

# **FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES 2009**

## **ARRANGEMENT OF RULES**

### **ORDER 1**

#### **REVOCAION, CITATION, SAVINGS, ETC.**

1. Revocation of Civil Procedure Rules 2000
2. Citation and commencement
3. Saving: Part heard matters etc.
4. Fundamental objective
5. Interpretation
6. Meaning of other words.

### **ORDER 2**

#### **PLACE OF INSTITUTING TRIAL OF SUITS**

1. (1) Place for trial of suits.  
(2) Suits relating to taxation, etc.  
(3) Suits for penalties  
(4) Suits upon contract  
(5) Suits relating to Customs, Excise, Tariff, etc.  
(6) Suits relating to foreign trade  
(7) Suits relating to passport, immigration, etc.  
(8) Suits relating to copyright  
(9) Other suits.
2. Judicial Division of Court in which suit may commence.
3. Suits commenced in wrong judicial Division.
4. Transfer of proceedings.

### **ORDER 3**

#### **FORM AND COMMENCEMENT OF ACTION**

1. Form of commencement of action
2. Proceedings which must be begun by writ.
3. Mode of beginning civil proceedings commenced by writ of summons.
4. Form of writ.
5. Form of writ for service out of Nigeria.
6. Proceedings which may be begun by originating summons.
7. Where right depends on construction of enactment.
8. Discretion of the judge.
9. Forms of originating summons.
10. Originating process to be tested by its date.
11. Preparing originating process.
12. Sealing of originating process.

13. What is to be done after sealing
14. Copies to be served
15. Duration of and renewal
16. Validity and renewal of originating summons
17. Endorsement of renewal
18. Loss of originating process
19. Concurrent originating process
20. Concurrent originating process for service within and out of jurisdiction.

#### **ORDER 4**

##### **ENDORSEMENT OF CLAIM AND OF ADDRESSES**

1. Endorsement
2. Endorsement as to representative capacity
3. What is endorsed where claim is liquidated
4. Ordinary account
5. Endorsement of address by plaintiff or by legal practitioner
6. Originating process with no address

#### **ORDER 5**

##### **PETITION:**

##### **GENERAL PROVISIONS**

1. Application
2. Contents of petition
3. Presentation of petition
4. Fixing time for hearing, etc. of petition
5. Certain applications not to be made by petition

#### **ORDER 6**

##### **SERVICE OF PROCESS**

##### **A –SERVICE WITHIN JURISDICTION**

1. By whom service is to be effected
2. Service of process: how effected
3. When process need not be served.
4. Special bailiff
5. Substituted service
6. Service on employee of Government
7. Service on partners
8. Service on corporation of company
9. Service on board ship
10. Service on prisoners and lunatics
11. Service on infants
12. Service on local agent of principal who is out of jurisdiction

##### **B –SERVICE OUT OF JURISDICTION**

13. Service of writ out of jurisdiction

14. Application to be supported by affidavit
15. Order to fix time for appearance
16. Service of notice
17. Service of originating summons, etc.
18. Service abroad by letter of request
19. Service out of the jurisdiction under the Civil Aviation Act
20. Service of documents abroad
21. Saving for other modes of service
22. Airmail
23. Service for foreign tribunals
24. Substituted service
25. Order thereon.

## **C –GENERAL PROVISIONS**

26. Where violence threatened
27. Affidavit of service
28. Expenses of service
29. Service on Sunday or public holiday
30. Recording of service
31. Interpretation

## **ORDER 7**

### **APPEARANCE**

1. Mode of entry of appearance
2. Defendant appearing in person or represented by legal practitioner
3. Memorandum of appearance with no address for service
4. Defendants appearing through same legal practitioner
5. Person under legal disability appearing

## **ORDER 8**

### **DEFAULT APPEARANCE**

1. Default of appearance generally
2. Liquidated demand
3. Liquidated demand: several defendants
4. Several defendants
5. Default of appearance by person under legal disability
6. Judgment in default of appearance
7. Detention of goods, damages and liquidated demands
8. Judgment for costs: upon payment, satisfaction etc.
9. Setting aside Judgment.
10. Default of appearance in actions not otherwise specifically provided for

## **ORDER 9**

### **PARTIES**

#### **A –GENERAL**

1. Persons claiming jointly or severally
2. Action in the name of a wrong plaintiff
3. Misjoinder and Counter-claim
4. (1) class action  
(2) Opting in and opting out
5. Any person may be joined as defendant.
6. Action in the name of a wrong defendant
7. Defendant needs not be interested in all the reliefs sought
8. Joinder of persons severally or jointly and severally liable
9. Plaintiff in doubt as to person from whom he seeks redress.
10. Persons under legal disability
11. Next friends
12. Numerous persons
13. Where there is no personal representative
14. Proceedings not defeated by misjoinder or non-joinder.
15. Application to add or strike out.
16. Where defendant is added.
17. (1) Third party notice  
(2) How leave obtained
18. Form and issuance of notice
19. Effect of notice
20. Appearance
21. Default by third party
22. Procedure after default
23. Third party directions
24. Leave to defend
25. At trial or after
26. Actions by and against firms
27. Disclosure of partners' name
28. Appearance of partners
29. Application of rules to actions between co-partners
30. Persons trading as firms.

### **C –ALTERNATION OF PARTIES**

31. Where change of interest. Court may make order enabling suit to proceed
32. Application to discharge order by person under disability having a guardian
33. Application to discharge order by persons under disability having no guardian

### **D - LEGAL PRACTITIONERS OR AGENTS**

34. Acts may be done by legal practitioner
35. Party may change legal representative
36. Where legal representative ceases to act
37. Address of party

### **ORDER 10**

#### **JOINDER OF CAUSES OF ACTION**

1. All causes of action may be joined

2. Claims by joint plaintiffs.
3. Counter-claim against plaintiff
4. Court may order separate trials, etc.

## **ORDER 11**

### **CONSOLIDATION**

1. Consolidation

## **ORDER 12**

### **THE UNDEFENDED LIST**

1. Undefended list: affidavit
2. Copies of affidavit to be served
3. Notice of intention to defend
4. Judgment in undefended suit
5. Oral evidence

## **ORDER 13**

### **PLEADINGS**

#### **4-CENERAL**

1. Service of statement of claim
2. Service of statement of defence
3. Service of reply and defence to counter-claim
4. (1) Pleading to state material facts and not evidence  
(2) How facts are to be stated
5. Particulars to be given where necessary
6. Matters which must be specifically pleaded
7. (1) Further and better statement or particulars  
(2) Letter for particulars  
(3) Particulars before defence
8. Order for particulars not a stay
9. Specific denial
10. Denial by joinder of issue
11. Pleadings to be consistent
12. (1) Grounds of claim founded on separate facts to be separately stated.  
(2) The relief claimed to be stated
13. Allegations shall not be made generally but specifically
14. Denial of fact must answer point of substance
15. Admissions
16. Set-off or counter-claim to be pleaded
17. Evidence in denial of allegation or in support of defence not set up in pleadings
18. Further pleadings
19. Costs in certain cases
20. Striking out pleadings
21. denial of contract
22. Effect of documents to be stated.

23. Malice, knowledge, or other condition of mind.
24. Notice
25. Implied contract or relation
26. Presumption of law
27. Technical objection
28. Stated or settled account
29. Defence of tender
30. Defence of set-off
31. Judgment for balance
32. Close of pleadings

#### **B - STATEMENT OF CLAIM**

33. Statement of claim
34. Claim beyond indorsement

#### **C –STATEMENT OF DEFENCE AND COUNTER-CLAIM**

35. (1) Statement of defence
- (2) Evasive denial
- (3) Denials generally
- (4) Persons in representative capacity
- (5) Pleading to damages
- (6) Set-off and counter-claim
- (7) Title of counter-claim
- (8) Claim against persons not parties
- (9) Appearance by added parties
- (10) Reply to counter-claim.
- (11) Judgment for balance
- (12) Grounds of defence after action brought
- (13) Further defence or reply
- (14) Concession to defence
- (15) Defence in originating summons.

#### **D-REPLY**

36. (1) Filing of reply
- (2) Reply to counter-claim

#### **ORDER 14**

##### **DEFAULT OF PLEADINGS**

1. Claim for debt or liquidated demand
2. Several defendants: default of one
3. Damages and detention of goods
4. Default of one or more defendants
5. Debt or damages and detention of goods or damages
6. Where a defence is filed to part of claim only
7. Defendant in default
8. One of several defendants in default

9. Default of third party
10. Setting aside Judgment by default
11. Interpretation

**ORDER 15**  
**ADMISSIONS**

1. Notice of admission of facts
2. Notice to admit document
3. Notice to admit facts
4. Judgment or order upon admission of facts
5. Costs, where documents unnecessary

**ORDER 16**  
**PROCEEDINGS IN LIEU OF DEMURRER**

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

**ORDER 17**  
**AMENDMENT**

1. Amendment of originating process and pleadings
2. Application
3. Amendment of originating process: additional witnesses
4. Failure to amend after order
5. Filing and service of amended process
6. Date of order and amendment to be displayed

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

1. Period for settlement
2. Formulation of issues for determination
3. Party may apply for issue to be tried
4. Formulation of issues by Court

**ORDER 19**  
**PROCEEDINGS AT TRIAL**

1. Non-appearance of both parties
2. Default of appearance by defendant at trial
3. Default of appearance by plaintiff
4. Judgment by default may be set-aside on terms.
5. Adjournment of trial

6. Time of commencement and termination of trial
7. Order of proceedings
8. Burden of proof by party to begin
9. Documentary evidence
10. Additional witness
11. Close of case of parties
12. Exhibits during trial
13. Custody of exhibit after trial
14. Office copy of list of exhibits
15. Indolent prosecution

## **ORDER 20**

### **EVIDENCE GENERALLY**

1. Facts; how proved
2. Particular of facts
3. Limitation on use of documentary evidence
4. Revocation and variation
5. Certified true copies admissible in evidence
6. Examination of witnesses abroad
7. Form of order for examination of witnesses abroad
8. Order for attendance of person to produce document
9. Disobedience to order for attendance
10. Expenses of persons ordered to attend
11. Contempt of court by witness
12. Examination of witnesses
13. Depositions not to be given in evidence without consent or by leave of a judge
14. Oaths
15. Attendance of witness under subpoena for examination or to produce document
16. Practice as to taking of evidence at any stage of cause or matter.
17. Special directions as to taking of evidence.
18. Evidence in proceedings subsequent to trial
19. Form of praecipe of a subpoena
20. Form of subpoena
21. Subpoena for attendance of witness in Chamber
22. Correction of error in subpoena
23. Personal service of subpoena
24. Duration of subpoena
25. Action to perpetuate testimony
26. Examination of witness to perpetuate testimony
27. Such action not to be set down for trial
28. Notice to produce to other party
29. Notice to produce in pleadings or in separate notice
30. Sufficient particulars
31. Fees
32. Failure to produce document
33. Court may order inspection, etc

34. Costs
35. Expressions relating to banker's book.

## **ORDER 21 NON-SUIT**

1. Power of court to non-suit

## **ORDER 22 FILING OF WRITTEN ADDRESS**

1. Power to order for written address
2. Court to order written addresses
3. Written address by the other party
4. Written address by party beginning
5. Right of reply
6. Content of written address
7. Summary of address
8. Oral argument
9. Address to be deemed adopted where party absent.
10. Copies of written address

## **ORDER 23 JUDGMENT, ENTRY OF JUDGMENT**

1. Delivery of Judgment
2. Judge unable to deliver Judgment
3. Date of Judgment pronounced in Court
4. Date of Judgment directed to be entered
5. Judge may direct time for payment or performance and interest
6. Payment by installment
7. Time to be stated for doing any act
8. Judgment by consent where defendant appears by a legal practitioner
9. Judgment by consent where defendant has no legal practitioner
10. Notice when Judgment reserved
11. When parties deemed to have had notice

## **ORDER 24 DRAWING UP OF ORDERS**

1. Signing of orders
2. Date of order when drawn
3. What orders need not be drawn up
4. Form of order

## **ORDER 25**

## **COSTS**

1. Security for costs by plaintiff or defendant
2. Principle to be observed in fixing costs
3. Security for costs
4. Security for costs by plaintiff temporarily within jurisdiction
5. Action founded on Judgment or bill of exchange
6. Bond as security for costs
7. Costs at discretion of court
8. Costs out of fund or property
9. Stay of proceedings until costs paid
10. Stage of proceedings at which costs to be dealt with
11. When costs to follow the event
12. Matters to be taken into account in exercising discretion
13. Costs arising from misconduct or neglect
14. Personal liability of legal practitioner for costs

## **ORDER 26**

### **INTERLOCUTORY APPLICATION**

#### **A- MOTIONS GENERALLY**

1. Time to apply
2. (1) Application by motion
- (2) Motion list
3. Affidavit and written address
4. Affidavit to be served with motion and written address
5. Counter affidavit to motion
6. Hearing of motions
7. Motion to be on notice except in emergency

#### **B - EX PARTE MOTIONS**

8. (1) Affidavit in support of ex parte motion
- (2) Where Anton Pillar order is applied for
9. Arguments on motion
10. Orders on ex parte motions
11. Court may vary or discharge order
12. Duration of ex parte order.

#### **C - ORDER TO SHOW CAUSE**

13. Return day to be specified
14. Counter evidence
15. Further service in certain cases
16. Appearance or proof of service
17. General powers as to orders

## **D-NOTICEOFMOTION**

18. Notice of motion
19. Service of notice
20. Service on solicitor
21. Copy of affidavit to be served with notice
22. Order of service

## **E-EVIDENCE IN INTERLOCUTORY PROCEEDINGS**

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

## **ORDER 27**

### **AFFIDAVITS**

1. Evidence of motions, etc
2. Title of affidavit
3. Use of defective affidavit
4. Special time for filing affidavits
5. Affidavits in support of ex parte application
6. Notice of intention to use affidavit
7. Alterations in accounts to be initialed.
8. Exhibits
9. Certificate of exhibit
10. Affidavit taken in Commonwealth country admissible without proof of seal, etc.

## **ORDER 28**

### **INTERLOCUTORY INJUNCTION AND INTERIM PRESERVATION OF PROPERTY**

1. Application for injunction.
2. Detention, preservation, etc. of subject matter of action.
3. Power to order samples to be taken
4. Sales of perishable property, etc.
5. Order for early trial
6. Recovery of personal property subject to lien, etc.
7. Directions
8. Allowance of income of property pendente lite.

## **ORDER 29**

### **DISPUTING THE COURT'S JURISDICTION**

1. Disputing the Court's jurisdiction

2. Defendant disputing must file memorandum of appearance
3. Defendant not to lose right to dispute jurisdiction.
4. Time and mode of application
5. Failure to apply within time.

### **ORDER 30**

#### **INTERIM ATTACHMENT OF PROPERTY**

1. Interim attachment of property: where ordered
2. Application for attachment
3. Form of order
4. Where defendant fails to show cause or give security
5. Rights of third parties not to be affected
6. Removal of attachment
7. In which Court proceedings may be taken

### **ORDER 31**

#### **NEEDLESS DETENTION OF CHATTLES AND REPARATION FOR IT**

1. Damages for needless detention, etc.

### **ORDER 32**

#### **STAY OF PROCEEDINGS OR EXECUTION PENDING APPEAL**

1. Stay of proceedings or execution pending appeal.
2. Court may grant or refuse order for stay
3. Compilation of records
4. Application for stay to be treated as urgent
5. Formal order to be drawn up.

### **ORDER 33**

#### **INTERPLEADER**

1. Entitlement to relief by way of interpleader.
2. Claim to goods, etc., taken in execution
3. Mode of application
4. Matters to be proved
5. When application to be made by defendant
6. Stay of action
7. Order upon summons
8. Failure of claimant to appear; or neglect to obey summons
9. Costs etc.

### **ORDER 34**

#### **APPLICATION FOR JUDICIAL REVIEW**

1. Cases appropriate for application for judicial review.
2. Joinder of claims for relief

3. Grant of leave to apply for judicial review
4. Time within which to bring application
5. Mode of applying for judicial review.
6. Statement and affidavits
7. Claim for damages
8. Interlocutory application
9. Hearing of application for judicial review
10. person acting in obedience to an order of mandamus
11. Consolidation of applications

### **ORDER 35**

#### **COMMITTAL FOR CONTEMPT OF COURT**

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

### **ORDER 36**

#### **WRIT OF EXECUTION**

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

### **ORDER 37**

#### **GARNISHEE PROCEEDINGS**

1. Attachment of debt due to Judgment debtor
2. Application for order
3. Service and effect of order to show cause
4. Non appearance or dispute of liability by garnishee
5. Dispute of liability by garnishee
6. Claims of third persons
7. Discharge of garnishee

### **ORDER 38**

#### **PROCEEDINGS IN FORMA PAUPERIS**

1. Duration of provisions
2. Who may sue or defend in forma pauperis
3. Conditions to be fulfilled
4. Fees and costs
5. Assignment of legal practitioner
6. Procedure to be followed
7. Revocation of order: discontinuance, etc
8. Payment to legal practitioner
9. Duty of legal practitioners
10. Leave to appeal.

**ORDER 39**  
**ASSESSOR**

1. Assessor sitting in Court
2. Assessor not to write Judgment
3. Assessor to give advice only on his subject
4. Judge not bound to accept assessor's advice
5. Assessor shall take oath of secrecy

**ORDER 40**  
**RECEIVER**

1. Application for appointment of Receiver and injunction
2. Giving of security by Receiver
3. Remuneration of Receiver
4. Receiver's account
5. Payment of balance, etc. by Receiver
6. Default by Receiver

**ORDER 41**  
**REFERENCE TO REFEREE**

1. Instructions to Referee
2. Interim inquiries or account
3. General powers of the Referee
4. Evidence
5. Referee's authority in the inquiry
6. Limitation in certain particulars
7. (1) Reports made in pursuance of reference
- (2) Referee may report questions of facts specially

**ORDER 42**  
**PAYMENT INTO AND OUT OF COURT**

1. Payment into and out of court
2. Plaintiff may take out money
3. Money remaining in Court

4. Several defendants
5. Counter-claim
6. Persons under legal disability
7. Payment into and withdrawal of money from court.

### **ORDER 43**

#### **DISCOVERY AND INSPECTION**

1. Discovery by interrogatories
2. Form of interrogatories
3. Interrogatories to corporation or company
4. Objection to interrogatories by answer
5. Affidavit in answer, filing of
6. Form of affidavit in answer
7. Order to answer, or answer further
8. Application for discovery of documents
9. Process filed after close of pleadings
10. Verification of business books
11. Committal of party after service on legal practitioner
12. Committal of legal practitioner
13. Using answers to interrogatories at trial
14. Discovery of documents in marine insurance policies
15. Affidavit of documents
16. Power to order list of documents in lieu of affidavit
17. Production of documents
18. Inspection of documents referred to in pleadings or affidavit
19. Notice to produce
20. (1) Time for inspection when notice given under rule 19
- (2) Form of notice
21. (1) Order for inspection
- (2) Affidavit in support of application when required
22. (1) verified copies
- (2) Power to order discovery of particular document or class of documents
23. Premature discovery
24. Non-compliance with order for discovery
25. Service on legal practitioner of order for discovery
26. Liability of legal practitioner
27. Using answer to interrogatories at trial
28. Discovery against sheriff
29. Order to apply to infants
30. Power to revoke order made.

