which may be sold at once.

Saving.

14. Nothing contained in this order shall be deemed to derogate from the powers of a court under the provisions of Order 15.

#### ORDER 19.—EXECUTION AGAINST PROPERTY

Execution against property.

1. A judgment or order of a court for the payment of money in a civil cause or matter may be enforced by the attachment and sale of the property of the judgment debtor, which shall be carried out in accordance with the following rules.

Attachment of movable property. Form 9.

2. On the application of a judgment creditor for the enforcement of any judgment or order for the payment of money by the attachment and sale of the property of the judgment debtor the court shall issue a writ for the attachment and sale of the movable property of the judgment debtor. Such writ shall be addressed to the bailiffs and messengers of the court.

Attachment of movable property.

3. Upon receipt of the writ the bailiff or messenger executing the same may seize movable property in the actual possession of the judgment debtor including any money, banknotes, bills of exchange, promissory notes, bonds or securities for money belonging to that person, and upon such seizure the bailiff or messenger shall be responsible for the safe custody of such movable property but shall transfer the same as soon as possible to the custody of the court:

Provided that the clothing, bedding and household utensils of the judgment debtor or his dependants and the tools and implements of his trade to the value of ten pounds shall not be seized.

Sale of attached movable property.

4. When attachment has been completed the bailiff or messenger executing the writ shall report the same to the clerk, and the clerk shall thereupon arrange for the sale of the attached property by auction in such manner and under such conditions as the court may direct:

Provided that no goods seized in execution under process of a court shall be sold for the purpose of satisfying the writ until the expiration of a period of at least five days next following the day on which the goods have been seized unless—

- (a) the goods are of a perishable nature; or
- (b) the person whose goods have been seized so requests in writing or orally before the court in the presence of not less than two witnesses:

Provided further that the court may, if it thinks fit, direct that the sale shall be postponed for any period not exceeding twenty-eight days after the attachment.

5. When movable property which has been attached by seizure has been sold such property shall be delivered to the purchaser. Delivery of movable property.

6. The person authorised by the court to conduct the sale shall pay the proceeds thereof to the clerk, who shall, after deducting the expenses of the sale, pay to the judgment creditor the amount owing under the terms of the judgment or order and any costs of execution. Any balance shall be paid to the judgment debtor. Proceeds of sale.

7. Where the proceeds of the sale of movable property attached in execution of a writ issued in accordance with rule 2 are insufficient to satisfy the judgment or order the court may, on the further application of the judgment creditor issue a writ for the attachment and sale of the immovable property of the debtor. Such writ shall be addressed to the bailiffs and messengers of the court. Attachment of immovable property. Form 11.

8. (1) Upon receipt of the writ the bailiff or messenger executing the same may attach lands, buildings or other immovable property belonging to the judgment debtor by serving the judgment debtor with a written order of the court forbidding the judgment debtor to alienate and any other person to accept the property in any way. Method of attachment of immovable property. Form 12.

(2) Copies of the written order shall be posted up on all items of the immovable property which have been attached.

9. When the attachment has been completed the bailiff or messenger executing the writ shall report the same to the clerk, who shall thereupon arrange for the sale of the attached property by auction in such manner and under such conditions as the court may direct. Sale of attached immovable property.

10. At any time within twenty-one days from the date of sale of any immovable property application may be made to the court for an order to set aside the sale on the ground of material irregularity in the conduct of the sale, but no such order shall be made unless the applicant shall prove to the court that he has suffered substantial damage or injury by reason of such irregularity. Setting aside sale for irregularity.

11. If a sale of immovable property is set aside, the purchaser shall be entitled to receive back any money deposited or paid by him on account of such sale, such money to be paid by such parties and in such manner as the court may direct. Effect of setting aside.

12. (1) If no application to set aside the sale is made within twenty-one days from the date of sale, the sale shall be absolute. Absolute sale.

(2) If an application to set aside is made and is not allowed by the court, the court shall (unless there be pending other applications to set aside the same sale) make an order confirming the sale, and such an order shall make the sale absolute.

Certificate of purchase. Form 13.

13. After a sale of immovable property has become absolute the court shall grant a certificate to the purchaser to the effect that he has purchased the right, title and interest of the judgment debtor in the property sold, and such certificate shall be valid transfer of such right, title and interest.

Cap. 59.

Provided that any consent to the alienation of the right of occupancy required by the Land Tenure Law shall have been had and obtained before the certificate is issued.

Proceeds of sale of immovable property. Costs of execution.

14. The proceeds of the sale of immovable property shall be disposed of in the manner provided for in rule 6.

15. The party enforcing a judgment or order may levy the costs of execution over and above the judgment debt and costs mentioned in such judgment or order unless the court shall otherwise order in cases where costs have been needlessly incurred.

#### ORDER 20.—GARNISHEE PROCEEDINGS

Debts may be garnisheed.

1. Where a judgment or order of a court for the recovery of payment of money has been made and is unsatisfied or partially satisfied, the court may, upon the application of the judgment creditor order that debts owing to the judgment debtor from any third person, hereinafter called the garnishee, shall be attached to satisfy the judgment or order.

Procedure on application for a garnishee order.

2. On the application of a judgment creditor for a garnishee order the court may, either before or after any oral examination of the judgment debtor, require such judgment creditor to make a declaration, which may be on oath in the discretion of the court, that the judgment or order is still unsatisfied and to what amount and that the garnishee is indebted to the judgment debtor.

Service of garnishee order. Form 14.

3. (1) Where the court is satisfied that the garnishee is indebted to the judgment debtor the court may order that the debts so owing to the judgment debtor shall be attached to satisfy the judgment or order, together with the costs of the garnishee proceedings, and may order by the same or any subsequent order that the garnishee shall appear before the court on a day and at a time stated in the order to show cause why he should not pay to the judgment creditor the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the judgment or order together with costs as aforesaid.