### **ORDER 44**

#### **ACCOUNTS AND INQUIRIES**

1. Summary order for accounts
2. Court may direct taking of accounts, etc.
3. Directions as to manner of taking account
4. Account to be made, verified, etc.
5. Erroneous account

6. Delay in prosecution of account, etc.
7. Distributions of fund before all persons entitled are ascertained.

#### **ORDER 45**

##### **ARREST OF ABSCONDING DEFENDANT**

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

#### **ORDER 46**

##### **COURT SITTING AND VACATION**

1. Days of sitting
2. Public or private sittings of court
3. Office hours
4. Days of sitting: long vacation
5. Vacation courts.
6. Vacation not reckoned in computing time for pleadings, etc.
7. Chambers

#### **ORDER 47**

##### **CAUSE LISTS**

1. Weekly cause lists
2. Posting of weekly cause lists
3. Where any Thursday is a public holiday
4. Notice boards
5. Weekly cause list

#### **ORDER 48**

##### **COMPUTATION OF TIME**

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

#### **ORDER 49**

##### **TRANSFER**

1. Transfer of cause or matter
2. Re-assignment of cause or matter
3. Action by the Chief judge on transfer

4. Evidence of part-heard cause or matter
5. Transfer of proceedings- from the Court to a High court
6. Transmission of order and copies of entries to the appropriate High Court

#### **ORDER 50**

##### **WITHDRAWAL AND DISCONTINUANCE**

1. Withdrawal of appearance
2. Discontinuance of action without leave
3. Discontinuance of action, etc, with leave
4. Effect of discontinuance
5. Stay of subsequent action until costs paid
6. Withdrawal of summons

#### **ORDER 51**

##### **EFFECT OF NON-COMPLIANCE**

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

#### **ORDER 52**

##### **ARBITRATION**

###### **A- REFERENCE TO ARBITRATOR**

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

###### **B –ARBITRAL PROCEEDINGS**

15. Applications under Arbitration and Conciliation Act

###### **C - ENFORCEMENT OF ARBITRAL AWARD**

16. Mode of enforcing awards

###### **D –REGISTRATION OF FOREIGN ARBITRAL AWARD**

17. Awards made in proceedings in foreign territory

### **ORDER 53**

#### **APPEALS AND APPLICATIONS UNDER THE TRADE MARKS ACT AND PATENTS AND DESIGNS ACT**

##### **A-GENERAL**

1. (1) Application of general procedure rules  
(2) Appeal from registrar
2. Notice of motion, etc.
3. Time within which appeal may be heard
4. Amendment of notice of motion
5. Power of the Court on appeal
6. Reference by Registrar

##### **B –TRADE MARKS**

7. Procedure for action on infringement of registered trade mark

##### **C –PATENTS AND DESIGNS**

8. Procedure for nullification of patents or designs
9. Restriction on evidence
10. Procedure for action on infringement of patent or design
11. Appointment of expert
12. Interpretation under this order

### **ORDER 54**

#### **APPEAL TO THE COURT FROM PROFESSIONAL BODIES**

1. Application
2. Methods of appeal
3. Evidence
4. Service
5. Content of notice and date of hearing
6. Reasons for appeal to be filed
7. Copies of affidavits to be served on the parties

### **ORDER 55**

#### **FEES AND ALLOWANCES**

1. Fees
2. Exemption
3. Allowances
4. Regulations

## **ORDER 56**

### **MISCELLANEOUS PROVISIONS**

1. Orders to be made
2. Other procedure rules in Appendix 1
3. Recovery of Penalties and costs
4. Notices
5. Filing
6. Fees. Appendix 3
7. Days of opening Registry to the public
8. Where no rules exist
9. Forms of writ of summons, etc.

## **ORDER 57**

### **POWERS OF THE CHIEF JUDGE TO AMEND RULES AND ISSUE PRACTICE DIRECTIONS**

1. Powers of Chief Judge over new Rules
2. Publication of new Rules
3. Chief Judge's Powers to issue practice directions, etc.
4. Practice directions etc. to be published

## **ORDER 58**

### **ESTABLISHMENT OF COMMUNICATIONS AND SERVICE CENTRE FORE-FILINC,**

1. Powers of the Chief Judge
2. Further Rules thereof
3. Time for establishment

## **S. I. 3 of 2009**

### **FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES 2009**

In exercise of the powers conferred on me by section 254 of the Constitution of the Federal Republic of Nigeria 1999, and of all other powers enabling me in that behalf, I, Abdullahi Mustapha, OFR, Chief Judge, Federal High Court, hereby make the following Rules.

#### **ORDER 1**

#### **REVOCATION, CITATION, SAVINGS, ETC.**

##### **Revocation of Civil Procedure Rules 2000**

1. The Federal High Court (Civil Procedure) Rules 2000 is hereby revoked.

##### **Citation and commencement**

2. These Rules may be cited as the Federal High Court (Civil Procedure) Rules 2009 and shall come into force on the 30<sup>th</sup> day of April, 2009.

##### **Savings: Part-Heard Matters**

3. (1) these rules shall not apply to any cause or matter part- heard on the date when these rules come into operation.  
(2) Where an action is filed and no further step is taken other than the filing, other subsequent procedure shall be under this rule.  
(3) In all other cases where causes or matters are pending the court shall give such directions as may be necessary or expedient to ensure conformity with requirements of these  
(4) The Chief Judge may give practice directions, generally or in respect of a particular case, for carrying out any of the rules in these Rules.  
(5) Except where the context otherwise requires, any reference in these Rules to any enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment.

##### **Fundamental objective**

4. The fundamental objective of these Rules is, just and expeditious disposition of cases.

##### **Interpretation**

5. In these Rules, unless the context otherwise requires:  
"Act" means the Federal High Court Act;  
"Attorney-General" means the Attorney-General of the federation;

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

"Concurrent Writ" has the same meaning as provided in Order 3 Rules 19 and 20 of these Rules;  
"Court" means the Federal High Court;

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

"Defendant" includes a defendant to a counter claim; "Judge" means judge of the Federal High Court; "Legal Practitioner" means a Law Officer, a State Counsel or a Legal Practitioner entitled to practice before the court;

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

"Plaintiff" includes a Claimant in a counter-claim; "Pleading", does not include a petition, summons or. Preliminary act;

"Process Server" includes Sheriff. Deputy Sheriff. Bailiff, Special Marshal and all other persons appointed to serve Court processes;

"Registrar" means the Chief Registrar, Deputy Chief Registrar(s), Assistant Chief Registrar, Principal Registrar, Senior Registrar, Registrar, or any other officer acting or performing the functions of a Registrar

"Registry" means the registry of the Federal High Court in Lagos or other Divisions;

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

### **Meaning of other words**

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

## **ORDER 2**

### **PLACE OF INSTITUTING AND TRIAL OF SUITS**

#### **Place for trial of Suits.**

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

#### **Suits relating to taxation, etc.**

- (2) All suits or actions relating to taxation of Companies and of other bodies established or carrying on business in Nigeria and of all other persons subject to Federal taxation shall be commenced and determined in the Judicial Division of the Court in which the headquarters or the principal office of the company or body is situate and in the case of a person subject to Federal taxation, where the person resides or carries on substantial part of his business.

**Suits for penalties.**

- (3) All actions for recovery of revenue, penalties and forfeitures, and also all actions against public officers, shall be commenced and tried in the Judicial Division of the Court in which the cause of action arose.

**Suits upon contract.**

- (4) All suits for specific performance or upon the breach of any contract shall be commenced in the Judicial Division of the Court in which the contract is supposed to have been performed or in which the defendant resides or carries on substantial part of his business.

**Suits relating to Customs, Excise, Tariff etc.**

- (5) All suits and actions relating to the Customs, Excise, Tariff, etc. shall be commenced and determined in the jurisdiction of the Judicial Division in which the breach of the law, or contract took place or the port or border where the breach took place.

**Suits relating to foreign trade.**

- (6) All suits and actions in respect of diplomatic, consular or foreign trade representation shall be commenced and determined in the Judicial Division in which the diplomatic, consular or foreign trade is carried out.

**Suits relating to passport, immigration, etc.**

- (7) All suits and actions in respect of citizenship, naturalization and aliens, repatriation of persons who are not citizens of Nigeria, passports and visas shall be commenced and determined in the Judicial Division in which the persons reside.

**Suits relating to copyright.**

- (8) All suits and actions relating to copyright, patents, designs, trademarks and merchandise marks shall be commenced and determined in the Judicial Division in which the defendant resides or where the alleged passing off or infringement takes place.

**Other Suits.**

- (9) All other suits shall be commenced and determined in the Judicial Division in which the defendant resides or carries on substantial part of his business or in which the cause of action arose.

**Judicial Division of Court in which suit may commenced**

2. If there are more defendants than one resident in different judicial Divisions, the suit may be commenced in any one of those Judicial Divisions, subject, however, to any order which the Court may, upon the application of any of the parties, or on its own motion, think fit to make with a view to the most convenient arrangement for the trial of the suit.

**Suits commence in wrong Judicial Division.**

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

## **Transfer of proceedings.**

4. No proceeding which has been taken before the plea in objection shall be in any way affected thereby, but the Judge may order that the cause be transferred to the Judicial Division to which it is proved to his satisfaction, to belong or, failing such proof, order that it be retained and proceeded with within the Court in which it had been commenced.

## **ORDER 3**

### **FORM AND COMMENCEMENT OF ACTION**

#### **Forms of commencement of action.**

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

#### **Proceedings which must be begun by writ**

2. Subject to the provisions of these Rules or any applicable law requiring any proceeding to be begun otherwise than by writ, a writ of summons shall be the form of commencing all proceedings.
  - (a) Where a plaintiff claims:
    - (i) Any relief or remedy for any civil wrong, or
    - (ii) Damages for breach of duty, whether contractual, statutory or otherwise, or
    - (iii) Damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or property.
  - (b) Where the claim is based on or includes an allegation of fraud, or
  - (c) Where an interested person claims a declaration.

#### **Mode of beginning civil proceedings commenced by writ of summons.**

3. (1) All civil proceedings commenced by writ of summons shall be accompanied by:
  - (a) Statement of claim,
  - (b) Copies of every document to be relied on at the trial,

Provided that dispute survey plans need not be filed at the commencement of the suit, but shall be filed within such time as may be ordered by the Court upon any application made under sub-rule 3 of this rule,

- (c) List of non-documentary exhibits,
- (d) List of witnesses to be called at the trial, and
- (e) Written statements on oath of witnesses;

Provided that;

- (i) The statements on oath of witnesses requiring subpoena from the Court need not be filed at the commencement of the suit,

- (ii) The witnesses who require subpoena or summons shall at the instance of the party calling them be served with Civil Form 1(a) before the filing of the statements of such witnesses.
- (2) Where a plaintiff fails to comply with sub-rule 1 of this rule, and rules 3 and 9 of this order his originating process shall not be accepted for filing by the Registry.
- (3) In land matters a plaintiff may file a motion on notice along with the originating process, for leave to enter the land in dispute for the purpose of making dispute survey plan for the suit.

**Form of writ; Civil Form 1.**

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

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

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

**Proceedings which may be begun by originating summons.**

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

**Where right depends on construction of enactment**

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

**Discretion of the Judge**

- 8. A judge shall not be bound to determine any such question of construction if in the Judge's opinion it ought not to be determined on originating summons but may make such orders as the Judge deems fit.

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

- 9. (1) an originating summons shall be in the Form 3, 4 or 5 to these Rules, with such variation as circumstances may require.
- (2) An originating summons shall be accompanied by:
  - (a) An affidavit setting out the facts relied upon, and
  - (b) Copies of all the exhibits to be relied upon

### **Originating process to be tested by its date.**

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

### **Preparing originating process.**

11. (1) Originating process shall be prepared by a plaintiff or the plaintiff's legal practitioner, and shall be clearly printed in black ink on white opaque A4 paper of high quality.
- (2) The person filing the originating summons shall leave at the Registry sufficient number of copies thereof together with the documents in sub-rule 2 of rule 9 of this rule for service on the respondent or respondents.

### **Sealing of originating process.**

12. (1) The Registrar shall seal every originating process where upon it shall be deemed to be issued.
- (2) A plaintiff or the plaintiff's legal practitioner shall, on presenting any originating process for sealing, leave with the Registrar as many copies of the process as there are defendants to be served and one copy for endorsement of service on each defendant.
- (3) Each copy shall be signed by the legal practitioner or by a plaintiff where the plaintiff sues in person and shall be certified after verification by the Registrar as being a true copy of the original process filed.

### **What is to be done after sealing?**

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

### **Copies to be served**

14. The Registrar shall promptly arrange for personal service on each defendant of a copy of the originating process and accompanying documents duly certified as provided by in this order.

### **Duration of and renewal**

15. (1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for twelve months beginning with the date of its issue, and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

- (2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period not exceeding six months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order if an application for extension is made to the court before that day or such later day (if any) as the Court may allow.
- (3) Before a writ, the validity of which has been extended under this rule, is served, it shall be marked with an official stamp showing the period for which the validity of the writ has been so extended.
- (4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served, so as to extend the validity of that other writ until the expiration of the period specified in the order.

### **Validity and renewal, renewal of originating summons**

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

### **Endorsement of renewal. Civil Form 6.**

17. A judge may order two renewals in each case strictly for good cause and upon prompt application, provided that no originating process shall be in force for longer than a total of two years. The Registrar shall state the fact, date and duration of renewal on every renewed originating process.

### **Loss of originating process**

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

### **Concurrent originating process**

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

### **Concurrent originating process for service within and out of jurisdiction**

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

## **ORDER 4**

### **ENDORSEMENT OF CLAIM AND OF ADDRESSES**

#### **Endorsement**

1. (1) every originating process shall contain the claim, the relief or remedy sought and the full name and address of the plaintiff.

#### **Endorsement as to representative capacity**

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

#### **What is endorsed where claim is liquidated?**

3. Where the claim is for debt or liquidated demand only, the originating process shall state the amount claimed for in respect of such demand with costs and shall further state that the defendant may pay the amount with costs to the plaintiff's legal practitioner within the time allowed for appearance and that upon such payment the proceedings shall terminate.

#### **Ordinary account**

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

#### **Endorsement of address by plaintiff or by legal practitioner**

5. (1) where a plaintiff is suing in person the originating process shall have stated on it:
  - (a) The plaintiff's residential or business address as the plaintiff's address for service,
  - (b) His mobile telephone number and e-mail address where available,
  - (c) If the plaintiff lives and carries on business outside the judicial Division of the Court the process shall have stated on it by him an address within the jurisdiction as his address for service.
- (2) Where a plaintiff sues through a legal practitioner, the legal practitioner shall state on the originating process.
  - (a) The legal practitioner's chambers address as the address for service,
  - (b) His mobile telephone number and e-mail address where available,
  - (c) if the legal practitioner is based outside the judicial Division of the Court the legal practitioner shall state a chambers address within the jurisdiction as the legal practitioner's address for service.

#### **Originating process with no address**

6. If the originating process does not state an address for service, it shall not be accepted.

## **ORDER 5**

### **PETITION**

#### **GENERAL PROVISIONS**

## **Application**

1. This order shall apply to petitions by which civil proceedings in the court are begun, subject, in the case of petitions of any particular class, to special provisions relating to petitions of that class made by or under any decree or other enactment.

## **Contents of petition**

2. (1) every petition shall include a concise statement of the nature of the claim made or relief or remedy required in the proceedings begun thereby.
- (2) Every petition shall include at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served a statement to that effect.
- (3) Where a person brings a petition in person, the petition shall be endorsed with-
  - (a) the address of the person's place of residence and if such person's place of residence is not within jurisdiction or if such person has no place of residence, the address of a place within the jurisdiction at or to which documents for such person may be delivered or sent;
  - (b) The person's occupation; and
  - (c) An address for service, mobile telephone number and e-mail address where available.

## **Presentation of petition**

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

## **Fixing time for hearing, etc. of petition**

4. (1) a day and time for the hearing of a petition shall be fixed by the judge.
- (2) Unless the Court otherwise directs, a petition which is required to be served on any person shall be served on him not less than seven days before the day fixed for the hearing of the petition.

## **Certain applications not to be made by petition**

5. No application in any pending cause or matter may be made by petition.

## **ORDER 6**

### **SERVICE OF PROCESS**

#### **A –SERVICE WITHIN JURISDICTION**

#### **By whom service is to be affected.**

1. Service of writs of summons, notices, petitions, pleading, orders summonses, warrants and all other proceedings, documents or written communication of which service is required, shall, shall be made by-
  - (a) The sheriff or a deputy sheriff, bailiff, officer of the court; or

- (b) A person appointed thereof (either especially or generally) by the Court or by a Judge in Chambers, unless another mode of service is prescribed by these Rules; or
- (c) a solicitor filing the document who must give a written undertaking at the time of filing the document to the registrar receiving the document that his Chambers shall serve the document on the other party or his solicitor and that he would file with the registrar a proof of the service signed by the other party or his solicitor; or
- (d) The Court or a Judge in Chambers by such other method of service as the Court or Judge in Chambers may otherwise direct.

**Service of process: how effected.**

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

**When process need not be served**

- 3. No service of a writ of summons or other process on the defendant shall be necessary when the defendant by his legal practitioner undertakes in writing to accept service.

**Special bailiff**

- 4. (1) The Court may in any civil case, for reasons which seems to it sufficient, appoint any process to be executed by a special bailiff, who for the time being shall have the privileges and liabilities of an officer of Court.
- (2) The expenses of the special bailiff shall be defrayed by the party on whose application he is appointed unless the Court in any case sees any reason to vary this rule.

**Substituted service**

- 5. Where it appears to the Court (either after or without an attempt at personal service) that for any reason personal service cannot be conveniently effected, the Court may order that service be effected either-
  - (a) By delivery of the document to an adult person at the usual or last known place of abode or business of the person to be served; or
  - (b) by delivery of the document to some person being an agent of the person to be served, or to some other person, on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or other person, come to the knowledge of the person to be served; or
  - (c) By advertisement in the Federal Government Official Gazette, or in some newspaper circulating within the jurisdiction; or
  - (d) by notice put up at the principal Court-House of, or some other place of public resort in the Judicial Division wherein the proceeding in respect of which the service is made is instituted, or at the usual or last known place of abode, or of business, of the person to be served; or
  - (e) by service where a party is represented by a legal practitioner, of notices, pleadings, petitions, orders, summonses, warrants and all other proceedings, documents or written communications on the legal practitioner or his clerk.

### **Service on employee of Government**

6. When a party to be served is in the service of any Ministry or non-Ministerial Department of Government or of a Local Government, the Court may transmit the document to be served and a copy thereof to the most senior officer of the Department of Government in the Judicial Division or place where the party to be served works or resides or to the Local Government in whose service the party to be served is, and such officer or local government shall cause the same to be served on the proper party, accordingly.

### **Service on partners**

7. Where partners are sued in the name of the partnership, the writ or other document shall be served upon any one or more of the partners, or at the principal place within the Judicial Division of the business of the partnership, upon any person in that place having at the time of the service the control or management of the business and such service shall be deemed good service upon the partnership.

### **Service on corporation or company**

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

### **Service on board ship**

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

### **Service on prisoners and lunatics**

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

### **Service on infants**

11. Where an infant is a party to an action, service on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, shall, unless the Court or a Judge in chambers otherwise orders, be deemed good personal service on the infant but the Court or Judge may order that service made or to be made on an infant personally shall be deemed good service.

### **Service on local agent of principal who is out of jurisdiction**

12. Where service is to be made upon a person residing out of, but carrying on business within the jurisdiction in his own name or under the name of a firm through an authorized

agent, and the proceeding is limited to a cause of action which arose within the jurisdiction, the Writ or other document may be served by giving it to the agent, and the service shall be equivalent to personal service.

## **B - SERVICE OUT OF JURISDICTION**

### **Service of writ out of jurisdiction**

13. Service out of jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge in Chambers whenever-
  - (a) The whole subject matter of the action is land situate within the jurisdiction (with or without rents or profits); or
  - (b) any act, deed, will contract, obligation, or liability affecting land or hereditament situate within the jurisdiction, is sought to be construed, rectified, set aside or enforced in the action; or
  - (c) Any relief is sought against any person domiciled, or ordinarily resident, within the jurisdiction; or
  - (d) The action is one brought against the defendant to enforce, rescind, dissolve, annul or otherwise effect a contract or to recover damages or other relief for or in respect of a breach of a contract-
    - (i) made within the jurisdiction, or
    - (ii) made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction, or
    - (iii) by its terms or by implication to be governed by the law in force in the jurisdiction or is brought against the defendant in respect of a breach committed within the jurisdiction of a contract wherever made, even though the breach was preceded or accompanied by a breach out of the jurisdiction which rendered impossible the performance of the part of the contract which ought to have been performed within the jurisdiction;
  - (e) the action is founded on tort or other civil wrong committed within the jurisdiction; or
  - (f) any injunction is sought as to anything to be done within the jurisdiction or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or
  - (g) Any person out of jurisdiction is a necessary or proper party to an action properly brought against some other party within the jurisdiction; or
  - (h) The action is by a mortgagee or mortgagor in relation to a mortgage of property situate within the jurisdiction and seeks relief of the nature or kind of the following that is to say. Sole foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee; but does not seek (unless and except so far as permissible under paragraph (d) of this rule) any personal Judgment or order for payment of any money due under the mortgage; or
  - (i) The action is one brought under the Civil Aviation Act or any regulation made in pursuance of the Act or any law relating to carriage by air.

### **Application to be supported by affidavit**

14. (1) Every application for leave to serve a writ or notice on a defendant out of the jurisdiction shall be supported by affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action and showing in what place or country the defendant is or probably may be found, and the grounds upon which application is made.

- (2) No such leave shall be granted unless it is made sufficiently to appear to the Court or a Judge in Chambers that the cause is a proper one for service out of jurisdiction under these Rules.

### **Order to fix time for appearance**

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

### **Service of notice**

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

### **Service of originating summons, etc**

17. (1) Service out of the jurisdiction may be allowed by the Court or a judge in Chambers of the following processes or of notices thereof, that is to say-
- (a) An originating summons, where the proceedings begun by an originating summons might have been begun by a writ of summons under these Rules;
  - (b) Any originating summons, petition, notice of motion or other originating proceedings-
    - (i) In relation to an infant or lunatic or person of unsound mind, or
    - (ii) Under any law or enactment under which proceedings can be commenced otherwise than by writ of summons, or
    - (iii) Under any rule of Court where under proceedings can be commenced otherwise than by writ of summons;
  - (c) without prejudice to the generality of paragraph (b) of this sub-rule, any summons, order or notice in any interpleader proceedings or for the appointment of an Arbitrator or umpire or to remit, set aside, or enforce an award in an arbitration held or to be held within the jurisdiction;
  - (d) Any summons, order or notice in any proceeding duly instituted whether by writ of summons or other such originating process as aforesaid.
- (2) The provisions of rule 14, 15 and 16 of this order shall apply mutatis mutandis to service under this rule.

### **Service abroad by letter of request**

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

#### **Civil Form 7**

- (a) the document to be served shall be sealed with the seal of the Court for use out of the jurisdiction, and shall be transmitted to the Permanent Secretary to the Ministry of Justice by the Chief Registrar on the direction of the Chief Judge, together with a copy thereof translated into the language of the country in which service is to be effected and with a request for transmission to the Minister responsible for foreign affairs for the further transmission of the same to the government

of the country in which leave to serve the document has been given and the request shall be as in Form 7 in Appendix 6 to these Rules with such variations as circumstances may require;

#### Civil Form 8

- (b) The party requesting a copy of a document for service under this section shall, at the time of requesting the same, file a praecipe as in **Form 8** in appendix 6 to these Rules.
- (c) An official certificate, or declaration upon oath or otherwise, transmitted through the diplomatic channel by the Government or Court of a foreign country to which this provision applies, to the Court, shall, provided that it certifies or declares the document to have been personally served, or to have been duly served upon the defendant in accordance with the law of that foreign country, or words to that effect, be deemed to be sufficient proof of service, and shall be filed on record as, and be equivalent to an affidavit of service within the requirements of these Rules in that behalf;

#### Civil Form 9

- (d) Where an official certificate or declaration transmitted to the Court in the manner provided in paragraph (c ) of this sub-rule certifies or declares that efforts to serve a document have been without effect, the Court or a Judge may, upon the ex parte application of the plaintiff, order substituted service of the document, and the document and a copy of it and the order shall be sealed and transmitted to the permanent secretary to the Ministry of justice in manner aforesaid together with a request in **Form 9** of Appendix 6 to these Rules, with such variations as circumstances may require.
- (2) Nothing herein contained shall in any way prejudice or affect any practice or power of the Court under which when lands, funds, choses in action, rights or property within the jurisdiction are sought to be dealt with or affected, the Court may, without affecting the exercise of jurisdiction over any person out of the jurisdiction, cause such person to be informed of the nature or existence of the proceedings with a view to such person having an opportunity of claiming, opposing or otherwise intervening..

#### **Service out of the jurisdiction under the Civil Aviation Act**

- 19. (1) where, for the purpose of an action under the Civil Aviation Act and the Convention therein set out, leave is given to serve a notice of writ of summons upon a high contracting party to the Convention other than Nigeria, the provisions of this order shall apply.
- (2) The notice shall specify the time for entering an appearance as limited in pursuance of rule 15 of this order.
- (3) The notice shall be sealed with the seal of the Court for service out of jurisdiction, and shall be transmitted to the Ministry of Justice, together with a copy thereof transmitted into the language of the country of the defendant, and with a request for transmission to the Minister responsible for matters relating to foreign affairs for further transmission of the same to the Government of that country.

#### Civil Form 10

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

- (5) The party bespeaking a copy of a document for service under this rule shall at that time of bespeaking the document file a praecipe in **Form 9** in Appendix 6 to these Rules.
- (6) An official certificate from the Minister responsible for matters relating to foreign affairs transmitted by the Ministry of Justice or otherwise to the Court certifying that the notice was delivered on a specified date to the Government of the country of the defendant shall be deemed to be sufficient proof of service and shall be filed as record of, and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf.
- (7) After entry of appearance by the defendant, or, if no appearance is entered after expiry of the time limited for appearance, the action may proceed to Judgment in all respects as if the defendant had for the purposes of the action waived all privileges and submitted to the jurisdiction of the Court.
- (8) Where it is desired to serve or deliver a summons, order or notice in the proceedings on the defendant out of the jurisdiction, the provisions of this rule shall apply with such variation as circumstances may require.

### **Service of documents abroad**

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

### **Civil Form 8 and Civil Form 37**

- (a) the party bespeaking the service shall file in the registry a request in **Form 8 or Form 37** in Appendix 6 to these Rule which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used and the request shall state the medium through which it is desired that the service shall be effected, that is, whether-
  - (i) Directly through the diplomatic channels, or
  - (ii) Through the foreign judicial authority, and shall be accompanied by the original documents and a translation thereof in the language of the country in which service is to be effected, certified by or on behalf of the person making the request and a copy of each for every person to be served and any convention may require (unless the service is required to be made on a Nigerian citizen directly through the diplomatic channels in which case the translation and copies thereof need not accompany the request unless the Convention expressly required that they should do so);
- (b) The documents to be served shall be sealed with the seal of the Court for use out of the jurisdiction and shall be forwarded by the Registrar to the Permanent Secretary for Foreign Affairs for transmission to the foreign country;
- (c) An official certificate, transmitted through the diplomatic channel by the foreign judicial authority or by a Nigerian diplomatic agent to the Court, establishing the fact and the date of the service of the document, shall be deemed to be sufficient proof of such service, and shall be filed as record of, and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf.

### **Saving for other modes of services**

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

#### **Air mail**

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

#### **Service for foreign tribunals**

23. Where, in any civil cause or matter pending before a court or tribunal in any foreign country with which a Convention in that behalf has been or shall be made, a request for service of any document on a person within the jurisdiction is received by the Chief Judge from the consular or other authority of the country, the following procedure shall, subject to any special provision contained in the Convention, be adopted-
- (a) The service shall be effected by the delivery of the original or a copy of the document, as indicated in the request and the copy of the translation, to the party or person to be served in person by an officer of the court, unless the Court or a judge in Chambers thinks fit otherwise to direct;
  - (b) no court fees shall be charged in respect of the service but the particulars of charges of the officer employed to effect service shall be submitted to the Chief Registrar of the Court who shall certify the amount properly payable in respect thereof;
  - (c) The Chief judge shall transmit to the consular or other authority making the request, a certificate establishing the fact and the date of the service in person, or indicating the reason for which it has not been possible to effect it, and at the same time shall notify to the said consular or other authority the amount of the charges certified under paragraph (b) of this rule.

#### **Substituted Service**

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

#### **Order thereon**

25. Any order giving leave to effect service out of the jurisdiction shall prescribe the mode of service, and shall limit a time after the service within which the defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served, and the Court may receive an affidavit or statutory declaration of such service having been effected as prima facie evidence thereof.

### **C - GENERAL PROVISIONS**

#### **Where violence threatened**

26. Where the officer of Court or person charged with the service of any writ or document on any person is prevented by the violence or threats of such person, or any other person in concert

with him, from personally serving the writ or documents, it shall be sufficient to inform the person to be served of the nature of the writ or document as near that person as practicable.

### **Affidavit of service**

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

### **Expenses of service**

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

### **Service on Sunday or public holiday**

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

### **Recording of service**

30. A book shall be kept at every Court for recording service or process, in such form as the Chief Judge may direct, in which shall be entered by the officer serving the process, or by the registrar, the names of the plaintiff or complainant and the defendant, the particular Court issuing the process, the method, whether personal or otherwise, of the service, and the manner in which the person serving ascertained that he served the process on the right person, and where any process is not duly served, then the cause of failure shall be stated and every entry in the book or an office copy of any entry shall be prima facie evidence of the several matters therein stated.

### **Interpretation**

31. In this order "Out of Jurisdiction" means out of the Federal Republic of Nigeria.

## **ORDER 7**

### **APPEARANCE**

#### **Mode of entry of appearance. Civil Form II**

1. (1) A defendant served with an originating process shall within thirty days file in the Registry, along with the process mentioned in order 13 rule 2 (1), the original and copy of a duly completed and signed memorandum of appearance as in Form 11 with such modifications or variations as circumstances may require.
2. On receipt of the memorandum of appearance, the Registrar shall make entry thereof and stamp the copy with the seal showing the date he received it and return the sealed copy to the person making the appearance.

3. If a defendant files an appearance after the time prescribed in the originating process, he shall pay to the Court an additional fee of N200.00 (Two Hundred Naira) for each day of default.

### **Defendant appearing in person or represented by legal practitioner**

2. (1) A defendant appearing in person shall state in the memorandum of appearance an address for service which shall be within the Judicial Division of the Court including mobile telephone number and E-mail address where available.
- (2) Where a defendant appears by a legal practitioner, the legal practitioner shall state in the memorandum of appearance his place of business and an address for service which shall be within the Judicial Division of the Court including mobile telephone number and E-mail address where available and where any such legal practitioner is only the agent of another legal practitioner, he shall also insert the name and place of business of the principal legal practitioner.

### **Memorandum of Appearance with no address for service**

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

### **Defendants appearing through same legal practitioner**

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

### **Person under legal disability appearing**

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

## **ORDER 8**

### **DEFAULT OF APPEARANCE**

#### **Default of appearance generally**

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

#### **Liquidated demand**

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

#### **Liquidated demand: several defendants**

3. Where the claim in the originating process is a liquidated demand and there are several defendants of whom one or more appear to the process and another or others fail to appear, a plaintiff may apply to a judge for Judgment against those who have not appeared and may execute the

Judgment without prejudice to his right to proceed with the action against those who have appeared.

### **Several defendants**

4. Where the claim in the originating process is as in rule 6 of this order and there are several defendants one or some of whom appear while another or others do not appear, a plaintiff may apply for Judgment against the defendant(s) failing to appear. The value of the goods and or the damages only as the case may be, shall be ascertained in such manner and subject to the filing of such particulars as a judge may direct before Judgment in respect of that part of the claim.

### **Default of appearance by person under legal disability.**

5. Where no appearance has been entered for a person under legal disability, a plaintiff shall apply to a judge for an order that some person be appointed guardian for such defendant and when appointed the person may appear and defend. The application shall be made after service of the originating process. Notice of the application shall be served on the person intended to be appointed the guardian of the defendant.

### **Judgment in default of appearance**

6. Where the claim in the originating process is for pecuniary damages, or for detention of goods with or without a claim of pecuniary damages, and the defendant or all of several defendants fail to appear, a plaintiff may apply for a Judgment. The value of the goods and damages or the damages only as the case may be shall be ascertained in such manner and subject to the filing of such particulars as a judge may direct before Judgment in respect of that part of the claim.

### **Detention of goods, damages and liquidated demands**

7. Where the claim in the originating process is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any of the defendants fail to appear, a plaintiff may apply to a judge for Judgment. The value of the goods and damages or the damages as the case may be shall be ascertained in such manner and subject to the filing of such particulars as a judge may direct before judgment in respect of that part of the claim.

### **Judgment for costs upon payment satisfaction, etc**

8. In any case to which rules, 2, 3, 4, 6 & 7 of this order do not apply and the defendant or all of several defendants fail to appear, but by reason of payment, satisfaction, abatement of nuisance, or any other reason, it is unnecessary for a plaintiff to proceed, he may apply to a judge for Judgment for costs:

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

### **Setting aside Judgment**

9. Where Judgment is entered pursuant to any of the preceding rules of this order a judge may set aside or vary such Judgment on just terms upon an application on notice by the defendant. The application shall be made within 14 days and it shall be accompanied with treasury receipt showing payment of penalty for the period of default and show a good defence to the claim and a just cause for the default.

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

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

**ORDER 9**

**PARTIES**

**A - GENERAL**

**Person claiming jointly or severally**

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

**Action in the name of a wrong plaintiff**

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

**Misjoinder and Counter-claim**

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

**Class action**

4. (1) Where in any class action concerning-
  - (a) Trademarks
  - (b) Copyright or
  - (c) Patents and Designs, a judge is satisfied that-
    - (i) A person, the class, or some members of the class interested cannot be ascertained or cannot rightly be ascertained,
    - (ii) The person, the class or some members of the class interested if ascertained, cannot be found,
    - (iii) The person, or class and the members thereof cannot be ascertained and be found,

It is expedient for the purpose of efficient procedure that one or more persons be appointed to represent that person or class or members of the class, the judge may make the appointment.

- (2) The decision of the Judge in the proceedings shall be binding on the person or class of persons so represented.

Opting in and opting out.

- (3) In any class proceedings a person, class or some members of the class may apply to the Court or a Judge in Chambers to opt in or opt out of the class action.
- (4) A court or Judge in Chambers may on good and justifiable cause permit any person, class or members of the class represented in a class action to opt in or opt out.

#### **Any person may be joined as defendant**

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

#### **Action in the name of a wrong defendant**

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

#### **Defendant needs not be interested in all the reliefs sought.**

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

#### **Joinder of persons severally or jointly and severally liable**

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

#### **Plaintiff in doubt as to person from whom he seeks redress**

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

### **Persons under legal disability**

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

### **Next friend**

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

### **Numerous persons**

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

### **Where there is no personal representative**

13. (1) If in any proceeding it appears to a Judge that any deceased person who was interested in the proceedings has no legal personal representative, the Judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for the purpose of the proceeding on such notice to such persons (if any) as the Judge shall deem fit either specifically or generally by public advertisement and the order so made and any order consequent thereon shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the proceedings.
- (2) Where a sole or sole surviving plaintiff or defendant in a proceeding dies and the cause of action survives but the person entitled to proceed fails to proceed, a Judge may on the application of either the deceased person's legal practitioner or the opposing party order any person to take the place of the deceased and proceed with the suit.
- (3) In default of such application or where the person substituted fails to proceed, Judgment may be entered for the defendant or as the case may be for the person against whom the proceedings might have been constituted.

### **Proceedings not defeated by misjoinder or non-joinder.**

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

- (2) A judge may at any stage of the proceedings either upon or without the application of either party and on such terms as may appear to the judge to be just, order that the names of any parties improperly joined be struck out.
- (3) A judge may order that the name of any party who ought to have been joined or whose presence before the Court is necessary to effectually and completely adjudicate upon and settle the questions involved in the proceedings be added.
- (4) No person under legal disability shall be added as a plaintiff suing without a guardian and no person shall be added as the guardian of a plaintiff under legal disability without his own consent in writing.
- (5) Every party whose name is added as defendant shall be served with the originating processes or notice in the manner prescribed in these Rules or in such manner as may be prescribed by a judge and the proceedings against such person shall be deemed to have begun on the service of such originating processes or notice.

#### **Application to add or strike out.**

15. (1) any application to add or strike out or substitute or vary the name of a plaintiff or defendant may be made to a judge by motion.
- (2) Where the application is to add a plaintiff or a defendant the application shall be accompanied by the statement of claim or defence as the case may be, all the exhibits intended to be used and the depositions of all the witnesses.

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

#### **Where defendant is added**

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

#### **Third party notice**

17. (1) Where in any action a defendant claims as against any person not already a party to the action (in this section called "the third party") that-
  - (a) he is entitled to contribution or indemnity; or
  - (b) he is entitled to any relief or remedy relating to, or connected with the original subject matter of the action and substantially the same as one relief or remedy claimed by the plaintiff; or
  - (c) any question or issue relating to or connected with the said subject matter is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but also as between the plaintiff and the defendant and the third party or between any or either of them,

The Court or a Judge in Chambers may give leave to the defendant to issue and serve a third party notice.