(2) Such order shall be served on the garnishee and the judgment debtor at least fourteen days before the day of hearing.

Order for attachment to bind debt.

4. Service on the garnishee in such manner as the court may direct of an order or of a notice thereof that a debt due or accruing to the judgment debtor shall be attached shall bind such debt in the hands of the garnishee.

Payment into court by garnishee.

5. The garnishee may before the day and time prescribed by any order made under the provisions of paragraph (1) of rule 3 pay into court without disputing his liability or with admission of his liability—

- (a) the amount due from him to the judgment debtor; or
- (b) an amount equal to the judgment debt, together with, in each case, the costs of the garnishee proceedings.

Execution against garnishee.

6. If the garnishee—

- (a) does not dispute the debt due or claimed to be due from him to the judgment debtor but fails to comply with the provisions of rule 5; or

(b) fails to appear upon the summons, the court may upon proof of service order execution to issue in accordance with the provisions of Order 19 and in the form prescribed in the First Schedule to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order, together with, in each case, costs as aforesaid.

Form 15.

7. If the garnishee appears and disputes his liability the court shall proceed to hear and determine the issue in such manner as justice shall seem to require.

Trial of liability of garnishee.

8. Where in any garnishee proceedings it is suggested by the garnishee that the debt sought to be attached belongs to some third person or that any third person has a lien or charge upon it, the court may order such third person to appear and state the nature and particulars of his claim upon such debt.

Lien or claim of third person on debt.

9. If the third person as described in rule 8 does not appear, the court may, upon proof of service of a copy of the order, proceed to make such order as justice shall seem to require.

Non-appearance of third person.

10. Upon the appearance of the third person as described in rule 8, after hearing his allegations and those of any other person whom the court may order to appear, the court may—

Procedure upon appearance of claimants.

- (a) order execution to issue to levy the amount due from the garnishee; or
- (b) order any issue or question to be tried and may bar the claim of such third person; or
- (c) make such other order, upon such terms with respect to any lien or charge or otherwise, as the court shall think just.

11. Payment made by or execution levied upon a garnishee under any such proceedings shall be a valid discharge to him against the judgment debtor, to the amount paid or levied.

Garnishee discharged.

12. After an attachment of immovable property of the garnishee shall have been made in accordance with these rules, any alienation without leave of the court of the property attached, whether by sale, gift or otherwise, and any payment of any debt or debts to the judgment debtor during the continuance of the attachment shall be null and void.

Alienation of immovable property and payment of debts void during attachment.

13. Garnishee proceedings may be heard in any court in which the judgment debtor could, under the provisions of section 19 of the Edict, sue the garnishee.

Venue.

14. The court may, in its discretion, refuse to make or issue a garnishee order where, from the small amount to be recovered or from the smallness of the debt to be attached, or otherwise, the remedy sought would be worthless or vexatious.

Court may refuse order.

#### ORDER 21.—INTERPLEADER PROCEEDINGS

1. Any person who claims that any property, whether movable or immovable, which has been attached is not liable to be sold in execution of a judgment or order against the judgment debtor, may apply to the court which issued the writ of attachment and sale for the issue of a summons calling upon the judgment creditor to appear before the court on a date and at an hour specified in the summons to show cause why the property should not be released from the attachment.

Interpleader summons.

Form 15.

Proceedings  
at the  
hearing.

2. (1) When the claim is investigated by the court it shall have the same powers as if the claimant had been originally a party to the suit.

(2) If it appears that the property attached is not liable to be sold in execution of the judgment or order the court shall make an order releasing the property from attachment.

(3) If it appears that property attached is the property of the judgment debtor, the court shall disallow the claim and dismiss the summons.

Time for  
making  
claims.

3. (1) A claim must be made to the court at the earliest opportunity and if the attached property has been advertised for sale the sale shall be postponed until the claim has been investigated.

(2) No claim shall be investigated if it appears to the court that it was designedly delayed with a view to obstructing the ends of justice.

(3) When it appears to the court that there has been deliberate delay or when the sale has taken place before the claim was made, the interpleader proceedings shall be dismissed.

Evidence in  
support of  
claim.

4. (1) Every application by a claimant for an interpleader summons shall be supported by a declaration by the claimant, which may be on oath at the discretion of the court, specifying the property claimed and setting out the grounds upon which it is claimed.

(2) A copy of such declaration, certified by the clerk, shall be provided for each person against whom the relief is sought and a copy shall be attached to each summons issued by the court.

(3) The court may call for oral evidence of the facts if it so wishes when the claim is investigated.

Procedure  
where  
damages are  
claimed.

5. Where in any interpleader proceedings the claimant claims damages from the judgment creditor or from the bailiff or messenger of the court in respect of any misfeasance occurring during the course of the attachment he shall in the declaration under paragraph (1) of rule 4, state the amount which he claims for damages and the grounds upon which he claims such damages.

Payment  
into court  
where  
damages  
claimed.

6. Where in the interpleader proceedings a claim for damages is made, the person from whom damages are claimed may pay money into the court in satisfaction of that claim, and the payment shall be made in the same manner and have the same effect as if the proceedings were an action in that court and the person claiming damages were plaintiff and the person from whom damages are claimed were defendant.

Costs.

7. Costs in any interpleader proceedings may be ordered to be paid in such manner as shall appear to the court to be just.

#### ORDER 22.—WRIT OF POSSESSION

Writ of  
possession.  
Form 16.