How leave obtained

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

### **Form and issuance of notice**

18. (1) the notice shall-
  - (a) State the nature and grounds of the claim or the nature of the question or issue sought to be determined and the nature and extent, of any relief or remedy claimed;

Civil Forms 12 and 13.

- (b) be in accordance with Form 12 or Form 13 in Appendix 6 to these Rules with such variations as circumstances may require; and
  - (c) Be sealed and served on the third party in the same manner as a writ of summons is sealed and served.
- (2) The notice shall, unless otherwise ordered by the Court or by a Judge in Chambers, be served within the time limited for delivering the defence, or, where the notice is served by a defendant to a counter-claim, the reply and with it also shall be served a copy of the writ of summons or originating summons and of any pleadings filed in the action.

### **Effect of notice**

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

### **Appearance**

20. The third party may enter an appearance in the action within eight days from service or within such further time as may be directed by the Court or Judge in Chambers as specified in the notice (where the third party is served in Nigeria outside the jurisdiction of Court, the period for entering appearance shall be at least third days) but a third party failing to appear within that time may apply to the Court or judge in chambers for leave to appear, and the leave may be given upon such terms, if any, as the Court or judge in chambers thinks fit.

### **Default by third party**

21. If a third party duly served with a third party notice does not enter an appearance or makes default in filing any pleading which he has been ordered to file, he shall be deemed to admit any claim stated in the third party notice and shall be bound by any Judgment given in the action, whether by consent or otherwise, and by any decision therein or any question specified in the action, and when contribution or indemnity or other relief for remedy is claimed against him in the notice, he shall be deemed to admit his liability in respect of the contribution or indemnity or other relief for remedy.

### **Procedure after default**

22. (1) Where a third party makes default in entering an appearance or filing any pleading which he had been ordered to file and the defendant giving the notice suffers Judgment by default, the defendant shall be entitled at any time, after satisfaction of the Judgment against himself, or before the satisfaction by leave of the Court or a judge in Chambers-
- (a) To enter Judgment against the third party to the extent of any contribution or indemnity claimed in the third party notice, or by leave of the Court or a judge in chambers.
  - (b) To enter such Judgment in respect of any other relief or remedy claimed as the Court or a judge in Chambers shall direct.
- (2) It shall be lawful for the Court or a judge in chambers to set aside or vary the Judgment against the third party upon such terms as may seem just.

### **Third party directions**

23. (1) If the third party enters an appearance, the defendant giving notice may, after notice of the intended application has been served upon the plaintiff, the third party, and on any other defendant, apply to the Court or a judge in chambers for directions, and the Court or Judge in chambers may-
- (a) where the liability of the third party to the defendant giving the notice is established on the hearing of the application, order such Judgment as the nature of the case may require to be entered against the third party in favour of the defendant giving the notice; or
  - (b) if satisfied that there is a question or issue properly to be tried as between the plaintiff and the defendant and the third party or between any or either of them as to the liability of the defendant to the plaintiff or as the liability of the third party to make any contribution or indemnity claimed, in whole or in part, or as to any other relief or remedy claimed on the notice by the defendant or that a question or issue stated in the notice should be determined not only as between the plaintiff and the defendant but as between the plaintiff, the defendant and the third party or any or either of them, order that question or issue to be tried in such manner as the Court or judge in Chambers may direct; or
  - (c) Dismiss the application
- (2) Any direction given pursuant to this rule may be given either before or after any Judgment has been entered in favour of the plaintiff against the defendant in the action, and may be varied from time to time and may be rescinded.
- (3) The third party proceedings may at any time be set aside by the Court or a judge in chambers.

### **Leave to defend**

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

## **At trial or after**

25. (1) Where the action is tried, the judge who tries the action may, at or after the trial, enter such Judgment as the nature of the case may require for or against the defendant giving the notice or against or for the third party, and may grant to the defendant or to the third party, any relief or remedy which might properly have been granted if the third party had been made a defendant to an action duly instituted against him by the defendant but execution shall not be issued without leave of the Court or of a judge in Chambers until after satisfaction by the defendant of the Judgment against him.
- (2) Where the action is decided otherwise than by trial, the Court or a judge in chambers may, on application by motion or summons, make such order as the nature of the case may require, and where the plaintiff has recovered Judgment, may cause such Judgment as may lie just to be entered for or against the defendant giving notice or against or for the third party.

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

### **Actions by and against firms**

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

### **Disclosure of partners' names**

27. (1) When an originating process is issued by partners in the name of their firm, the plaintiffs or their legal practitioners shall, on demand in writing by or on behalf of any defendant declare in writing the names and residential addresses of all the persons constituting the firm on whose behalf the action is brought.
- (2) Where the plaintiffs or their legal practitioners fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as a judge may direct.
- (3) Where the names of the partners are so declared, the suit shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as plaintiffs in the originating process provided that the proceedings may continue in the name of the firm.

### **Appearance of partners**

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

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

### **Application of rules to actions between co-partners**

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

### **Persons trading as firms**

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

## **C - ALTERNATION OF PARTIES**

### **Where change of interest, Court may make order enabling suit to proceed**

31. (1) Where after the institution of a suit a change or transmission of interest or liability occurs in relation to any party to the suit, or any party to the suit dies or becomes incapable of carrying on the suit, or the suit in any other way becomes defective or incapable of being carried on, any person interested may obtain from the Court an order for curing the defect, or enabling or compelling proper parties to carry on the proceedings.  
  
(2) A person served with an order made pursuant to sub-rule (1) of this rule may, within such time as the court in the order directs, apply to the Court to discharge or vary the order.

### **Application to discharge order by person under disability having a guardian**

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

### **Application to discharge order by persons under disability having no guardian**

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

## **D - LEGAL PRACTITIONERS OR AGENTS**

**Acts may be done by legal practitioners.**

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

#### **Party may change legal representative**

35. (1) A party to any cause or matter who sues or defends by a counsel, may change his legal practitioner without an order for that purpose, but and until notice of the change is filed and copies of the notice are served on every other party to the cause or matter and on the former legal practitioner of the party for the duration of the action.
- (2) A copy of the former legal representative shall remain the legal practitioner of the notice accompanied by an affidavit stating that the notice has been duly filed in the Registry shall also be filed.
- (3) The party giving notice may perform the duty prescribed by this order in person or by his new legal representative.

#### **Where legal representative- ceases to act**

36. (1) Where a legal practitioner who has acted for a party in a cause or matter ceases to act and the party has not given notice of change in accordance with sub-rule 1 of rule 35 of this order, the legal practitioner may apply to the acting court for an order declaring that the legal representative has ceased to be the one for the party in the cause or matter and the Court may make an order accordingly.
- (2) An order under sub-rule I of this rule shall not be made until the legal practitioner serves on every party to the cause or matter a copy of the notice otherwise he shall be considered the legal practitioner of the party for the remaining duration of the cause or matter.
- (3) An application for an order under this rule shall be made by originating motion supported by an affidavit stating the grounds of the application.
- (4) An order made under this rule shall not affect the rights of the legal representative and the party for whom he acted as between themselves.

#### **Address of party.**

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

### **ORDER 10**

#### **JOINDER OF CAUSES OF ACTION**

#### **All causes of action may be joined**

1. Subject to the following rules of this order, the plaintiff may unite in the same action or several causes of action; but if it appears that they cannot be conveniently tried or disposed of together, a

Judge may order separate trials of such causes of action or may make such order as may be necessary or expedient for the separate disposal thereof.

### **Claims by joint plaintiffs**

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

### **Counter-claim against plaintiff.**

3. (1) Subject to sub-rule (2) of this rule, a defendant in any action who alleged that he has any claim or is entitled to any relief or remedy against the plaintiff in the action in respect of any matter (whenever and however arising), may instead of bringing a separate action, make a counter claim in respect of that matter; and where he does so, he shall add the counter claim to his defence.
- (2) Sub-rule 1 of this rule shall apply in relation to a counter claim as if the counter claim were a separate action and as if the person making the counter claim were a plaintiff and the person against whom it is made, the defendant.
- (3) A counter claim may be proceeded with notwithstanding that Judgment is given for the plaintiff in the plaintiff's action or that the action is stayed, discontinued or dismissed.

### **Count may order separate trials, etc**

4. (1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counter claim or if two or more plaintiffs or defendants are parties to the same action, and it appears to the court that the joinder of such causes of action or of parties as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.
- (2) If it appears on the application of any party against whom a counter claim ought for any reason to be disposed of by a separate action, the Court may order it to be tried separately or make such other order as may be expedient.

## **ORDER 11**

### **CONSOLIDATION**

#### **Consolidation**

1. (1) Where two or more matters are pending in the Court and it appears to the Court that-
  - (a) same question of law or fact arises in both or all of them; or
  - (b) The rights to relief claimed therein are in respect of or arise out of the same or similar transaction or series transactions; or
  - (c) The interest of justice of the trial so demands, the Court may order that the causes or matters be consolidated on such terms as it thinks just and the court shall give such directions as may be necessary with respect to the hearing of the causes or matters so consolidated.
- (2) An order to consolidate may be made where two or more causes or matters are pending between
  - (a) the same plaintiffs and the same defendants; or
  - (b) the same plaintiffs and different defendants; or
  - (c) Different plaintiffs and different defendants.

- (3) Applications for consolidation may be made by summons or notice for directions in Chambers or they may be made in Court by motion on notice.

## **ORDER 12**

### **THE UNDEFENDED LIST**

#### **Undefended list: affidavit**

1. Whenever application is made to a Court for the issuance of a writ of summons in respect of a claim to recover a debt or liquidated money demand and the application is supported by an affidavit setting forth the grounds upon which the claim is based and stating that in the deponent's belief there is no defence thereto, the Court shall, if satisfied that there are good grounds for believing that there is no defence thereto, enter the suit for hearing in what shall be called the "Undefended List", and mark the writ of summons accordingly, and enter thereon a date for hearing suitable to the circumstances of the particular case.

#### **Copies of affidavit to be served**

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

#### **Notice of Intention to defend.**

3. (1) If the party served with the writ of summons and affidavit delivers to the Registrar, not less than five days before the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the merit, the Court may give him leave to defend upon such terms as the court may think just.
- (2) Where leave to defend is given under this rule, the action shall be removed from the Undefended List and placed on the ordinary cause list and the Court may order pleadings, or proceed to hearing without further pleadings.
- (3) Where pleadings are ordered the provisions of order 13 rule 3 of these Rules shall apply.

#### **Judgment in undefended suit**

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

#### **Oral evidence**

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

## **ORDER 13 PLEADINGS**

### **A - GENERAL**

#### **Service of statement of claim.**

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

#### **Service of statement of defence.**

2. (1) Subject to sub-rule (2) of this rule, a defendant who enters an appearance and intends to defend the actions shall, unless the Court gives leave to the contrary serve:
  - (a) A statement of defence which may include any preliminary objection he wishes to raise to the plaintiff's action;
  - (b) List of witnesses to be called at the trial;
  - (c) Written statement on oath of the witnesses;
  - (d) copies of every document to be relied on at the trial; and
  - (e) list of non-documentary exhibits at the time he files his memorandum of appearance.
- (2) If a summons under order 12 rule 1 of these Rules is served on a defendant, sub-rule (1) of this rule shall not have effect in relation to him unless by the order of Court made on a motion on notice he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within fourteen days after the making of the order or within such other period as may be specified in the order.

#### **Service of reply and defence to counter-claim.**

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

#### **Civil Form 14**

- (2) A plaintiff on whom a defendant serves a counter-claim as in Form 14 in Appendix 6 to these Rules, shall, if he intends to defend it, serve on that defendant within fourteen days a defence to counter-claim.
- (3) Where a plaintiff intends to file both a reply and a defence to counter-claim, he shall include them in the same document.
- (4) A reply to any defence shall be served by the plaintiff before the expiration of fourteen days after the service on him of that defence, and a defence to a counter-claim shall be served by the plaintiff before the expiration of fourteen days after the service on him of the counter claim to which it relates.

#### **Pleading to state material facts and not evidence.**

4. (1) Every pleading shall contain a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be. but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, and numbered consecutively.
- (2) Dates, sums and numbers shall be expressed in figures but may also be expressed in words.
- (3) Pleadings shall be signed by a legal practitioner or by the party if he sues or defends in person.

How facts are to be stated

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

**Particulars to be given where necessary.**

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

**Matters which must be specifically pleaded.**

6. (1) a party shall plead specifically any matter (for example, performance, release, and any relevant statute of limitation, fraud or any fact showing illegality) which if not specifically pleaded might take the opposite party by surprise.
- (2) Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or the defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or the defendant shall be implied in his pleading.
- (3) Without prejudice to sub-rule (1) of this rule, a defendant in an action for the recovery of land shall plead specifically every ground of defence on which he relies and a plea that he is in possession of the land by himself or his tenant is not sufficient.

**Further and better statement or particulars.**

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

**Letter for particulars.**

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

**Particulars before defence.**

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

**Order for particulars not a stay.**

8. (1) the party at whose instance particulars have been filed under a Judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the service of the particulars upon him that he had initially.
- (2) Except as provided in this rule, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings or give any extension of time.

**Specific denial.**

9. Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not adjudged a lunatic.

**Denial by joinder of issue.**

10. (1) if there is no reply to a defence, there is an implied joinder of issue on that defence.
- (2) Subject to sub-rule (3) of this rule-
  - (a) There is at the close of the pleadings an implied joinder of issue on the pleadings last served;
  - (b) A party may in his pleadings expressly join issue on the last preceding pleading.
- (3) There shall be no joinder of issue, implied or expressed, on a statement of claim or counter claim.
- (4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, in the case of an express, joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case, the express joinder of issue operates as a denial of every other such allegation.

**Pleadings to be consistent**

11. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

**Grounds of claim founded on separate facts to be separately stated.**

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

**The relief claimed to be stated**

- (2) Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief and the same rule shall apply to any counter-claim made or relief claimed by the defendant in his defence.

**Allegations shall not be made generally but specifically.**

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

**Denial of fact must answer point of substance.**

14. (1) when a party denies all allegations of fact he shall not do so evasively, but shall answer the point of substance.
- (2) When a matter of fact is alleged with diverse circumstances it shall not be sufficient to deny it as alleged along with those circumstances, but a full and substantial answer shall be given.

**Admission**

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

**Set-off or counter-claim to be pleaded.**

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

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

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

**Further pleadings**

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

**Costs in certain cases**

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

### **Striking out pleadings**

20. The Court may at anytime, on the application of either party, strike out any pleading or any part thereof, on the ground that it discloses no cause of action, or no defence to the action, as the case may be. or on the ground that it is embarrassing, or scandalous or vexatious, or an abuse of the process of the Court: and the Court may either give leave to amend the pleading, or may proceed to give Judgment for the plaintiff or the defendant, as the case may be. or may make such other order, and upon such terms and conditions, as may seem just.

### **Denial of contract**

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

### **Effect of documents to be stated.**

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

### **Malice, Knowledge, or other condition of mind**

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

### **Notice**

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

### **Implied contract or relation**

25. (1) Whenever any contract or any relation between persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege the contract or relation as a fact, and to refer generally to those letters, conversations, or circumstances without setting them out in details.

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

**Presumption of law**

26. Neither party needs in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied (such as consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim).

**Technical objection.**

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

**Stated or settled account.**

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

**Defence of tender.**

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

**Defence of set-off.**

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

**Judgment for balance.**

31. (1) Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give Judgment for the defendant for the balance, or otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.
- (2) Sub-rule (1) of this rule shall apply mutatis mutandis where the balance is in favour of the plaintiff.

**Close of pleadings.**

32. (1) the pleadings in an action are deemed to be closed-
- (a) at the expiration of fourteen days after service of the reply or, if there is no reply but only a defence to counter claim, after service of the defence to counter-claim; or
  - (b) if neither a reply nor a defence to counter-claim is served, at the expiration of fourteen days after service of the defence.
- (2) The pleadings in an action are deemed to be closed at the time provided by sub-rule (1) of this rule, notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

## **B - STATEMENT OF CLAIM**

### **Statement of claim.**

33. (1) Every statement of claim or counter-claim shall state specifically the relief claimed either singly or in the alternative, and it shall include any general or other relief, which may be given as a judge may think just as if it had been asked for.
- (2) Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, the claim or causes shall be stated separately and distinctly. The same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off or counter-claim founded upon separate and distinct facts.

### **Claim beyond endorsement.**

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

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

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

### **Statement of defence**

35. (1) the statement of defence shall be a statement in summary form and shall be supported by copies of documentary evidence, list of witnesses and the written statements on oath.

#### **Evasive denial**

- (2) When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he shall not do so evasively, but answer the point of substance. If an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

#### **Denials generally**

- (3) (i) In an action for debt or liquidated money demand, a mere denial of the debt shall not be sufficient defence.

- (ii) In an action for money had and received a defence in denial must deny the receipt of the money or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff.
- (iii) In an action for goods sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed.
- (iv) In an action upon a bill of exchange, promissory note or cheque, a defence in denial must deny some matter of fact e.g. the drawing, making, endorsing, accepting, presenting or notice of dishonour of the bill or note.

**Persons in representative capacity.**

- (4) If either party wishes to deny the right of any other party to claim as executor, or a trustee or in any representative or other alleged capacity, or the alleged constitution of any partnership firm he shall deny the same specifically.

**Pleading to damages.**

- (5) No denial or defence shall be necessary as to damages claimed or their amount; they are deemed to be in issue in all cases, unless expressly admitted.

**Set-off and counter-claim.**

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

**Title of counter-claim. Civil Form 14.**

- (7) Where a defendant by his defence sets up any counter claim which, raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim setting forth the names of all persons who, if such counter-claim were to be enforced by cross- action, would be defendants to such cross action and shall deliver his defence to such of them as are parties to the action within the period which he is required to deliver it to the plaintiff.

**Claim against persons not parties.**

- (8) Where any such person as in sub-rule 7 of this order is not a party to the action he shall be summoned to appear by being served with a copy of the defence and counter claim, and such service shall be regulated by the same rules as those governing the service of the originating process, and every defence and counter-claim so served shall be endorsed in Form 14 with such modifications or variations as circumstances may require.

**Appearance by added parties.**

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

**Reply to counter-claim.**

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

**Judgment for balance.**

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

**Grounds of defence after action brought.**

- (12) (i) Any ground of defence which arises after the action has been filed, but before the defendant has delivered his defence, and before the time limited for doing so has expired, may be raised by the defendant in his defence, either alone or together with other grounds of defence,  
(ii) If after a defence has been delivered along with a set-off or counter-claim, any basis for answer or ground of defence arises to any such set off or counter-claim respectively, it may be raised by the plaintiff in his reply (in the case of a set-off) or defence to counter-claim, either along or together with any other ground of reply or defence to counter-claim.