1. The execution of any judgment or order relating to land or other immovable property may be carried out by a writ of possession whereby the judgment creditor is placed in possession of the land or immovable property as the case may be—

Provided that any consent to the alienation of the right of occupancy required by the Land Tenure Law shall have been had and obtained before the said judgment creditor is placed in possession of the land or other immovable property.

2. (1) If any person (other than the judgment debtor) is dispossessed and such person disputes the right of the judgment creditor to dispossess him on the ground that—

Claims to possession by a third party.

- (a) the property was in good faith in his possession on his own account or on the account of some person other than the judgment debtor;
  - (b) the property was not included in the judgment or order; or
  - (c) if included in the judgment or order he was not a party to the suit.
- he may apply to the court within twenty-eight days of dispossession making claims to such land or other immovable property as has been attached or for such other relief as may be appropriate.

(2) If, after examining the applicant, it appears to the court that the applicant has good ground for making the application, the application shall be numbered and entered in the Civil Cause Record Book as a suit between the applicant and the judgment creditor, and the court shall investigate the matter in dispute in the same manner and with the same powers as if a claim for the property had been made in a suit by the applicant against the judgment creditor.

(3) If an application made in accordance with the provisions of this rule is entertained by the court it shall operate as a stay of execution of the writ of attachment and sale of the land or other immovable property in question.

3. The decision of a court given consequent upon an investigation in accordance with rule 2 shall have the same force and effect as a decision in an ordinary civil suit, and no fresh suit arising out of the same facts may subsequently be entertained between the same parties or any persons claiming under them in respect of the same property.

Effect of order on a claim to possession.

ORDER 23.—ALTERATION OF PARTIES :

1. Where after a cause or matter has been instituted any change or transmission of interest or liability occurs in relation to any party to the cause or matter, or any party dies or becomes incapable, or the cause or matter in any other way becomes defective or incapable of being carried on, any person interested may apply to the court for any order requisite for curing the defect, or enabling or compelling the proper parties to carry on the proceedings.

Order to carry on proceedings.

2. Any person served with such an order may, within such time not exceeding fourteen days after service as the court directs, apply to the court to discharge the order.

Application to discharge order.

3. The court may at any stage strike out the names of any parties improperly or unnecessarily joined, and may, after due notice given to the parties affected, add the names of parties whose presence is essential to a just decision of the matter in dispute, and on proof of such notice the parties so served, whether they shall have appeared or not, shall be bound by the proceedings in the action.

Misjoinder and non-joinder.

ORDER 24.—FORMS

1. All forms for issue by a court shall be completed by the clerk.

Completion of forms.

2. A record of all forms issued shall be kept by the clerk, retaining a duplicate which shall accurately record all the details inserted in the form before issue.

Record of issue of forms.

Forms in  
First  
Schedule.

3. (1) Forms for use in a court shall be those set out in the First Schedule.  
(2) Forms to the like effect may be used in all proceedings to which they are applicable with such variations as circumstances may require.

#### ORDER 25.—FEES

Scale of fees.  
Second  
Schedule.

1. (1) Fees shall be charged according to the scales set out in the Second Schedule:

Provided that the Chief Registrar may direct in writing—

(a) that such fee or fees (not exceeding the said fees set out in the Second Schedule) as he may consider suitable in respect of the matters mentioned in the said Schedule or any of them shall be substituted in the case of any particular court, and where substituted fees have been so specified such fees and no other fees shall be payable in that court (subject nevertheless to the provisions hereinafter mentioned);

(b) that in any class or classes of cases no fee shall be payable.

(2) In the administration of an estate the court, instead of charging any fees which but for this paragraph would have been chargeable, may order that ten per cent of the value of the estate be retained by or paid to the court as a court fee:

Provided that this paragraph shall not apply to estates where by Moslem Law fees or dues or a portion of the estate are payable to the court or to the Treasury.

Multiplicity of  
defendants not  
to increase  
fees.

2. No additional fee shall be paid on the issue of any civil process by reason of the names of more than one defendant appearing thereon.

Exhibition of  
list of fees.

3. A list of the authorised fees shall be conspicuously exhibited in the most public and accessible part of every court and also in its offices.

Fees to be  
paid to clerk.

4. Fees shall be paid to the clerk, who shall issue to the payer an official receipt for each payment made to him in accordance with the provisions of rule 3 of Order 26.

Process not to  
issue unless  
fees first paid.

5. Where in these rules a fee is prescribed for any form or process, or the doing of any act, such form or process shall not be issued, or the act done, unless the fee is first paid.

Waiver,  
reduction or  
remission of  
fees.

6. (1) A court may order that fees shall be wholly or in part waived, reduced or remitted when owing to the poverty of a party or other reasonable cause it appears desirable that such waiver, reduction or remission should be made.

(2) Any person who seeks a waiver, reduction or remission of fees shall make an application for the same in person to the court and the court may, if it so wishes, call upon the applicant to give, and to produce witnesses to give, evidence in support of his application, and any such proceedings and the decision of the court shall be written in the Civil Cause Record Book by the judge or clerk.

No fees  
payable by  
local autho-  
rity or public  
officers.

7. Whenever the party by whom fees would be payable under this order is a public officer or a local authority or an officer or servant of a local authority in each case acting in his or its official capacity, fees shall not be charged, but in a civil cause fees which would be payable but for this rule may be included in any costs allowed to such public officer or local authority or officer or servant and shall in the event be paid to the court.

## ORDER 26.—ACCOUNTS

1. Every court shall cause to be kept—  
 (a) a Civil Cause Cash Book;  
 (b) receipt books;  
 and such cash book and receipt books shall be in such form and pattern as may from time to time be approved by the Accountant-General in consultation with the Auditor-General.
2. All moneys received by a court and all moneys paid out by a court in the course of the business of the court shall be accounted for by the judge of the court.
3. (1) All moneys received by a court whether revenue or deposits and all moneys paid out by a court in the course of the business of the court shall be entered in the cash book by the clerk.  
 (2) Each entry shall show the case number and folio number of the appropriate record and whether payment was made by the plaintiff or defendant or whether the payment was for fees or costs as the case may be.  
 (3) The clerk shall from the receipt books required to be kept by paragraph (b) of rule 1 of this Order issue a receipt to all persons paying money into court in the course of the business of a court. The receipt number shall be entered in the cash book as part of the particulars required by paragraph (1) of this rule.
4. All moneys received by a court and all moneys paid out by a court in the course of the business of the court shall be retained, deposited and paid out in accordance with the provisions of such financial instructions as may from time to time be issued.
5. All cash books and receipt books required to be kept by a court under the provisions of rule 1 shall be submitted for Treasury inspection and audit at such time and in such manner as the Accountant-General or Auditor-General respectively may direct.

Cash books and receipt books.

Judge responsible for all moneys.

Entries in cash books and issue of receipts.

Area court to comply with Financial instructions.

Inspection and audit of cash books and receipt books.

## ORDER 27.—RECORDS

1. Each court shall cause the following records to be kept—  
 (a) a Civil Cause Book;  
 (b) a Civil Cause Record Book.
2. All proceedings of a court, including final and interlocutory orders, orders of adjournment and notes of evidence may be in English or in the vernacular.
3. (1) The clerk or judge shall be responsible for the carrying out of the provisions of rule 2 and shall authenticate all records by signing the same.  
 (2) All records and Forms as prescribed in the First Schedule shall be authenticated by the signature of the judge of the court concerned.
4. (1) A copy of any proceedings in any cause or matter shall upon application and payment of the prescribed fee be supplied by a court—  
 (a) to a party to or person concerned in any such cause or matter;  
 (b) to a member of the immediate family or such party or person;  
 (c) to any administrative officer applying on behalf of such party or person; and  
 (d) with the consent of the court, to any other person.

Records to be kept by area court. Form 17.

Recording of proceedings to be in English or the vernacular.

Maintenance and authentication of records.

First Schedule.

Copies of records.

(2) Any copy so supplied shall be certified by the signature of the clerk as being a true copy.

Preservation of records. 5. The records prescribed by rule 1 and any other records which may from time to time be prescribed by rules made under the Edict shall be preserved by the clerk.

ORDER 28.—REVOCATION

Revocation of N.R.L.N. 84 of 1967, page 1007 of 4sq of 1963 Law.

The Area Courts (Civil Procedure) Rules and the Area Courts (Interim Provisions) Rules, 1968, are hereby revoked.

Order 24, rule 3.

FIRST SCHEDULE

FORM 1

No.....

Order 2, rule 9.

CIVIL SUMMONS

In the Area Court of..... Between .....<sup>1</sup> Plaintiff (if more than one, all should be named) and.....<sup>2</sup> Defendant (if more than one, all should be named).

To<sup>3</sup>.....of.....

You are hereby summoned to attend this Court at.....<sup>3</sup> on the.....day of....., 19..... at the hour of.....a.m./p.m., to answer a claim by<sup>4</sup>.....of.....against you.

The said Plaintiff claims—

4.....  
.....  
.....

Take notice that if you do not attend at this Court at the time and on the date stated, the Court may, on proof of service of this summons, give judgment in your absence.

Fees paid.....Court Receipt No.....

Dated the.....day of....., 19.....

(Signature).....  
*Area Judge or President*

<sup>1</sup>Insert name of person or body complaining.  
<sup>2</sup>Insert name of person to be summoned.  
<sup>3</sup>Insert place of sitting.  
<sup>4</sup>State concisely substance of complaint giving particulars including relevant dates and places.



FORM 4

WARRANT FOR THE ARREST OF DEFENDANT WHO HAS  
DISOBEYED SUMMONS

No.....

In the Area Court of.....  
To all bailiffs and messengers of this court and members of the Police.

Whereas complaint has been made to this Court on the.....day  
of....., 19.....that.....<sup>1</sup> did.....

.....<sup>2</sup>  
And whereas the said.....<sup>1</sup> was thereupon summoned  
to appear before this Court at.....<sup>3</sup> on the.....day of  
....., 19.....at the hour of.....a.m./p.m. to  
answer the said complaint;

And whereas it has been proved that the said.....<sup>1</sup>  
was duly served with the summons but did not appear as stated above to  
answer the said complaint;

And whereas the cause or matter cannot be disposed of under native  
law and custom without the appearance of the said.....<sup>1</sup>;

You are therefore hereby commanded to arrest the said.....<sup>1</sup>  
and to bring him before the Court to answer the said complaint and to be  
further dealt with according to law.

(Signature).....  
Area Judge or President

<sup>1</sup>Insert name of defendant.  
<sup>2</sup>State concisely substance of complaint giving particulars including rele-  
vant dates and places.  
<sup>3</sup>insert place of sitting.

FORM 5

No.....

SUMMONS TO WITNESS

In the Area Court of.....  
between.....Plaintiff  
(if more than one, all should be named).....  
and.....Defendant  
(if more than one, all should be named).

To.....<sup>1</sup>  
You are hereby commanded to attend before this Court sitting at  
.....<sup>2</sup> on the.....day of....., 19...  
at the hour of.....a.m./p.m. to testify all that you  
know in the above cause, and to produce the following documents, that  
is to say—

You are summoned on behalf of the.....<sup>4</sup>

DATED the.....day of....., 19.....

(Signature).....  
Area Judge or President

- <sup>1</sup>Insert name of witness.
- <sup>2</sup>Insert place of sitting.
- <sup>3</sup>State details of documents to be produced by the witness.
- <sup>4</sup>Insert plaintiff or defendant, as the case may be.