**Further defence or reply**

- (13) Where any ground of defence arises after the defendant has delivered a defence, or after the time limited for his doing so has expired the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivery of a reply has expired, the plaintiff may, within 8 days after such ground of defence has arisen or at any subsequent time by leave of a judge deliver a further defence or further reply, as the case may be setting forth the same.

**Concession to defence. Civil Form 15**

- (14) Whenever any defendant in his defence or in any further defence pursuant to sub-rule 12 or 13 of this order alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may concede to such defence (which concession may be in Form 15 with such modification as circumstances may require) and may thereupon obtain Judgment up to the time of the pleading of such defence, unless the Judge either before or after the delivery of such concession otherwise orders.

**Defence in originating summons.**

- (15) A defendant to an originating summons shall file a counter-affidavit together with all the exhibits he intends to rely upon and a written address within 14 days after service of the originating summons.

**D - REPLY**

**Filing of reply.**

36. (1) where the Plaintiff desires to make a reply shall file it within fourteen days from the service of the defence.

**Reply to counter-claim.**

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

**ORDER 14**

**DEFAULT OF PLEADINGS**

### **Claim for debt or liquidated demand**

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

### **Several defendants: default of one.**

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

### **Damages and detention of goods.**

3. If the plaintiff's claim is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages only, and the defendant or all the defendants, if more than one, default as mentioned in rule 1 of this order, the plaintiff may apply to a Judge for interlocutory Judgment against the defendant or defendants and the value of the goods and the damages, or the damages only as the case may be, shall be ascertained in any way which the Judge may order.

### **Default of one or more defendants.**

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

### **Debt or damages and detention of goods or damages.**

5. Where the claim is for debt or liquidated demand and also for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any defendant in default as mentioned in rule 1 the plaintiff may apply to a judge for final Judgment for the debt or liquidated demand, and may also apply for interlocutory Judgment for the value of the goods and damages or the damages only as the case may be and proceed as mentioned in rules 4 and 5.

### **When a defence is filed to part of claim only.**

6. If the plaintiff's claim is for debt or liquidated demand or for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, or for any such matters, and the defendant files a defence which purports to offer an answer to part only of the plaintiff's alleged cause of action the plaintiff may apply for Judgment, final or interlocutory, as the case may be, for the part unanswered.

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

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

**Defendant in default.**

7. In all actions other than those in the preceding rules of this order, if the defendant makes default in filing a defence, the plaintiff may apply to a judge for Judgment, and such Judgment shall be given upon the statement of claim as the judge shall consider the plaintiff to be entitled to.

**One of several defendants in default.**

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

**Default of third party.**

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

**Setting aside Judgment by default.**

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

**Interpretation.**

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

**ORDER 15  
ADMISSIONS**

**Notice of admission of facts.**

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

**Notice to admit document.**

2. (1) Any party to a proceeding may give notice by his pleading or otherwise in writing that he admits the truth of the whole or part of the case of any other party and the Court may receive such notice in evidence as an admission without further proof.
3. When a party wishes to challenge the authenticity of any document, he shall, not later than seven days of service of that document give notice that he does not admit the document and requires it to be proved at the trial.
4. Where a party gives notice of non-admission and the document is proved at the trial the cost of proving the document, which shall not be less than a sum of five thousand naira, shall be paid by the party who has challenged it unless at the trial or hearing the judge shall certify that there were reasonable grounds for not admitting the authenticity of the document.

**Notice to admit facts.**

3. (1) Either party may after close of pleadings, by notice in writing, filed and served, require any other party to admit any specific fact or facts mentioned in the notice, and the party so served shall not later than fourteen days after service give notice of admission or non-admission of the fact or facts failing which he shall be deemed to have admitted it unless a judge otherwise orders.
- (2) Any admission made pursuant to such notice shall be deemed to be made only for the purpose of those particular proceedings and not as an admission to be used against the party or any other party than the party giving the notice.
- (3) Where there is a refusal or neglect to admit the same within fourteen days after service of such notice or within such further time as may be allowed by the Judge, the cost of providing such fact or facts which shall not be less than a sum of five thousand naira, shall be paid by the party so refusing or neglecting whatever the result of the proceedings; unless the Judge certifies that the refusal to admit was reasonable or unless the Judge at any time otherwise orders or directs.

**Judgment or order upon admission of facts.**

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

**5. Costs, where documents unnecessary.**

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

**ORDER 16  
PROCEEDINGS IN LIEU OF DEMURRER**

**Demurrer abolished.**

1. No demurrer shall be allowed.

### **Points of law may be raised by pleadings.**

2. (1) A party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the judge who tries the cause at or after the trial.
- (2) A point of law so raised may, by consent of the parties, or by order of the Court or a Judge in Chambers on the application of either party, be set down for hearing and disposed of at any time before the trial.

### **Dismissal of action.**

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

### **Striking out pleadings where no reasonable cause of action is disclosed.**

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

### **Declaratory Judgment.**

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

## **ORDER 17**

### **AMENDMENT**

#### **Amendment of originating process and pleadings.**

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

#### **Application.**

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

#### **Amendment of originating process: additional witnesses.**

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

**Failure to amend after order.**

4. (1) If a party who has obtained an order to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within seven days from the date of the order, such party shall forfeit the right to amend or shall pay an additional fee of N200.00 (two hundred Naira) for each day of default.
- (2) Where the party pays an additional fee for the default, it shall file an application for regularization exhibiting evidence of payment of the penalty up to the date of filing the amendment.

**Filing and service of amended process.**

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

**Date of order and amendment to be displayed.**

6. Whenever any endorsement or pleading is amended it shall be marked in the following manner:  
“Amended the ..... Day of ..... Pursuant to order of (name of judge) dated the ..... Day of .....”

**ORDER 18**

**SETTLEMENT OUT OF COURT AND SETTLEMENT OF ISSUES**

**Period for settlement.**

1. (1) When a matter comes before the Court for the first time, the Judge shall in circumstances where it is appropriate, grant to the parties, time, not more than thirty days within which parties may explore possibilities for settlement of the dispute.
- (2) Where parties fail to settle within thirty days or such other period as the Court may grant, the case shall without more, proceed to trial.

**Formulation of issues for determination.**

2. (1) where a matter is to proceed to trial, the parties shall file respectively, issues for determination at the trial. The issues may state questions of law or admitted facts or questions of disputed facts or questions partly of law of the one part and partly of facts of the other.
- (2) Where the parties have filed their respective issues for determination and the parties have not agreed on the issues for determination, or the judge is of the opinion that the issues formulated by the parties do not adequately address the controversy between the parties, the Judge may, in spite of the issues formulated by the parties, formulate appropriate issues for determination and such shall be the issues for determination at the trial of a matter.

**Party may apply for issue to be tried.**

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

**Formulation of issues by court.**

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

**ORDER 19  
PROCEEDINGS AT TRIAL**

**Non-appearance of parties.**

1. When a case has been listed for hearing and none of the parties appears, the judge shall, unless he sees good reasons to the contrary, strike the case out.

**Default of appearance by defendant at trial.**

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

**Default of appearance by plaintiff. Civil Form 16.**

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

**Judgment by default may be set-aside on terms.**

4. (1) where a case is struck out under rule 1 of this order either party may apply that the case be relisted on such terms as the judge may deem fit.  
(2) Any Judgment obtained where any party does not appear at the trial may be set aside by the Judge upon such terms as he may deem fit.  
(3) An application to re-list a case struck out or to set aside a Judgment shall be made within six days after the order or Judgment or such other longer period as the judge may allow.

**Adjournment of trial.**

5. The Judge may, if he thinks it expedient in the interest of justice, postpone or adjourn a trial for such time and upon such terms if any, as he shall deem fit; provided that a party shall not be entitled to more than three adjournments during the course of trial.

**Time of commencement and termination of trial.**

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

**Order of proceedings.**

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

**Burden of proof by party to begin.**

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

**Documentary evidence.**

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

**Additional witness.**

10. (1) In exceptional circumstance, to be determined by the Judge, a party who desires to call any witness not being a witness whose deposition on oath accompanied his pleading shall apply to the Judge for leave to call such witness.  
(2) An application for leave in sub-rule 1 above shall be accompanied by the deposition on oath of such witness.

**Close of case of parties.**

11. (1) A party shall close his case when he has concluded his evidence. Either the plaintiff or defendant may make oral application to have the case closed.  
(2) Notwithstanding the provision of sub-rule 1 of this rule, the judge may on his own motion, where he considers that either party fails to conclude his case within a reasonable time, close the case for the party.

**Exhibits during trial.**

12. (1) The registrar shall take charge of every document or object put in as exhibit during the trial of an action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in (or where more convenient the witness by whom the exhibit is proved) and with a number, so that all the exhibits put in by a party (or proved by a witness) are numbered in one consecutive series.  
(2) The Registrar shall cause a list of all the exhibits in the action to be made.  
(3) The list of exhibits when completed shall form part of the record of the action.  
(4) For the purpose of this rule, a bundle of documents may be treated and counted as one exhibit.

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

**Custody of exhibit after trial.**

13. (1) an exhibit shall not be released until after the trial to any party.
- (2) Unless otherwise ordered by the Court, an exhibit shall not be released to the party who has put it in unless the period during which notice of appeal may be given has elapsed without such notice having been given, and then only if the trial Judge (or in his absence, another judge) grants leave to release such exhibit on being satisfied:
- (a) That the exhibit will be kept duly marked and labeled and will be produced, if required, at the hearing of an appeal (if any such appeal is lodged); or
- (b) That the release of the exhibit will not in any way prejudice any other party.
- (3) After a notice of appeal has been filed, an exhibit produced at the trial shall not be released by the Court unless leave to release such exhibit is granted by the Court of Appeal.

**Office copy of list of exhibits.**

14. (1) any party may apply for and on payment of the prescribed fee obtain an office copy of the list of exhibits for the purpose of appeal to the Court of Appeal.
- (2) Where there is an appeal, an office copy of the list of exhibits shall be included amongst the documents supplied to the Court of Appeal for the purpose of the appeal.

**Indolent prosecution.**

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

**ORDER 20**

**EVIDENCE GENERALLY**

**Facts; how proved.**

1. (1) Subject to these rules and to any enactment relating to evidence, any fact required to be proved at the trial of any action shall be proved by written deposition and oral examination of witnesses in open court.
- (2) All agreed documents or other exhibits shall be tendered from the bar or by the party where he is not represented by a legal practitioner.
- (3) The oral examination of a witness during his evidence-in chief shall be limited to confirming and adopting his written deposition and tendering in evidence all disputed documents or other exhibits referred to in the deposition.

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

**Particular of Facts.**

- (2) (1) A judge may, at or before the trial of an action, order or direct that evidence of any particular fact be given at the trial in such manner as may be specified by the order or direction.
- (2) The power conferred by sub-rule 1 of this rule extends in particular to ordering or directing that evidence of any particular fact be given at the trial:
- (a) By statement on oath of information or belief;
- (b) By the production of documents or entries in books;
- (c) By copies of documents or entries in books; or
- (d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular locality, by the production of a specified newspaper which contains a statement of that fact.

**Limitation on use of documentary evidence.**

3. No document, plan, photograph or model shall be receivable in evidence at the trial of an action unless it has been filed along with the pleadings of the parties under these Rules, except the Judge in the interest of justice otherwise orders or directs.

**Revocation and variation.**

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

**Certified true copies admissible in evidence.**

5. Certified true copies of all writs, processes, records, pleadings, and documents filed in any Court shall be admissible in evidence in all matters to the same extent as the original would be admissible.

**Examination of witnesses abroad.**

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

**Civil Form 17.**

- (a) the party obtaining such order shall file in the registry an undertaking in Form 17 which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used;
- (b) Such undertaking shall be accompanied by-

**Civil Form 18.**

- (i) A request in Form 18 with such modifications or variations as may be directed in the order for its issuance, together with a translation in the language of the country in which it is to be executed (if not English):
- (ii) A copy of the interrogatories (if any) to accompany the requests, with a translation, if necessary:
- (ii) A copy of the cross-interrogatories (if any) with a translation, if necessary.

#### **Form of order for examination of witnesses abroad. Civil Form 19.**

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

#### **Order for attendance of person to produce document.**

- 8. The Judge may at any stage of any proceeding order the attendance of any person for the purpose of producing any writing or other documents named in the order:

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

#### **Disobedience to order for attendance.**

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

#### **Expenses of persons ordered to attend.**

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

#### **Contempt of Court by witness.**

- 11. If any person duly summoned by subpoena to attend for examination refuses to attend or if having attended, refuses to be sworn, affirm or to answer any lawful question he shall be in contempt of Court and be dealt with by the Judge.

#### **Examination of witness.**

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

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

- 13. Except where by this order otherwise provided or directed by a Judge, no deposition shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom

the same may be offered, unless the judge is satisfied that the deponent is dead or beyond the jurisdiction of the Court or unable from sickness or other infirmity to attend the hearing or trial, in any of which case the depositions certified under the hand of the person taking the examination shall be admissible in evidence, saving all just exception, without proof of the signature to such certificate.

### **Oaths.**

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

### **Attendance of witness under subpoena for examination or to produce document.**

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

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

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

### **Special directions as to taking of evidence.**

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

### **Evidence in proceedings subsequent to trial.**

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

### **Form of praecipe of a subpoena: Civil Form 20.**

19. Where it is intended to issue out a subpoena, a praecipe for that purpose as in Form 20 shall be filed. No subpoena shall be issued unless all Court fees have been paid (including fee for service) and sufficient money on the prescribed scale is deposited to cover the witness's first day's attendance.

### **Form of subpoena: Civil Forms 21, 22 and 23.**

20. A subpoena shall be in one of Forms 21, 22 or 23 with such variations as circumstances may require.

**Subpoena for attendance of witness in Chambers.**

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

**Correction of error in subpoena**

22. In the interval between the issue and service of any subpoena the legal practitioner issuing it may correct any error in the names of parties or witnesses, and may have the writ resealed upon leaving a corrected praecipe of the subpoena marked with the words "altered and resealed", with the signature, name and address of the legal practitioner.

**Personal service of subpoena.**

23. A subpoena shall be served personally unless substituted service has been, ordered by a Judge in a case where a person persistently evades service. The provisions of order 6 of these Rules shall so far as possible apply to service and proof of service of a subpoena.

**Duration of subpoena.**

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

**Action to perpetuate testimony**

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

**Examination of witness to perpetuate testimony.**

26. A witness shall not be examined to perpetuate his testimony unless an action has been commenced for that purpose.

**Such action not to be set down for trial.**

27. No action to perpetuate the testimony of a witness shall be set down for trial.

**Notice to produce to other party.**

28. Where a party to a suit desires any other party to the suit to produce in Court at the trial, a document or any other thing, which he believes to be in the possession or power of that other party, the party desirous of the production shall give "Notice to Produce" to that other party.

### **Notice to produce in pleadings or in separate notice.**

29. A notice to produce may be included in the pleadings of the party seeking the production of the document or thing, or be in a separate notice delivered to the other party or his counsel.

### **Sufficient particulars.**

30. A notice to produce shall specify sufficient particulars to identify to the other party the exact document or thing required.

### **Fees.**

31. Fees for notices to produce shall be paid as prescribed by these Rules; Provided that where more notices than one are included in the pleadings payment shall be made for only one notice.

### **Failure to produce document.**

32. Where a party to whom notice to produce was given, fails to produce the document or thing required to be produced, the party that gave the notice, shall be at liberty to lead secondary evidence of the matter contained in the document or thing that was not produced.

### **Court may order inspection, etc.**

33. On the application of any party to a legal proceeding, the Court may order that such party be at liberty to inspect and take copies of any entry in a banker's book for any of the purposes of such proceeding. An order under this rule may be made either with or without summoning the bank or any other party; and shall be served on the bank three days before the same is to be obeyed, unless the Court otherwise directs.

### **Costs.**

34. The costs of any such application, and the costs of anything done or to be done under an order of the Court made under or for the purposes of the foregoing rule, or under the provisions of **section 97** of the Evidence Act relating to the proof of an entry in a banker's book, shall be in the discretion of the Court, which may order the same or any part thereof to be paid to any party by the bank, where the same have been occasioned by any default or delay on the part of the bank. Any such order against a bank may be enforced as if the bank were a party to the cause or matter.

### **Expressions relating to banker's book.**

35. Expressions relating to banker's books include ledgers, day books, cash books, account books and all other books used in the ordinary business of the bank.

**ORDER 21**  
**NON-SUIT**

### **Power of Court to non-suit.**

1. When- satisfactory evidence is not given entitling the plaintiff or the defendant to the Judgment of the Court, the judge may on his own motion or upon application in Hi suit the plaintiff, but the parities or their counsel shall have the right to make submissions on the propriety or otherwise of making such order.

### **ORDER 22**

### **FILING OF WRITTEN ADDRESS**

#### **Power to order for written addresses**

1. The Court shall have the power to order for the filing of written addresses in all cases.

#### **Court to order written addresses.**

2. The court shall at the trial of any case whether by writ or originating summons, petitions, originating motion or otherwise order the filing of written addresses by the parties in support of or in defence to a claim.

#### **Written address by the other party.**

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

#### **Written address by party beginning.**

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

#### **Right of reply.**

5. The party who files the first address shall have a right of reply on points of law only. The reply shall be filed within seven days after service of the other party's address.

#### **Content of written address.**

6. A written address shall be printed in black ink on high quality white opaque A4 size paper and set out in sub paragraphs numbered serially and shall contain:
  - (i) The claim or application on which the address is based;
  - (ii) a brief statement of the facts with reference to the exhibit attached to the application or tendered at the trial; the issues arising from the evidence for determination, and
  - (iii) A succinct statement or argument on each issue incorporating the purport of the authorities referred to together with full citation of each such authority.

#### **Summary of Address.**

7. All written addresses shall be concluded with a numbered summary of the points raised and party's prayer. A list of all authorities referred to shall be submitted with the address. Where any unreported Judgment is relied upon the Certified True Copy shall be submitted along with the written address.

**Oral Argument.**

8. Oral argument of not more than twenty minutes shall be allowed for each party.

**Address to be deemed adopted where party absent.**

9. When final written addresses or written addresses in respect of any application under these rules have been filed and such come up for adoption and either of the parties is absent, the Court shall either on its own motion or upon oral application by the counsel for the party present, order that the addresses be deemed adopted if it is satisfied that all the parties had notice of the date for adoption. The Court shall be satisfied that, that party had notice of the date for adoption if on the previous date last given the party or his counsel was present in court.

**Copies of written address.**

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

**ORDER 23**

**JUDGMENT, ENTRY OF JUDGMENT**

**Delivery of Judgment.**

1. The Judge shall after trial, deliver Judgment in open court.

**Judge unable to deliver Judgment.**

2. Where a judge has written and sign a Judgment pursuant to rule 1 of this order but could not deliver same on ground of ill health, death or any other reason, such decision may be read by another judge of the Court as the Chief judge may direct.