FORM 6

Order 14,  
rule 3.

No.....

FORMAL ORDER

In the Area Court of.....  
between.....Plaintiff  
(if more than one, all should be named).....  
and.....Defendant  
(if more than one, all should be named).

To.....<sup>1</sup>

It is hereby ordered that the above-named.....<sup>2</sup>  
do recover from you.....<sup>1</sup>  
the sum of £        s        d, representing £        s        d, for debt/  
damages and £        s        d, for costs and you are hereby ordered to  
pay to such persons the total sum of £        s        d, \*forthwith \*on the  
.....day of..... 19..... \*by instalments of £        s        d,  
for every.....<sup>3</sup>

DATED at.....<sup>3</sup> this.....day of....., 19...

(Signature).....  
Area Judge or President

*Debt ...	...	...	...	...	£	s	d
*Damages	...	...	...	...	£	s	d
Costs...	...	...	...	...	£	s	d
Total					£		

- \*Delete whichever is not applicable.
- <sup>1</sup>Insert full names of all persons against whom the order is made.
- <sup>2</sup>Insert full names of all persons in whose favour the order is made.
- <sup>3</sup>Insert week, month or as the case may be.
- <sup>4</sup>Insert place of sitting.

B 44

Order 18,  
rule 2.

FORM 7

No. ....

JUDGMENT DEBTOR SUMMONS

In the Area Court of.....  
between.....Plaintiff  
(if more than one, all should be named).  
and.....Defendant  
(if more than one, all should be named).

To.....<sup>1</sup>  
whereas the above-named.....<sup>2</sup>  
obtained a judgment/order\* against the above-named.....<sup>3</sup>  
in this Court sitting at.....<sup>4</sup>  
on the.....day of....., 19.....  
for the payment of £ s d, for debt/damages and costs to be paid \*forth-  
with \*on the.....day of....., 19..... \*by instalments of £ s d,  
for every.....<sup>5</sup> and subsequent costs have been  
incurred and allowed by the Court, amounting to £ s d.

And whereas default has been made by you in payment of the sum  
of £ s d, payable in pursuance of the said judgment/order\* and the  
said.....<sup>2</sup> has/have\*  
required this judgment summons to be issued against you.

You are therefore hereby summoned to appear personally in this Court  
at.....on the.....day of....., 19...  
at the hour of.....a.m./p.m. to be  
examined as to the means you have or have had since the date of the said  
judgment/order\* to satisfy the sum payable in pursuance of the said judg-  
ment/order\*; and also to show cause why you should not be committed to  
prison for such default.

Dated this.....day of....., 19.....

(Signature).....  
*Area Judge or President*

Sum in payment of which default has been	£	s	d
made as in second recital above	...	...	...
Fees on issue of this summons	...	...	...
Other expenses incurred by judgment creditor	...	...	...
Total	...	...	...

- \*Delete whichever is not applicable.
- <sup>1</sup>Insert name of person or persons to whom summons is issued.
- <sup>2</sup>Insert full names of all persons in whose favour judgment or order was made.
- <sup>3</sup>Insert full names of all persons against whom judgment or order was made.
- <sup>4</sup>Insert place where Court was sitting when judgment/order was made.
- <sup>5</sup>Insert week, month or as the case may be.

No.....

WARRANT TO ARREST A JUDGMENT DEBTOR

In the Area Court of.....  
between..... Plaintiff,  
(if more than one, all should be named) and..... Defendant (if more  
than one, all should be named) To all bailiffs and messengers of this Court  
and members of the Police.

Whereas the above-named.....<sup>1</sup>  
has failed to answer to a judgment summons issued by this Court on the  
..... day of....., 19.....<sup>1</sup>

And whereas it has been proved that the said.....<sup>1</sup>  
was duly served with the summons:

You are hereby commanded to arrest the said.....<sup>1</sup>  
and to bring him before the Court to be examined as to the means he has  
or has had since the date of the judgment/order\* to satisfy the sum payable  
in pursuance of the said judgment/order\*; and to show cause why he should  
not be committed to prison for such default.

Sum on payment of which the judgment debtor    £    s    d  
is to be discharged    ...    ...    ...

Dated this..... day of....., 19.....

(Signature).....  
Area Judge or President

\*Delete whichever is not applicable.  
<sup>1</sup>Insert name of person or persons to be arrested.

No.....

WARRANT OF IMPRISONMENT ON A JUDGMENT DEBTOR

In the Area Court of.....  
between..... Plaintiff  
(if more than one, all should be named).....  
and..... Defendant  
(if more than one, all should be named) To all bailiffs and messengers of this  
Court and members of the Police, and to the officer in charge of.....<sup>1</sup>  
Prison.

You are hereby commanded to convey the above-named.....<sup>2</sup>  
hence and to deliver him to the officer in charge of.....<sup>1</sup>  
Prison, thereto to be imprisoned for.....<sup>3</sup> unless  
he shall sooner pay to the above-named.....<sup>4</sup> the  
sum of £    s    d, being the balance of the sum of £    s    d, which  
sum he was ordered to pay to the said.....<sup>4</sup>  
by a judgment/order\* of the Court in the above-mentioned suit.

Dated at .....<sup>5</sup> this ..... day of ..., 19...

(Signature).....  
*Area Judge or President*

- \*Delete whichever is not applicable.
- <sup>1</sup>Insert the name of the appropriate Prison.
- <sup>2</sup>Insert name of defaulting debtor to be imprisoned.
- <sup>3</sup>Insert the number of days/months for which the defaulting debtor is to be imprisoned.
- <sup>4</sup>Insert the name or names of the judgment creditor or creditors to whom payment is due.
- <sup>5</sup>Insert place of sitting.

Order 19,  
rule 2.

FORM 10

No.....

**WRIT OF ATTACHMENT AND SALE**  
*(Movable Property)*

In the Area Court of.....  
between.....Plaintiff  
(if more than one, all should be named).....  
and.....Defendant,  
(if more than one, all should be named) To all bailiffs and messengers of  
this Court.

Whereas the above-named.....<sup>1</sup>  
obtained a judgment/order\* against the above-named.....<sup>2</sup>  
in this Court sitting at.....<sup>3</sup> on  
the.....day of....., 19.....  
for the payment of £ s d, for debt/damages\* and costs to be paid\*  
forthwith \*on the.....day of....., 19.....  
\*by instalments of £ s d, for every.....<sup>4</sup> and  
subsequent costs have been incurred and allowed by the court amounting  
to £ s d:

And whereas default has been made in payment of the sum of £ s d,  
payable by the above-named.....<sup>5</sup>

You are hereby ordered forthwith to levy the sum of £ s d, due  
under the said judgment/order\* together with the costs of this writ and the  
costs of executing the same by the attachment of the movable property of  
the said.....<sup>5</sup> wheresoever  
they may be found within the area of the jurisdiction of this court (except the  
clothing and bedding of him or his dependants and the tools and implements  
of his trade to the value of ten pounds) and also by seizing and taking any  
money, bank-notes, cheques, bills of exchange, promissory notes, bonds or  
securities for money belonging to the said.....<sup>5</sup>  
or such part or so much thereof as may be sufficient to satisfy this execution;  
and to bring what you shall have so levied to this Court and to make a report  
of what you have done under this writ immediately upon execution thereof.

Dated this.....day of....., 19.....

(Signature).....  
*Area Judge or President*

	£	s	d
Amount remaining due under judgment/ order*... ..			
Fees and costs on execution of this writ ...			
Total ... ..			£

- \*Delete whichever is not applicable.
- <sup>1</sup>Insert full names of all persons in whose favour judgment or order was made.
- <sup>2</sup>Insert full names of all persons against whom judgment or order was made.
- <sup>3</sup>Insert place where Court was sitting when judgment/order made.
- <sup>4</sup>Insert week, month or as the case may be.
- <sup>5</sup>Insert name of defaulting judgment debtor.

Order 19,  
rule 7.

FORM 11

No.....

WRIT OF ATTACHMENT AND SALE  
(Immovable Property)

In the Area Court of.....  
 between.....Plaintiff  
 (if more than one, all should be named).....  
 and.....Defendant,  
 (if more than one, all should be named) To all bailiffs and messengers of  
 this Court.

Whereas the above-named.....<sup>1</sup>  
 obtained a judgment/order\* against the above-named.....<sup>2</sup>  
 in this Court sitting at.....<sup>3</sup> on  
 the.....day of....., 19..... for  
 the payment of £ s d, for debt/damages\* and costs to be paid \*forth-  
 with \*on the.....day of....., 19..... \*instalments of  
 £ s d, for every.....<sup>4</sup> and  
 subsequent costs have been incurred and allowed by the court amounting  
 to £ s d:

And whereas default has been made in the payment of the sum of  
 £ s d, payable by the above-named.....<sup>5</sup>

And whereas a writ has been issued by this Court for the attachment  
 and sale of the movable property of the said.....<sup>6</sup>  
 but the execution of such writ has failed to realize the full amount due  
 from the said.....<sup>6</sup> in  
 pursuance of the said judgment/order\*:

You are hereby commanded forthwith to levy the sum of £ s d,  
 still remaining due to the above-named.....<sup>1</sup>  
 under the said judgment/order\* together with the costs of this writ and the  
 costs of executing the same by the attachment of the immovable property  
 of the said.....<sup>6</sup> wheresoever  
 such property may be found within the area of jurisdiction of this Court,  
 and to make a report of what you have done under this writ immediately  
 upon execution thereof.

Dated this.....day of....., 19.....

(Signature).....  
Area Judge or President

	£	s	d
Amount remaining due	...	...	...
Fees and costs on execution of this writ	...	...	...
Total	...	...	... £

- \*Delete whichever is not applicable.
- <sup>1</sup>Insert full names of all persons in whose favour judgment or order was made.
- <sup>2</sup>Insert full names of all persons against whom judgment or order was made.
- <sup>3</sup>Insert place where Court was sitting when judgment or order was made.
- <sup>4</sup>Insert week, month or as the case may be.
- <sup>5</sup>Insert name of defaulting judgment debtor.

Order 19,  
rule 8.

FORM 12

No.....

ATTACHMENT NOTICE

In the Area Court of.....  
 between.....Plaintiff  
 (if more than one, all should be named) and .....  
 .....Defendant,  
 (if more than one, all should be named).

TAKE NOTICE THAT—

Whereas a writ of Attachment and Sale<sup>2</sup> dated the.....day  
 of....., 19.....has been issued under the hand of.....<sup>1</sup>  
 Area Judge/President\* of.....<sup>4</sup>  
 .....<sup>3</sup>at the instance of.....  
 judgment creditor, for the attachment of the immovable property of.....  
 .....<sup>4</sup>judgment debtor in the above-mentioned suit, the  
 said judgment debtor is hereby prohibited from alienating the property below  
 mentioned by sale, gift, or in any other way, and all persons are hereby  
 prohibited from receiving the said property by purchase, gift or otherwise,  
 that is to say: <sup>5</sup>.....  
 .....  
 .....  
 .....

DATED at.....this.....day of....., 19.....