**Date of Judgment in Court.**

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

**Date of Judgment directed to be entered.**

4. When any Judgment is directed to be entered by an order made on application for Judgment, the Judgment shall, unless the judge otherwise orders, be dated as the day on which the order is made and take effect from that date:

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

**Judge may direct time for payment or performance and interest.**

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

**Payment by installment.**

6. (1) when any Judgment or order directs the payment of money, the court may, upon sufficient reason, order that the amount shall be paid by installments with or without interest.
- (2) The order may be made at the time of giving Judgment or at anytime afterwards and may be rescinded upon sufficient cause at any time.

**Time to be stated for doing any act**

7. Every Judgment or order made in any cause or matter requiring any person to do an act shall state the time or the time after service of the Judgment or order, within which the act is to be done.

**Judgment by consent where defendant appears by a legal practitioner.**

8. In any cause or matter where the defendant has appeared by a legal practitioner, no order for entering Judgment shall be made by consent unless the consent of the defendant is given in writing and counter-signed by the defendant's legal practitioner.

**Judgment by consent where defendant has no legal practitioner.**

9. Where the defendant has no legal practitioner such order shall not be made unless the defendant gives consent in person in open Court.

**Notice when Judgment reserved.**

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

**When parties deemed to have had notice.**

11. All parties shall be deemed to have notice of the decision or Judgment if pronounced at the hearing, and all parties served with notice to attend and hear Judgment shall be deemed to have notice of the Judgment when pronounced.

## **DRAWING UP OF ORDERS**

### **Signing of orders.**

1. Every order shall be signed by the judge who delivered the decision but where the judge dies or retires or for any other reason he is unable to sign the drawn up order, the order shall be signed by the Chief Judge.

### **Date of order when drawn.**

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

### **What orders need not be drawn up.**

3. Where an order has been made not embodying any special term nor including any special direction, but simply enlarging time for taking any proceeding or doing any act or giving leave
  - (a) For the issuance of any writ other than a writ of attachment;
  - (b) For the amendment of any writ or pleading;
  - (c) For the filing of any document; or
  - (d) For any act to be done by any officer of the Court other than a legal practitioner, it shall not be necessary to draw up such order unless the judge otherwise directs.

### **Form of order.**

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

## **ORDER 25 COSTS**

### **Security for costs by plaintiff or defendant.**

1. (1) when on the application of the plaintiff or defendant, as the case may be, it appears to the Court either at commencement or at any stage of the proceedings-
  - (a) That the plaintiff or defendant is ordinarily resident out of jurisdiction; or
  - (b) That the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so; or
  - (c) Subject to sub-rule (2) of this rule, that the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated therein; or
  - (d) That the plaintiff or the defendant has changed his address during the course of the proceedings with a view to evading the consequence of the litigation.

Then if, having regard to all the circumstance of the case, the Court thinks it just to do so, it may order the plaintiff or the defendant to give such security for the plaintiff's costs or defendant's costs of the action or other proceedings as it thinks just.

- (2) The Court shall not require a plaintiff to give security by reason only of sub-rule (1) (c) of this rule if he satisfies the court that the failure to state his address or the misstatement thereof was made innocently and without intention to deceive.
- (3) The reference in the foregoing rule to a plaintiff and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counter-claim.

### **Principle to be observed in fixing costs**

2. (1) In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been unnecessarily put in the proceedings, as well as compensated for his time and effort in coming to Court. The Judge may take into account all the circumstances of the case.
- (2) When costs are ordered to be paid, the amount of such costs shall, if practicable, be summarily determined by the judge at the time of delivering the Judgment or making the order.
- (3) When the judge deems it to be impracticable to determine summarily the amount of any costs which the judge has adjudged or ordered to be paid, all questions relating thereto shall be referred by the judge to a taxing officer for taxation.

### **Security for costs.**

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

### **Security for costs by plaintiff temporarily within jurisdiction.**

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

### **Action founded on Judgment or bill of exchange.**

5. In actions brought by persons resident out of the jurisdiction, when the plaintiff's claim is founded on Judgment or order or on a bill of exchange or other negotiable instrument the power to require the plaintiff to give security for costs shall be exercised at the judge's discretion.

### **Bond as security for costs.**

6. Where a bond is to be given as security for costs, it shall, unless the judge otherwise directs, be given to the party or person requiring the security and not to an officer of the court.

### **Costs at discretion of Court.**

7. Subject to the provisions of any applicable law and these Rules, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be at the

discretion of the judge, and the judge shall have full power to determine by whom and to what extent the costs are to be paid.

**Costs out of fund or property.**

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

**Stay of proceedings until costs paid.**

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

**Stage of proceeding at which costs to be dealt with.**

10. (1) Costs may be dealt with by the judge at any stage of the proceedings.
- (2) Costs when ordered becomes payable forthwith and shall be paid within seven days of the order, otherwise the defaulting party or his legal practitioner may be denied further audience in the proceedings.

**When costs to follow the event.**

11. In addition to any penalty payable for default under these Rules the costs of and occasioned by any application to extend the time fixed by the rules or any direction or order there under for delivering or filing any document or doing other act, including the cost of any order made on the application shall be borne by the party making the application unless the judge otherwise orders.

**Matters to be taken into account in exercising discretion.**

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

**Costs arising from misconduct or neglect.**

13. (1) Where in any cause or matter anything is done or omission is made improperly or unnecessarily by or on behalf of a party, the judge may direct that any costs to that party in respect of it shall not be allowed and any costs occasioned by it to other parties shall be paid by him to them.
- (2) Without prejudice to the generality of sub-rule 1 of this rule, the judge shall for the purpose of that sub-rule have regard in particular to the following matters that is to say:
  - (a) The omission to do anything the doing of which would have been calculated to save costs;
  - (b) The doing of anything calculated to occasion or in a manner or at a time calculated to occasion unnecessary cost;
  - (c) Any unnecessary delay in the proceedings.

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

### **Personal liability of legal practitioner for costs.**

14. (1) Subject to the following provisions of this rule, where in any proceeding costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the judge may make against any legal practitioner whom the judge considers to be responsible whether personally or through a servant or agent, an order;
  - (a) Disallowing the costs as between the legal practitioner and the legal practitioner's client; and
  - (b) Directing the legal practitioner to pay to the client's costs which the client has been ordered to pay to other parties to the proceedings; or
  - (c) Directing the legal practitioner personally to indemnify such other parties against costs payable by them.
- (2) The provisions of rule 13 sub-rule 1 of this order shall apply where proceedings in Court cannot conveniently proceed or fail or are adjourned without useful progress being made;
  - (a) Because of the failure of the legal practitioner to attend in person or by a proper representative; or
  - (b) Because of the failure of the legal practitioner to deliver any document for the use of the Court which ought to have been delivered or to be prepared with any proper evidence or account or otherwise to proceed.
- (3) No order under this rule shall be made, against a legal practitioner unless the legal practitioner has been given a reasonable opportunity to appear before the judge to show cause why the order should not be made.
- (4) If, on the taxation of costs to be paid out of a fund, one-sixth or more of the amount of the bill for those costs is taxed off, the legal practitioner whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.
- (5) The judge may direct that notice of any proceeding or order against a legal practitioner under this rule shall be given to the legal practitioner's client in such manner as may be specified in the direction.

## **ORDER 26**

### **INTERLOCUTORY APPLICATIONS**

#### **A - MOTIONS GENERALLY**

##### **Time to apply.**

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

##### **Application by motion**

2. (1) Whereby these Rules an application is authorized to be made to the Court or to a judge in Chambers, such application may be made by motion.

### **Motion list**

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

### **Affidavit and written address.**

3. Every motion shall be supported by an affidavit setting out the grounds on which the party moving intends to rely and such motion shall be filed along with a written address.

### **Affidavit to be served with motion and written address.**

4. Where service of a motion is required by these Rules or directed by the Court or a Judge, the motion shall be served together with all affidavits on which the party moving intends to rely, as well as with a written address.

### **Counter affidavit to motion.**

5. A party on whom a motion has been served as per the preceding rules of this order and who intends to reply may do so by filing his written address in reply along with a counter affidavit if he so wishes and shall do so, not later than seven days from the serve of the motion on him.

### **Hearing of motions.**

6. A motion may be heard at any time while the Court is sitting.

### **Motion to be on notice except in emergency.**

7. (1) No motion shall be made without previous notice to the parties affected thereby.  
(2) Notwithstanding sub-rule 1 of this rule, the Court may, if satisfied that to delay the motion till after notice is given to the parties affected would entail irreparable damage or serious mischief to the party moving, make an order ex parte upon such terms as to costs or otherwise and subject to rule 12 of this order, and upon such undertakings, as the justice of the case demands.  
(3) No application for an injunction shall be made ex parte unless the applicant files with it a motion on notice in respect of the application.

## **B - EX PARTE MOTIONS**

### **Affidavit in support of ex parte motion.**

8. (1) A motion ex parte, shall be supported by an affidavit which, in addition to the requirements of rule 3 of this order, shall state sufficient grounds why delay in granting the order sought would entail irreparable damage or serious mischief to the party moving.

Where an order is applied for.

- (2) In an application for an order, the applicant shall in addition show:
- (a) that he has a strong prima facie case,
  - (b) that he may suffer serious damages,
  - (c) that the defendant has incriminating documents and that there is a real possibility that the defendant may destroy such material before the discovery process.

**Arguments on motion.**

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

**Orders on ex parte motion.**

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

**Court may vary or discharge order.**

11. Where an order is made on a motion ex parte, any person affected by it may, within seven days after service of it, or within such further time as the Court shall allow, apply to the Court by motion to vary or discharge it; and the Court may, on notice to the party obtaining the order, either refuse to vary or discharge it, or may vary or discharge it with or without imposing terms as to costs or security, or otherwise, as seems just.

**Duration of ex parte order.**

12. (1) No order made on motion ex parte shall last for more than fourteen days after the party or person affected by the order has applied for the order to be varied or discharged or last for another fourteen days after application to vary or discharge it has been argued.
- (2) If a motion to vary or discharge an ex parte order is not taken within fourteen days of its being filed, the ex parte order shall lapse.

**C - ORDER TO SHOW CAUSE**

**Return day to be specified.**

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

**Counter Evidence**

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

**Further service in certain cases.**

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

**Appearance or proof of service.**

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

**General Powers as to orders.**

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

**D - NOTICE OF MOTION**

**Notice of motion.**

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

**Service of notice.**

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

**Service on solicitor**

20. Where a party acts by a solicitor, service of notice of motion on the solicitor shall be deemed good set vice- on the party.

**Copy of affidavit to be served with notice**

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

**Order of service**

21. If at the hearing of any motion, the Court is of the opinion that any person, to whom notice has not been given, ought to have or ought to have had such notice, the Court may either strike out the

motion, or adjourn the hearing thereof in order that the notice may be given upon such terms as the Court may deem it.

## **E - EVIDENCE IN INTERLOCUTORY PROCEEDINGS.**

### **Oral evidence.**

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

### **Evidence in addition to or in lieu of affidavits.**

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

### **Notice to parties and interested parties.**

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

### **Evidence how taken.**

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

### **Affidavit not filed with motion paper.**

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

## **ORDER 27 AFFIDAVITS**

### **Evidence on motions, etc.**

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

### **Title of affidavit.**

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

**Use of defective affidavit.**

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

**Special time for filing affidavits.**

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

**Affidavits in support of ex parte application.**

5. Except by leave of the judge, no order made ex parte in Court founded on any affidavit shall be of any force unless the affidavit on which the application was based was made before the order was applied for, and produced or filed at the time of making the application.

**Notice of intention to use affidavit.**

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

**Alterations in accounts to be initialed.**

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

**Exhibits.**

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

**Certificate of exhibit.**

9. Every certificate on all exhibits referred to in an affidavit signed by the commissioner before whom the affidavit is sworn shall be marked with the short title of the proceedings.

**Affidavit taken in commonwealth country admissible without proof of seal, etc.**

10. A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a Court, Judge, Notary Public or person having authority to administer oath in any

part of the commonwealth outside Nigeria in testimony of an affidavit being taken before it or such person in that part shall be admitted in evidence without proof of the seal or signature of that Court, Judge, Notary Public or person.

## **ORDER 28**

### **INTERLOCUTORY INJUNCTIONS AND INTERIM PRESERVATION OF PROPERTY**

#### **Application for injunction.**

1. (1) An application for the grant of an injunction may be made by a party to an action before, during or after the trial of the action, whether or not a claim for injunction was included in that party's action.
- (2) Where the applicant is the plaintiff and the case is one of urgency, the application may be made ex parte on affidavit but, except as aforesaid, the application shall be made by motion on notice or summons.
- (3) The plaintiff may not make such an application before the issue of the process by which the action is to be begun, except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issuance of the process and service of the process, together with the ex parte order obtained on the defendant and such other terms, as the court thinks fit.

#### **Detention, preservation etc. of subject matter of action.**

2. (1) On the application of any party to an action, the Court may make an order for the detention, custody or preservation of any property which is the subject matter of the action or as to which any question may arise therein or for the inspection of any such property in the possession of a party to the action.
- (2) For the purpose of enabling any order under sub-rule (1) of this rule to be carried out, the Court may by order authorize any person to enter upon any land or building in the possession of a party to the action.
- (3) Where the right of any party to a specific fund is in dispute in an action, the Court may on the application of the party, order the fund to be paid into Court or otherwise secured.
- (4) An order under this rule may be made on such terms, as the Court may think just.
- (5) An application for an order under this rule shall be made by summons or motion on notice.
- (6) Unless the Court otherwise directs, an application by the defendant for such an order may not be made before he enters an appearance.

#### **Power to order samples to be taken.**

3. (1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any action, the Court may, on the application of a party and on such term as it thinks just, by order authorize or require any sample to be taken of any property which is the subject matter of

the action or as to which any question may arise therein, any observation to be made on the property or any experiment to be tried on or with the property.

- (2) For the purpose of enabling any order under sub-rule (1) to be carried out, the Court may by the order authorize any person to enter any land or building in the possession of any party.
- (3) Sub-rules (5) and (6) of rule 2 of this order shall apply in relation to an application for an order under this rule.

#### **Sales of perishable property etc.**

4. (1) The Court may, on the application of any party, make an order for the sale by such person, in such manner and on such terms as may be specified in the order, of any property (other than land) which is the subject matter of the action or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other reason it is desirable to sell forthwith.
- (2) Sub-rules (5) and (6) of rule 2 of this order shall apply in relation to an application for an order under this rule.

#### **Order for early trial**

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

#### **Recovery of personal property subject to lien, etc.**

6. Where the plaintiff or the defendant by way of counter claim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears, from the pleadings or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum if any for interests and costs as the Court may direct and that, upon the payment if any for interests and costs as the Court may direct and that, upon the payment being made, the property claimed be given up to the party claiming it, but subject to the provisions of any law relating to exchange control.

#### **Directions.**

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

#### **Allowance of income of property pendente lite**

8. Where any real or personal property forms the matter of any proceeding, and the Court is satisfied will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all such parties.

## **ORDER 29 DISPUTING THE COURT'S JURISDICTION**

### **Disputing the Court's jurisdiction.**

1. (a) dispute the Court's jurisdiction to try the claim; or
- (b) argue that the Court should not exercise its jurisdiction, he may apply to the Court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have, and the Court may take such application together with the Plaintiff's substantive suit in so far as the substantive suit does not involve the taking of oral evidence.

### **Defendant disputing must file memorandum of appearance.**

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

### **Defendant not to lose right to dispute jurisdiction**

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

### **Time and mode of application.**

4. An application under this order shall:
  - (a) be made within twenty one days after service on the defendant of the originating process, and
  - (b) be supported by affidavit where it is not based on ground of law alone.

### **Failure to apply within time.**

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

## **ORDER 30 INTERIM ATTACHMENT OF PROPERTY**

### **Interim attachment of property: where ordered.**

1. (a) where the defendant in any suit with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property, of any part thereof, or to remove any such property from jurisdiction; or

- (b) in any suit founded on contract or for detinue in which the cause of action arose within the jurisdiction-
- (i) the defendant is absent from the jurisdiction, or there is a probable cause to believe that he is concealing himself to evade service; and
- (ii) the defendant is beneficially entitled to any property of the jurisdiction in the custody or under the control of any other person in the jurisdiction, or such person is indebted to the defendant,
- (c) then in either such case, the Plaintiff may apply to the Court either at the time of the institution of the suit or at any time thereafter until final Judgment, to call upon the defendant to furnish sufficient security to fulfill any decree that may be made against him in the suit, and on his failing to give the security, or pending the giving of such security, to direct that any property movable or immovable belonging to the defendant shall be attached until the further order of the Court.

**Application for attachment.**

- 2. The application for attachment s<sup>1</sup> all contain a specification of property required to be attached, and the estimated value thereof so far as the Plaintiff can reasonably as certain the same, and the plaintiff shall, at the time of making the application, declare that to the best of his information and belief the defendant is about to dispose of or remove his property with such intent as aforesaid.

**Form of order.**

- 3. (1) If the Court after making such investigation as it may consider necessary is satisfied that the defendant is about to dispose of or remove his property with intent to obstruct or delay the execution of the decree, it shall be lawful for the Court to order the defendant, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order or produce and place at the disposal of the Court when required, the said property, or value of the same or such portion thereof as may be sufficient to fulfill the decree, or to appear and show cause why he should not furnish security.
- (2) Pending the defendant's compliance with the order, the Court may by warrant direct the attachment until further order of the whole, or any portion, of the property specified in the application.

**Where defendant fails to show cause or give security.**

- 4. (1) If the defendant fails to show such cause, or to furnish the required security within the time fixed by the Court, the Court may direct that the property specified in the application if not already attached, or such portion thereof as shall be sufficient to fulfill the decree, shall be attached until further order.
- (2) If the defendant shows such cause, or furnishes the required security, and the property specified in the application or any portion of it shall have been attached, the Court shall order the attachment to be withdrawn.

**Rights of third parties not to be affected.**

- 5. The attachment shall not affect the rights of persons not parties to the suit, and in the event of any claim being preferred to the property attached before Judgment, such claim shall be

investigated in the manner prescribed for the investigation of claims to property attached in execution of a decree.

### **Removal of attachment.**

6. In all cases of attachment before Judgment, the Court shall at any time remove the attachment, on the defendant furnishing security as above required, together with security for the costs of the attachment, or upon an order for a non-suit or striking out the matter.

### **In which court proceeding may be taken.**

7. (1) the application may be made to the Court in the Judicial Division where the defendant resides or in the case «i urgency, where the property proposed to be attached i situate and the Court may make such order as the Conn shall deem just.
- (2) In case an order for the attachment of property is issued by a different Court from that in which the suit is pending, that court shall, on the request of either of the parties, transmit the application and evidence therein to the Court in which the suit is pending, retaining the property in the meantime under attachment or taking sufficient security for its value, and the Court in which the suit is pending shall thereupon inquire to and proceed with the application in accordance with the foregoing provisions, in such manner as shall seem just.