.....  
*Proper Officer*

- \*Delete whichever is not applicable.
- <sup>1</sup>Here insert name of person signing writ.
- <sup>2</sup>Here insert name of Court issuing writ.
- <sup>3</sup>Here insert name of judgment creditor.
- <sup>4</sup>Here insert name of judgment debtor.
- <sup>5</sup>Here detail goods attached.

FORM 13

Order 19,  
rule 13.

No.....

**CERTIFICATE OF PURCHASE**

In the Area Court of.....  
between..... Plaintiff  
(if more than one, all should be named).....  
and..... Defendant,  
(if more than one, all should be named).

**TAKE NOTICE THAT—**

This is to certify that.....<sup>1</sup>  
of.....<sup>2</sup> has been declared by this Court to be the purchaser  
of the right, title and interest of<sup>3</sup>.....in the  
land and other immovable property hereinafter mentioned, that is to say:  
.....  
.....

which said right, title and interest was sold in execution of a judgment/order\*  
in the above suit by an order of this Court dated the .....day  
of....., 19.....<sup>5</sup>

DATED at.....<sup>6</sup> this.....day of....., 19.....

(Signature).....  
*Area Judge or President*

- \*Delete whichever is not applicable.
- <sup>1</sup>Insert name of purchaser.
- <sup>2</sup>Insert address of purchaser.
- <sup>3</sup>Insert name of judgment debtor.
- <sup>4</sup>Describe the land or other immovable property purchased.
- <sup>5</sup>Insert date when order was made.
- <sup>6</sup>Insert place of sitting.

No.....

GARNISHEE ORDER

In the Area Court of.....  
between..... Judgment Creditor  
and..... Judgment Debtor  
and..... Garnishee

To.....(Garnishee)

Whereas the judgment creditor on the.....day of.....  
19.....obtained a judgment/order\* in the Area Court of.....<sup>1</sup>  
against the Judgment debtor for the payment of £ s d for debt/  
damages\* and £ s d, for costs which judgment/order \*remains  
unsatisfied as to the sum of £ s d,

And whereas it appears to the Court that you are indebted to the said  
judgment debtor in the sum of £ s d.

You are hereby ordered to appear before this Court sitting at.....<sup>2</sup>  
on the.....day of....., 19.....at the hour of.....a.m./p.m.  
to show cause why an order should not be made upon you for the payment  
to the judgment creditor of the amount of the debts due and owing or  
accruing from you to the said judgment debtor or so much thereof as will  
satisfy the debt due under the said judgment/order\* and the costs entered  
on this summons:

And take notice that from and after the service of this summons upon  
you so much of the debts owing or accruing from you to the judgment  
debtor as will satisfy the debt due under the said judgment/order\* and the  
costs entered on this summons are bound in your hands:

And further take notice that if you pay into this Court the amount  
of such debts, or so much thereof as will satisfy the debt due under the  
said judgment/order\* and the costs entered on this summons within fourteen  
days of the service of this summons on you, inclusive of the day of service,  
you will incur no further costs.

Dated this.....day of....., 19.....

(Signature).....  
Area Judge or President<sup>3</sup>

\*Delete whichever is not applicable.

<sup>1</sup>Insert name of court making the judgment or order.

<sup>2</sup>Insert place of sitting to hear garnishee proceedings.

No.....

EXECUTION AGAINST A GARNISHEE

In the Area Court of.....  
between..... Judgment Creditor  
and..... Judgment Debtor  
and..... Garnishee

To all bailiffs and messengers of this Court.

Whereas by judgment dated the.....day of....., 19..... it was ordered that the garnishee should pay the sum of £ s d, together with the sum of £ s d, for costs, amounting together to the sum of £ s d, to this Court:

And whereas default has been made in payment according to the said judgment:

You are hereby commanded forthwith to levy the sum of £ s d still remaining due to the judgment creditor under the said judgment together with the costs of the writ and the cost of executing the same by the attachment of the immovable property of the garnishee wheresoever such property may be found within the area of jurisdiction of this Court, and to make a report of what you have done under this writ immediately upon execution thereof.

(Signature).....  
Area Judge or President

FORM 16

Order 21,  
rule 1.

No.....

INTERPLEADER SUMMONS

In the Area Court of.....  
In the matter of a debt owing by.....<sup>1</sup>

To.....<sup>2</sup>

Whereas a writ of Attachment and Sale was at the instance of.....<sup>3</sup> issued by this Court on the.....day of....., 19..... against the property of.....<sup>1</sup> and has since been executed:

And whereas.....<sup>4</sup> hereinafter called the claimant, has made claim to certain goods or the proceeds thereof taken in execution of the said writ:

You are hereby summoned to appear before this Court at.....<sup>5</sup> on the.....day of....., 19.....at the hour of.....a.m./p.m. when the said claim will be adjudicated upon and such order made thereon as the Court thinks fit.

Dated this.....day of....., 19.....

(Signature).....  
Area Judge or President

Note.—A copy of the declaration made by the claimant specifying the property claimed and setting out the grounds upon which it is claimed is attached hereto.

- \*Delete whichever is not applicable.
- <sup>1</sup>Insert the name of the judgment debtor in the original suit.
- <sup>2</sup>Insert the name of the claimant or the judgment creditor in the original suit, as the case may be.
- <sup>3</sup>Insert the name of the judgment creditor.
- <sup>4</sup>Insert the name of the person at whose instance this summons is issued.
- <sup>5</sup>Insert the place where the Court will sit to adjudicate upon the interpleader issue.

No.....

WRIT OF POSSESSION

In the area Court of.....  
To all bailiffs and messengers of this Court.

Whereas by an order of this Court, dated the.....  
day of....., 19....., one.....<sup>1</sup> was  
ordered to deliver to.....<sup>2</sup> possession of the  
land and premises hereinafter mentioned, that is to say: <sup>3</sup>.....