## **ORDER 31**

### **NEEDLESS DETENTION OF CHATTELS AND REPARATION FOR IT**

#### **Damages for needless detention, etc.**

1. Where a Court on an application of a party, makes an order to hold to bail, or of sale, injunction or attachment or any warrant to stop the clearance of, or to arrest any chattel upon any condition and-
  - (a) it later appears to the Court that an order made by it was applied for on insufficient grounds; or
  - (b) the suit in which the application was made is struck out or dismissed or Judgment is given against the applicant by default or otherwise and it appears to the Court that there was no probable ground for instituting such a suit, the Court may on application of the defendant made at any time before the expiration of three months from the termination of the suit, award the defendant an amount of compensation not larger than one that could be awarded for damages in any suit.

## **ORDER 32**

### **STAY OF PROCEEDINGS OR EXECUTION PENDING APPEAL**

#### **Stay of proceedings or execution pending appeal.**

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

#### **Court may grant or refuse order for stay.**

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

#### **Compilation of records.**

3. An applicant for stay of proceedings or execution of a Judgment shall cause to be compiled the records of appeal within ninety days from the date of filing a notice of appeal and where the record is not so compiled, the respondent may apply to strike out the application or discharge the order if already granted.

#### **Application for stay to be treated as urgent.**

4. (1) Application for stay of proceedings or execution shall be regarded as an urgent matter.
- (2) Where the Court has refused an application for stay, no application for stay of proceedings or execution shall be made to it on the same matter.

#### **Formal order to be drawn up.**

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

### **ORDER 33 INTERPLEADER**

#### **Entitlement to relief by way of interpleader**

1. (1) Where-
  - (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto; or
  - (b) claim is made to any money, goods or chattels taken or intended to be taken by a sheriff in execution under any process, or to the proceeds or value of any such goods or chattels by a person other than the person against whom the process is issued,

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

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

#### **Claim to goods etc. taken in execution.**

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

shall include in his notice a statement of this address, and that address shall be his address for service.

- (2) On receipt of a claim made under this rule, the sheriff shall forthwith give notice thereof to the execution creditor and the execution creditor shall, within seven days after receiving the notice, give notice to the sheriff informing him whether he admits or disputes the claim.
- (3) An execution creditor who gives notice in accordance with this provision admitting the claim shall only be liable to the sheriff for any fees and expenses incurred by the sheriff before the receipt of that notice.
4. Where-
  - (a) the sheriff receives a notice from an execution creditor under sub-rule 2 of this rule, disputing a claim, or the execution creditor fails, within the period mentioned in that sub-rule to give the required notice; and
  - (b) The claim made under this rule is not withdrawn; the sheriff may apply to the court under this order.
- (5) A sheriff who receives a notice from an execution creditor under sub rule (2) of this rule admitting a claim made under this provision, shall withdraw from possession of the money, goods or chattels claimed and may apply to the Court for relief under this provision of the following kind, that is to say, an order restraining the bringing of an action against him for or in respect of his having taken possession of that money or those goods or chattels

#### **Mode of application**

3. (1) An application for relief under this order shall be made by originating summons unless made in a pending action in which case it shall be made by motion in the action.
- (2) Where the applicant is a sheriff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2 (5) of this order, the summons shall be served on any person who made a claim under rule 2 ( 1 ) of this order, to or respect of the money, or those goods or chattels, and that person may attend the hearing of the application.
- (3) No appearance need be entered to an originating summons under this provision.

#### **Matters to be proved.**

4. The applicant shall satisfy the Court or a Judge in Chambers by affidavit or otherwise that-
  - (a) The applicant claims no interest in the subject matter in dispute, other than for charges or costs, and
  - (b) The applicant does not collude with any of the claimants; and
  - (c) The applicant is willing to pay or transfer the subject matter into Court or to dispose of it as the Court or a Judge in Chambers may direct.

#### **When application to be made by defendant.**

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

**Stay of action.**

6. If the application is made by a defendant in an action, the Court or a judge in chambers may stay all further proceedings in the action.

**Order upon summons.**

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

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

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

**Costs, etc.**

9. The court or a judge in chambers may, in or for the purposes of any interpleader proceeding, make all such orders as to costs and all other matters as may be just and reasonable-

**ORDER 34****APPLICATION FOR JUDICIAL REVIEW****Cases appropriate for application for judicial review.**

1. (1) An application for:
  - (a) an order of mandamus, prohibition or certiorari. Or
  - (b) an injunction restraining a person from acting in any office in which he is not entitled to act shall be made by way of an application for judicial review in accordance with the provisions of this order.
- (2) An application for a declaration Or an injunction (not being an injunction in rule (1) (b) of this rule) may be made by way of an application for judicial review, and the Court may grant the declaration or injunction if it deems it just and convenient to grant it by way of judicial review, having regard to:
  - (a) The nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari,
  - (b) The nature of the persons and bodies against whom relief may be granted by way of such an order, and
  - (c) All the circumstances of the case.

**Joinder of claims for relief**

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

### **Grant of leave to apply for judicial review.**

3. (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.
  - (2) An application for leave shall be made ex parte to the judge and shall be supported by:
    - (a) a statement setting out the name and description of the applicant, the reliefs sought and the grounds on which they are sought;
    - (b) an affidavit verifying the facts relied on; and
    - (c) a written address in support of application for leave.
3. The judge hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise in such terms, if any, as he deems it.
- (4) The judge shall not grant leave unless he considers that the applicant has a sufficient interest in the matter to which the application relates.
- (5) Where leave is sought to apply for an order of certiorari to remove or the purpose of its being quashed, any Judgment, order, conviction or any other proceeding which is subject to appeal and a time is limited for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.
- (6) Where leave to apply for judicial review is granted, then:
  - (a) if the relief sought is an order of prohibition or certiorari and the Judge directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Judge otherwise orders;
  - (b) if any other relief is sought, the Judge may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ;
  - (c) the judge may impose such terms as to costs and as to giving security as he deems fit.

### **Time within which to bring application.**

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

### **Mode of applying for judicial review**

5. (1) when leave has been granted, the application shall be made by motion or by originating summons which shall be accompanied by a written address.
- (2) The notice of motion or summons shall be served on all persons directly affected, and where it relates to any proceeding before a judge and the object of the application is either to compel the Judge or an officer of the Court to do any act in relation to the proceedings, or to quash them

or any order made therein, the notice or summons shall also be served on the clerk or registrar of the Court, and where any objection to the conduct of the Judge is to be made on the judge.

- (3) Unless the judge granting leave has otherwise directed, there shall be at least seven days between the service of the notice of motion or summons and the day named therein for the hearing.
- (4) A motion shall be entered for hearing within fourteen days after the grant of leave.
- (5) An affidavit giving the names and addresses of, and the places and days of service on the persons, who have been served with the notice of motion or summons shall be filed before the motion or summons is entered for hearing and if any person who ought to be served under this rule has not been served, the affidavit shall state that fact and the reason for it and the affidavit shall be before the judge on the hearing of the motion or summons.
- (6) If on the hearing of the motion or summons the judge is of the opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the judge may adjourn the hearing on such terms if any, as he may direct in order that the notice of summons may be served on that person.

#### **Statement and affidavits.**

6. (1) Copies of the statement in support of an application for leave under rule 3 shall be served with the notice of motion or summons and subject to sub-rule (2), no ground shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.
- (2) The judge may on the hearing of the motion or summons allow the applicant to amend his statement whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as he deems fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.
- (3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.
- (4) Each party to the application shall supply to every other party a copy of every affidavit which he proposes to use at the hearing including, in the case of the applicant the affidavit in support of the application for leave under rule 3

#### **Claim for damages.**

7. On an application for judicial review, the judge may, subject to rule 2, award damages to the applicant if:
  - (a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates; and
  - (b) the judge is satisfied that if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

### **Interlocutory application.**

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

### **Hearing of application for judicial review.**

9. (1) On the hearing of any motion or summons under rule 5, any person who desires to be heard on the motion or summons, and appears to the judge to be a proper person to be heard, shall be heard notwithstanding that he has not been served with notice of the motion or the summons.
- (2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has filed a copy thereof verified by affidavit or account for his failure to do so to the satisfaction of the judge hearing the motion or summons.
- (3) Where an order of certiorari is made in any such case as is referred to in sub-rule (2), the order shall, subject to sub rule 4, direct that the proceedings shall be quashed forthwith on their removal into court.
- (4) Where the relief sought is an order of certiorari and the judge is satisfied that there are grounds for quashing the decision to which the application relates, the judge may, in addition to quashing it. Remit the matter to the Court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the judge.
- (5) Where the relief sought is a declaration, an injunction or damages and the judge considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the judge may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ.

### **Person acting in obedience to an order of mandamus.**

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

### **Consolidation of applications.**

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

## **ORDER 35**

### **COMMITTAL FOR CONTEMPT OF COURT**

#### **Committal for contempt of Court.**

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

- (2) An order of committal may be made by the Court where contempt of court-
- (a) Is committed in connection with-
  - (i) Any proceeding before the court;
  - (ii) Criminal proceedings,
- (b) is committed in the face of the court, or consists of disobedience to an order of the Court or a breach of an undertaking to the Court; or
- (c) is committed otherwise than in connection with any proceeding.

### **Application to Court.**

- 1. (1) an application for an order of committal shall be made to the Court by motion on notice supported by an affidavit and shall state the grounds of the application.
- (2) The notice of motion, affidavit and grounds shall be served personally on the person sought to be committed but the Court may dispense with personal service where the justice of the case so demands.

### **Saving for power to commit without application for the purpose**

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

### **Provisions as to hearing.**

- 4. (1) Subject to sub-rule (2) of this rule, the court hearing an application for an order of committal may sit in private in the following cases that is to say where-
  - (a) the application arises out of proceedings relating to a person, suffering or appearing to be suffering from mental disorder; or
  - (b) the application arises out of proceedings in which a secret process, discovery or invention was in issue;
  - (c) it appears to the court that in the interests of the administration of justice or for reasons of national security the application should be heard in private, but except as aforesaid, the application shall be heard in open court.
- (2) if the court hearing an application in private by virtue of sub rule (1) of this rule decides to make an order of committal against the person sought to be committed, it shall in open Court state-
  - (a) the name of that person;
  - (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and
  - (c) if he is being committed for a fixed period, the length of that period.
- (3) Except with the leave of the court hearing an application for an order of committal, no ground shall be relied upon at the hearing except the grounds set out in the statement under rule 2 of this order.
- (4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence his own behalf he shall be entitled to do so.

**Contempt in face of Court: saving for.**

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

**Power to suspend execution of committal order.**

6. (1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.
- (2) Where execution of an order of committal is suspended by an order under sub-rule (1) of this rule, the applicant for the order of committal shall, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that sub rule.

**Discharge of person committed.**

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

**Saving for other powers.**

8. Nothing in the foregoing provisions of this order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of Court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of court to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

**Return.**

9. (1) every writ of attachment issued in a case to which this order applies shall be made returnable before the Court.
- (2) If a return of non est inventus is made, one or more writs may be issued on the return of the previous writ.

**ORDER 36**

**WRIT OF EXECUTION**

## **GENERAL**

### **Definition.**

1. In this order, unless the context otherwise requires, "writ of execution" includes a writ of fieri facias, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs.

### **When leave to issue any writ of execution is necessary**

2. (1) a writ of execution to enforce a Judgment or order may not issue without the leave of the Court in following cases, that is to say where-
  - (a) six years or more have elapsed since the date of the Judgment order, or
  - (b) any change has taken place, whether by death or otherwise. in the parties entitled or liable to execution under the Judgment order, or
  - (c) the Judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the Judgment or order, and it is sought to issue execution against the assets, or
  - (d) under the Judgment or order any person is entitled to relief subject to the fulfillment of any condition which it is alleged has been fulfilled, or
  - (e) any goods sought to be seized under a writ of execution are in the hands of a Receiver appointed by the Court or a sequestrator.
- (2) Sub-rule (1) of this rule is without prejudice to any enactment or rule by virtue of which a person is required to obtain the leave of the Court for the issuance of a writ of execution or to proceed to execution on or otherwise to the enforcement of a Judgment or order.
- (3) Where the Court grants leave, whether under this rule or otherwise, for the issuance of a writ of execution and the writ is not issued within one year after the date of the order granting such leave, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

### **Leave required for issuance of writ in aid of other writ**

3. A writ of execution in aid of any other writ of execution shall not issue without the leave of the Court.

### **Application for leave to issue writ**

4. (1) an application for leave to issue a writ of execution may be made ex pane unless the Court directs it to be made by summons.
- (2) Such an application shall be supported by an affidavit-
  - (a) identifying the judgment or order to which the application relates and, if the Judgment or order is for the payment of money, stating the amount originally due there under and the amount due there under at the date of the application;
  - (b) stating, where the case falls within rule 2 (1) (a) of this order, the reasons for the delay in enforcing the Judgment or order;

- (c) stating, where the case falls within rule 2 (1) (b) of this order, the change which has taken place in the parties entitled or liable to execution since the date of the Judgment or order:
  - (d) stating, where the case falls within rule 2(1) (c ) or (d) of this order, that a demand to satisfy the Judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so.
  - (e) giving such other information as is necessary to satisfy the court that the applicant is entitled to proceed to execution on the Judgment or order in question and that the person against whom it is sought to issue execution r. liable to execution on it.
- (3) The court hearing the application may grant leave in accordance with the application or may order that any issue or question, a decision on which is necessary determine the rights of the parties, be tried in any manner in which any question of fact or law arising in an action may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

**Application for leave to issue writ of sequestration.**

5. (1) notwithstanding anything in rules 2 and 4 of this order, an application for leave to issue a writ of sequestration shall be made to a judge by motion.
- (2) Subject to sub-rule (3) of this rule, the notice of motion, stating the grounds of the application, shall be served personally on the person against whose property it is sought to issue the writ.
- (3) The judge hearing an application for leave to issue a writ of sequestration may sit in private in any case in which there is an application to the judge to sit in private, if the application were for an order.

**Issuance of writ of execution.**

6. (1) The issuance of a writ of execution takes place on its being sealed by an officer of the appropriate office.
- (2) A praecipe for the issuance of a writ shall be filed before the writ is issued.
- (3) The praecipe shall be signed by or on behalf of the solicitor of the person entitled to execution or if that person is acting in person, by the person.
- (4) No such writ shall be sealed unless at the time of the tender thereof for sealing-
- (a) The person tendering it produces-
    - (i) The Judgment or order on which the writ is to issue, or an office copy thereof, or
    - (ii) Where the writ may not issue without the leave of the court, the order granting the leave or evidence of the granting of it, and
  - (b) the officer authorized to seal it is satisfied that the period, if any, specified in the Judgment or order for the payment of any money or the doing of any other act there under has expired.
- (5) Every writ of execution shall bear the date of the day on which it is issued.
- (6) In this rule "**the appropriate office**" means-
- (a) Where the cause or matter in which execution is to issue is proceeding in a Division Registry, that Registry;

- (b) Where that cause or matter is an admiralty cause or matter which is not proceeding in a Registry, the Admiralty Registry;
- (c) In any other case, the court Registry.

**Duration of and renewal of writ of execution.**

- 7. (1) For the purpose of execution, a writ of execution is valid in the first instance for twelve months beginning with the date of its issuance.
- (2) Where a writ has not been wholly executed the Court may by order extend the validity of the writ from time to time for a period of twelve months at any time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire or such later day, if any as the court may allow.
- (3) Before a writ, the validity of which had been extended under this rule is executed, either the writ shall be sealed with the seal of the office out of which it was issued showing the date on which the order extending its validity was made or the applicant for the order shall serve a notice sealed as aforesaid, on the sheriff to whom the writ is directed informing him of the making of the order and the date thereof.
- (4) The production of a writ of execution, or of the notice as is mentioned in sub-rule (3) of this rule purporting in either case can be sealed as mentioned in that sub-rule, shall be evidence that the validity of that writ, or, as the case may be, of the writ referred to in that notice, has been extended under this rule.

**Return of writ of execution.**

- 8. (1) Any party at whose instance a writ of execution was issued may serve a notice on the sheriff to whom the writ was directed requiring him, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.
- (2) If a sheriff on whom such notice is served fails to comply with it, the party by whom it was served may apply to the Court for an order directing the sheriff to comply with the notice.

**ORDER 37**

**GARNISHEE PROCEEDINGS**

**Attachment of debt due to Judgment debtor.**

- 1. (1) Where a person (in this order referred to as "**the judgment creditor**") has obtained a Judgment or order for the payment by some other person (in this order referred to as "the Judgment debtor") of a sum of amount in value to at least N20.000 not being a Judgment or order for the payment of money into court, and any other person within the jurisdiction (in this order referred to as "the garnishee") is indebted to the Judgment debtor, the Court may, subject to the provisions of this order and of any enactment, order the garnishee to pay the Judgment creditor the amount of any debt due or accruing due to the Judgment debtor from the garnishee, or as much thereof as is sufficient to satisfy that Judgment or order and the costs of the garnishee proceedings.
- (2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is

mentioned in sub-rule (1) or so much therefore as may be specified in the order, to answer the Judgment or order mentioned in that and the costs of the garnishee proceedings.'

- (3) An order under this rule shall not require a payment which would reduce below N5, 000 the amount standing in the name of the Judgment debtor in an account with a building society or a credit union.

### **Application for order**

2. An application for an order under rule 1 of this order shall be made ex pane supported by an affidavit-
  - (a) Stating the name and last known address of the judgment debtor;
  - (b) Identifying the judgment or order to be enforced and stating the amount of the judgment or order and the remaining unpaid under it as (at) the time of the application.
  - (c) stating, that to the best of the information or belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information or the grounds for his belief; and
  - (d) stating, where the garnishee is a deposit-taking institution having more than one place of business, the name and address of the branch at which the judgment debtor's account is believed to be held and the number of that account or, if it be the case, that all or part of this information is not known to the deponent.

### **Service and effect of order to show cause**

3. (1) unless the Court otherwise directs, an order under rule I of this order to show cause shall be served
  - (a) On the garnishee personally, at least, fifteen days before the day appointed thereby for the further consideration of the matter; and
  - (b) On the judgment debtor, at least seven days after the order has been served on the garnishee and at least seven days before the day appointed for the further consideration of the matter.
- (2) An order under rule 1 of this order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

### **Non-appearance or dispute of liability by garnishee**

1. (1) where on the further consideration of the matter, the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may make an order absolute under rule 1 of this order against the garnishee.
- (2) An order absolute under rule 1 of this order against the garnishee may be enforced in the same manner as any other order for the payment of money.

### **Dispute of liability by garnishee**

5. Where on the further consideration of the matter, the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the Court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried, without, if it orders trial before a matter, the need for any consent by the parties.

### **Claims of third persons**

6. If in garnishee proceedings it is brought to the notice of the Court that some other person other than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge upon, the Court may order that person to attend before the Court and state the nature of his claim with particulars thereof.