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

You are hereby commanded to give possession of the said land and  
premises to the said.....<sup>2</sup>  
and to make a report of what you have done under this writ immediately  
after the execution thereof, and to bring that report and this writ to this court.

Dated at.....<sup>4</sup> this.....day  
of....., 19.....

(Signature).....  
*Area Judge or President*

<sup>1</sup>Insert the name of person who is to deliver possession.  
<sup>2</sup>Insert the name of person who is to receive possession.  
<sup>3</sup>Set out particulars of the land and premises to be delivered.  
<sup>4</sup>Insert place of sitting.



CERTIFICATE OF DIVORCE  
TAKARDAR SHAIDAR KASHE AURE

This is to certify that Divorce has been granted to Mr/Mrs  
Wannan itace shaidar cewar an kashe auren Mallam/Mallama

.....  
.....husband/wife of Mr/Mrs.....  
.....mijin/matar.....

.....in respect of their marriage contracted under Moslem/Native  
auren da aka daura bisa shari'ar Musulunci/bisa

Law and Custom after the full hearing of the Divorce Suit No.  
Ala'ada bayan kotu taji duk dalilan kara mai lamba.

.....of.....

day of....., 19.....  
ta ranar

.....in this.....  
.....cikin wannan

.....Area Court Grade..... of North-Central  
Kotu Mai Daraja ta Jihar Arewa Ta

State.  
Tsiakiya.

This marriage between.....  
Wannan aure tsakanin

.....(husband) and.....  
.....(miji) da

.....(wife) therefore becomes annulled with effect from the  
.....(mata) an kashe shi daga

.....day of....., 19.....upon  
which day the court takes a decision according to Moslem  
ranar da kotu ta yanke hukunci bisa shari'ar Musulunci

/Native Law and Custom.  
Bisa Ala'ada

Date and official stamp  
Kwanan wata da hatimin kotu

.....

.....  
Area Court Judge

e of..... pounds..... shillings paid on  
*tin takardar shaida*..... *fam*..... *sule wanda aka biya*

Receipt No..... dated.....  
*a rasil mai lamba*

## SECOND SCHEDULE

### (PART I)

	£	s	d
1. On issue of summons, where the claim does not exceed £5	0	7	6
On issue of summons where the claim exceeds £5, but does not exceed £10	0	12	6
On issue of summons where the claim exceeds £10 but does not exceed £25	1	0	0
On issue of summons where the claim exceeds £25 but does not exceed £50	1	10	0
On issue of summons where the claim exceeds £50 for each £50 or part thereof but such that the maximum fee shall not exceed £50	1	15	0
2. On issue of summons where the claim is not for the recovery of money or goods but for other relief or assistance for which no fees are specified	1	15	0
3. On filing petition for divorce	2	0	0
4. On filing or making any other application	0	10	0
5. If the claim arose more than five years before the application for summons or petition the fee in the case of each of the above items shall be double the fee specified in the item			
6. Service fees: 2s per day or part thereof, plus cost of transport where necessary.			
7. On issue of interpleader summons	0	15	0
8. On issue of judgment summons	0	15	0
9. On issue of court order to attach property (Fi Fa)	0	15	0
10. On issue of court order to imprison judgment debtor	0	15	0
11. On issue of garnishee order	0	15	0
12. On adjournment, by the party applying thereof	0	5	0
13. On issue of summons for witness	0	5	0
14. Fee for every copy of proceedings per 100 words or part thereof	0	1	0
15. Fees for inspection of court records	0	5	0
16. Fee for inspection of land	1	0	0
17. Fee for certificate of divorce (to be given only to a party who applies for it)	1	0	0

### (PART II)

#### FEE PAYABLE ON APPLICATION UNDER SECTION 31 (2) OF ADMINISTRATOR-GENERAL'S ACT (CHAPTER 4 OF THE 1958 LAWS)

1. In respect of an estate certified by the Administrator-General as not exceeding £50 in value ... .. No Fee

2. In respect of an estate certified by the Administrator-General as exceeding £50 in value ... .. Ten shillings for every £50 or part thereof after the first £50.
3. Fees payable for ascertaining the address of abode of the next of kin of a deceased person, for the information of a Federal or State Government Department or of a Statutory Authority or Corporation ... .. Ten Shillings.

MADE this 16th day of June, 1971.

N. V. REED,  
*Chief Justice*

THE AREA COURTS EDICT, 1967 (No. 2 of 1967)  
 THE AREA COURTS (JURISDICTION) (AMENDMENT No. 2)  
 NOTICE, 1971

*Date of Commencement: 1st October, 1971*

In pursuance of the provisions of subsection (6) of section 3 of the Area Courts Edict, 1967 and with the authority of the Chief Justice, it is hereby notified as follows:—

1. This notice may be cited as the Area Courts (Jurisdiction) (Amendment No. 2) Notice, 1971, and shall come into operation on the 1st day of October, 1971.

Title and commencement

2. In conformity with the warrant signed by the Chief Justice establishing the Samaru Area Court Grade I with effect from the 1st day of October, 1971, the Schedule to the Area Courts (Jurisdiction) Notice, 1969, is hereby amended by inserting immediately below the line for Zaria Sabon-Gari Area Court No. 2 the particulars of the newly established Samaru Area Court Grade I as set out in the following Schedule:—

Amendment of N.C.S.L.N. 5 of 1969.

SCHEDULE

Samaru Area Court	Zaria	Samaru, Bomo and Falladan in the Zaria Sabon-Gari Town Council Area	...	...	I	—	J
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GIVEN this 24th day of September, 1971.

S. U. MOHAMMED,  
*Chief Registrar*