#### **Discharge of garnishee**

7. Any payment made by a garnishee in compliance with an order absolute under this order, and any execution levied against him in pursuance of such an order shall, be a valid discharge of liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or judgment or order from which they arose is reversed.

### **ORDER 38**

#### **PROCEEDINGS IN FORMA PAUPERIS**

##### **Duration of provisions**

1. (1) The provision of this order shall remain in force until statutory provisions are made for legal aid in connection with civil proceedings before the Court and thereupon shall cease to have effect.

##### **Who may sue or defend in forma pauperis**

2. The Judge may admit a person to sue or defend in forma pauperis, except in bankruptcy proceedings, if satisfied that his means do not permit him to employ legal aid in the prosecution of his case and that he has reasonable ground for suing or defending as the case may be.

##### **Conditions to be fulfilled**

3. (1) The application shall, if the Judge so directs, be accompanied by an affidavit signed and sworn by the applicant himself stating that the application satisfied the requirements of rule 2 of this order as to his means, and setting forth all the material facts on which he relies in his desire to sue or defend, distinguishing between those which are within his personal knowledge and those which he bases on information and belief, and in the latter case, setting forth the sources of his information and belief.
- (2) If the application is in the opinion of the Judge, worthy of consideration it shall be referred to a legal practitioner willing to act, and unless the legal practitioner certifies that in his opinion the applicant has good cause of action or good ground of defence, as the case may be, the application shall be refused.

##### **Fees and costs**

4. Courts fees payable by a person admitted to sue or defend in forma pauperis may be remitted either in whole or in part as a Judge may deem right, and a person so admitted to sue or defend shall not, unless the Court otherwise orders, be liable to pay or be entitled to receive any costs.

##### **Assignment of legal practitioner**

5. On granting the application, a Judge may assign to the applicant any legal practitioner willing to be assigned, and any legal practitioner so assigned shall not be discharged by the applicant except with leave of the Court or of a Judge in Chambers.

### **Procedure to followed**

6. (1) Neither the legal practitioner whose opinion is sought nor the legal practitioner assigned to the applicant or any other person shall, except by leave of the Court or of a Judge in Chambers, take or agree to take or seek to obtain any payment whatsoever from the applicant or any other person in connection with the application or the action taken or defended there under.
- (2) If the applicant pays or agrees to pay money to any person whatsoever in connection with his application or the action taken or defended there under, his application shall be refused or, if already granted, the order granting it shall be rescinded.
- (3) If the legal practitioner assigned to the applicant discovers that the applicant is possessed of means beyond those stated in the affidavit, if any, he shall at once report the matter in writing to the Registrar.

### **Revocation of order discontinuance, etc**

7. (1) The Judge may at any time revoke the order granting the application and thereupon the applicant shall not be entitled to the benefit of this provision in any proceeding to which the application relates unless otherwise ordered.
- (2) Neither the applicant nor the legal practitioner assigned to him shall discontinue, settle or compromise the action without the leave of the Court or of a Judge in Chambers

### **Payment to legal practitioner**

8. The Court may order payment to be made to the legal practitioner assigned out of any money recovered by the applicant or may charge in favour of the legal practitioner assigned, upon any property recovered by the applicant, such sum as in all circumstances may seem fit.

### **Duty of legal practitioner**

9. Every writ, notice or application on behalf of the applicant, except an application for the discharge of his legal practitioner, shall be signed by his legal practitioner who shall take care that no application or notice is made or given without reasonable cause.

### **Leave to appeal**

10. No person shall be permitted to appeal in forma pauperis, except by leave of the trial or the appellate Court, and then only on grounds of law.

## **ORDER 39**

### **ASSESSOR**

#### **Assessor sitting in Court**

1. Where an Assessor sits with a Judge during a trial, he shall only discuss with or advise the Judge on the issue he was co-opted for

#### **Assessor not to write judgment**

2. The Assessor shall not write any opinion in form of Judgment or order and shall not dissent or concur with the judgment or order the Judge has given.

#### **Assessor to give advice only on his subject**

3. An Assessor shall in advising the Court, limit himself to the issue in which he is an expert on, and on which account he was appointed to sit with the Court.

#### **Judge not bound to accept Assessor's advice**

4. The Judge is not bound to accept and act on the opinion or advice of the Assessor.

#### **Assessor shall take oath of secrecy**

5. The Assessor shall subscribe to judicial oath of secrecy before the Judge or another Judge before resuming his duty.

### **ORDER 40 RECEIVER**

#### **Application for appointment of Receiver and injunction**

1. (1) An application for the appointment of a receiver may be made by motion on notice
- (2) An application for an injunction ancillary or incidental to an order appointing a Receiver may be joined with the application for the order.
- (3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so ex parte on affidavit in an appropriate case.
- (4) The Court hearing an application under sub-rule (3) of this rule may grant an injunction restraining the party beneficially entitled to any interest in the property of which a Receiver is sought from assigning, charging or otherwise dealing with that property pending the hearing of a summons for the appointment of a Receiver and may require such a summons, returnable on such date as the Court may direct, to be issued.

#### **Giving of security by Receiver**

2. (1) Where a Judgment is given, or an order is made directing the appointment of a Receiver, then, unless the judgment or order otherwise directs, a person shall not be appointed a Receiver in accordance with the judgment or order until he has given security as in Form 24 to these Rules, in accordance with this rule.
- (2) Where, by virtue of sub-rule (1) of this rule, or any judgment or order appointing a person named therein to be a Receiver, a person is required to give security in accordance with this rule, he shall give security as in Form 25 to these Rules, as may be approved by the Court duly to account for what he receives as a Receivers and to deal with it as the Court directs.
- (3) Unless the Court otherwise directs, the security shall be by guarantee or, if the amount for which the security is to be given does not exceed two thousand naira, by an undertaking.
- (4) The guarantee or undertaking shall be filed in the Court Registry.

### **Remuneration of Receiver**

3. A person appointed a Receiver shall be allowed such proper remuneration if any, as may be fixed by the Court.

### **Receiver's account Civil Form 26**

4. (1) A Receiver shall submit accounts as Form 26 to these Rules, to the Court at such intervals or on such dates as the Court may direct in order that they may be passed.
- (2) Unless the Court otherwise directs, each account submitted by a Receiver shall be accompanied by an affidavit as in Form 26 verifying it.
- (3) The Receiver's account and affidavit (if any) shall be left at the Registrar's office, and the claimant or party having the conduct of the proceedings shall thereupon obtain an appointment for the purpose of passing the account
- (4) The passing of a Receiver's account shall be certified by the Registrar.

### **Payment of balance, etc by Receiver**

5. The days on which a Receiver shall pay into Court the amount shown by his account as due from him, or such part thereof as the Court may certify as proper to be paid in by him, shall be fixed by the Court

### **Default by Receiver**

6. (1) Where a Receiver fails to attend for the passing of any account of his, or fails to submit any account, make any affidavit or do any other thing which he is required to submit, make or do, he and any or all of the parties to the proceedings in which he was appointed may be required to attend in Chambers to show cause for the failure, and the Court may either in Chamber or after adjournment into Court, give such directions as it thinks proper including if necessary, directions for the discharge of the Receiver and the appointment of another and the payment of costs.
- (2) Without prejudice to sub-rule (1) of this rule, where a Receiver fails to attend for the passing of any account or fails to pay into Court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the Receiver in any subsequent account and may, where he has failed to pay any such sum into Court, charge him with interest at the rate of ten per cent per annum on that sum while in his possession as a Receiver.

## **ORDER 41**

### **REFERENCE TO REFEREE**

#### **Instructions to Referee**

1. In any case in which a matter is referred to a Referee under the provisions of the Federal High Court Act, the Court shall furnish the Referee with such part of the proceedings and such information and detailed instructions as may appear necessary for his guidance, and shall direct the parties, if necessary, to attend upon the Referee during the inquiry.
- (2) The instructions shall specify whether the Referee is merely to transit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his investigation.

#### **Interim inquiries or accounts**

2. The Court may at any stage of the proceedings direct any such necessary inquiries or accounts to be made or taken notwithstanding that it appears that there is some special or further relief sought for, or some special issues to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

### **General powers of the Referee**

3. (1) The Referee may, subject to the order of the Court, hold the inquiry at, or adjourn it to, any place which he may deem most expedient, and have any inspection or view which he may deem expedient, for the disposal of the controversy before him.
- (2) The Referee shall, as far as practicable, proceed with the inquiry from day to day.

### **Evidence**

4. Subject to any order to be made by the Court ordering the inquiry, evidence shall be taken at any inquiry before a Referee, and the attendance of witnesses to give evidence before a Referee may be enforced by the Court in the manner as the attendance may be enforced before the Court and every such inquiry shall be conducted in the same manner or as nearly as circumstances will admit, as trials before a Judge of the court, but not so as to make the tribunal of the Referee a public Court of justice.

### **Referee's authority in the inquiry**

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

### **Limitation in certain particulars**

6. Nothing in these provisions authorizes any Referee to commit any person to prison, or to enforce any order by attachment or otherwise, but the Court may, in respect of matters before a Referee, make any order of attachment or committal it may consider necessary.

### **Reports made in pursuance of reference**

7. (1) The report made by a Referee in pursuance of a reference under these Rules shall be made to the Court and notice thereof served on the parties to the reference.

#### **Referee may report questions of facts specially**

2. A Referee may in his report submit any question arising therein for the decision of the Court or make a special statement of facts from which the Court may draw such inferences as it thinks fit.
- (3) On the receipt of a Referee's report, the Court may-
  - (a) adopt the report in whole or in part;
  - (b) vary the report;
  - (c) require an explanation from the Referee;
  - (d) remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other Referee; or

- (e) decide the question or issue originally referred to him on the evidence taken before him, either with or without additional evidence.
- (4) When the report of the Referee has been made, an application to vary the report or remit the whole or any part of the question or issue originally referred may be made on the hearing by the Court to the further consideration of the cause or matters, after giving not less than four days notice thereof, and any other application with respect to the report may be made on the hearing without notice.
- (5) Where on a reference under this order, the Court or a Judge in Chambers orders that the further consideration of the cause or matter in question shall not stand adjourned until the receipt of the Referee's report, the order may contain directions with respect to the proceedings on the receipt of the report, and the foregoing provisions of the rule shall have effect subject to such directions.

## **ORDER 42**

### **PAYMENT INTO AND OUT OF COURT**

#### **Payment into and out of Court**

1. (1) Where after service in any proceeding for debt or damages, a defendant envisages an intention to pay money into Court in respect of the proceeding, he shall notify the Chief Registrar who will thereupon direct him to pay the money into an interest yielding account in a commercial bank, and he shall file the teller for such payment with the Chief Registrar.
- (2) Where a teller for payment is filed with the Chief Registrar, he shall forthwith give notice of the payment to the plaintiff who may apply to a Judge, for an order to withdraw the amount so paid.
- (3) Where a defence of tender before action is set up, the sum of money alleged to have been tendered shall in brought into Court.
- (4) The defendant may, without leave, give a written notice to the Chief Registrar of an intention to increase the amount of any sum paid into Court.
- (5) Where the money is paid into Court in satisfaction of one or more of several causes of action, the notice shall specify the cause or causes of action in respect of which payment is made and the sum paid in respect of each such cause of action unless a Judge otherwise directs

#### **Civil Form 27**

- (6) The notice shall be in Form 27 with such modifications or variations as circumstances may require, the receipt of the notice shall be acknowledged in writing by the plaintiff within three days. The notice may be modified or withdrawn or delivered in an amended form by leave of a Judge upon such terms as may be just.
- (7) Where money is paid into Court with denial of liability, the plaintiff may proceed with the action in respect of the claim, and if he succeeds, the amount paid shall be applied so far as is necessary in satisfaction of the claim, and the balance, if any, shall on the order of a Judge be repaid to the defendant. Where the defendant succeeds in respect of such claim the whole amount paid into Court shall be repaid to him on the Order of a Judge.

### **Plaintiff may take out money (Civil Form 28)**

2. (1) Where money is paid into Court under rule 1, the plaintiff may within fourteen days (of the receipt of the notice of payment into Court or where more than one payment into Court has been made, within fourteen days of the receipt of the notice of the last payment into Court), accept the whole sum or anyone or more of the specific sum in satisfaction of the cause or causes of action to which the specified sum or sums relate by giving notice to the defendant in **Form 28** with such modifications or variations as circumstances may require, and thereupon shall be entitled to receive payments of the accepted sum or sums in satisfaction as aforesaid.
- (2) Payment shall be made to the plaintiff or on his written authority to his legal practitioner and thereupon proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall abate.
- (3) If the plaintiff accepts money paid into Court in satisfaction of his claims or if he accepts a sum or sums paid in respect of one or more specified causes of action, and gives notice that he abandons the other causes of action, he may after our days from payment out and unless a Judge otherwise orders, tax his costs incurred to the time of payment into Court, and 48 hours after taxation may sign judgment for his taxed costs.
- (4) Where in an action for libel or slander, the plaintiff accepts money paid into Court, either party may apply, by summons to a Judge, for leave for the parties or either of them to make a statement in open Court in terms approved by the Judge.

### **Money remaining in Court.**

3. If the whole of the money in Court is not taken out under rule 2, the money remaining in Court shall not be paid out except in satisfaction of the claim or specified cause or causes of action in respect of which it was paid in pursuance of an order of a judge which may be made at any time before, during or after trial.

### **Several defendants.**

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

### Civil Form 29

- (2) If the plaintiff elects within fourteen days after receipt of notice of payment into Court to accept the sum or sums paid into Court, he shall give notice as in Form 29 with such modifications or variations as circumstances may require to each defendant and hereupon all further proceedings in the action or in respect of the specified causes of action (as the case may be) shall abate.
- (3) The money shall not be paid out except in pursuance of an order of a judge dealing with the whole cause or causes of action.
- (4) In an action for libel or slander against several defendants sued jointly, if any defendant pays money into Court, the plaintiff may within fourteen days elect to accept the sum paid into Court in satisfaction of his claim against the defendant making the payment and shall give notice to all the defendants in **Form 29** with such modifications or variations as circumstances may require. The

plaintiff may tax his costs against the defendant who has made such payment in accordance with rule 2(3) of this order and the action shall abate against that defendant.

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

#### **Counter-claim**

5. A person made a defendant to a counter-claim may pay money into Court in accordance with the foregoing rules, with necessary modification.

#### **Persons under legal disability.**

6. (1) In any proceeding in which money or damages is or are claimed by or on behalf of a person under legal disability, suing either alone or in conjunction with other parties, no settlement or compromise or payment or acceptance of money paid into Court, whether before, at or after the trial, shall as regards the claims of any such person be valid without approval of a Judge.
- (2) No money (which expression for the purposes, of this rule includes damages in any way recovered, or adjudged or ordered or awarded or agreed to be paid) in any such proceedings in respect of the claims of any such person under legal disability whether by Judgment settlement, compromise, payment into Court or otherwise, before, at or after the trial, shall be paid to the plaintiff or to the guardian of the plaintiff or to the plaintiff's legal practitioner unless a judge shall so direct.
- (3) All money so recovered or adjudged or ordered or awarded or agree to be paid shall be dealt with as the judge shall direct. The directions thus given may include any general or special directions that the judge may deem fit to give including directions on how the money is to be applied or dealt with and as to any payment to be made either directly or out of money paid into Court to the plaintiff or to the guardian in respect of money paid or expenses incurred or for maintenance or otherwise for or on behalf of or for the benefit of the person under legal disability or otherwise or to the plaintiff's legal practitioner in respect of costs or of the difference between party and party and legal practitioner and client costs.

#### **Payment into and withdrawal of money from Court.**

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

### **ORDER 43**

#### **DISCOVERY AND INSPECTION**

##### **Discovery by interrogatories.**

1. In any cause or matter, the plaintiff or defendant may deliver interrogatories in writing for the examination of the opposite parties or anyone or more of such parties and such interrogatories when delivered shall have a note at the end of it, stating which of the interrogatories each person is required to answer. Interrogatories shall be delivered within seven days of close of pleadings.

#### **Form of Interrogatories Civil Form 30**

2. Interrogatories shall be in Form 30 with such modifications or variations as circumstances may require.

**Interrogatories to corporation or company.**

3. If any party to a cause or matter is a limited or unlimited company, body corporate, firm, enterprises, friendly society, association or any other body or group of persons, whether incorporated or not, empowered by the law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may deliver interrogatories to any member or officer of such party.

**Objection to interrogatories by answer.**

4. Any objection to answering any one or more of several interrogatories on the ground that it is or they are scandalous or irrelevant may be taken in the affidavit in answer.

**Affidavit in answer; filing of.**

5. Interrogatories shall be answered by affidavit to be filed within seven days, or within such other time as the judge may allow and shall be served, a copy thereof delivered to the party that delivered the interrogatories as well as the other parties or as the Court or Judge may direct.

**Form of affidavit in answer; Civil Form 31.**

6. An affidavit in answer to interrogatories shall be in the **Form 31** with such modifications or variations as circumstances may require.

**Order to answer, or answer further.**

7. If any person interrogated omits to answer or answers insufficiently, the judge shall on application issue an order requiring him to answer or to answer further as the case may be.

**Application for discovery of documents**

8. (1) Any party may in writing, request any other party to any cause or matter, to make discovery on oath of the documents that are or have been in his possession, custody, power or control, relating to any matter in question in the case. Request for discovery shall be served within seven days of close of pleadings or within such period as the Court or Judge may direct and shall form part of the proceedings. The party on whom such a request is served shall answer on oath completely and truthfully within seven days of the request or within such other time as the judge may allow.
- (2) Every affidavit in answer to a request for discovery of documents shall be accompanied by copies of documents referred to therein.

**Civil Form 32**

- (3) The affidavit to be made by any person in answer to a request for discovery of documents shall specify which, if any, of the listed documents he objects to producing, stating the grounds of his objection, and it shall be in Form 32 with such modifications or variations as circumstances may require.
- (4) On the hearing of the application, the Court or Judge in Chambers may either refuse or adjourn the hearing, if satisfied that the discovery is not necessary or make such order, either

generally or limited to certain classes of documents, as may, in its or his discretion, be thought fit.

- (5) Discovery shall not be ordered when and so far as the Court or Judge in chambers is of the opinion that it is not necessary either for disposing fairly of the action or for saving costs.

**Process filed after close of pleadings.**

9. (1) any process to be filed after the close of pleadings shall be accompanied by copies of documents referred to in the process.
- (2) Where a process filed is not accompanied by a document referred to therein, a judge may on application strike out the process.

**Verification of business books.**

10. (1) where any document required to be attached to any process or produced under this or any other rule is a business book, a Judge may upon application order a copy of any entry therein to be furnished and verified in an affidavit. Such affidavit shall be made by a person who keeps the book or under whose supervision the book is kept.
- (2) Notwithstanding that a copy has been supplied a Judge may order inspection of the book from which the copy was made.
- (3) The Judge may upon application whether or not an affidavit has been ordered or filed, make an order requiring any party to state by affidavit whether any particular document or any class of documents is or has at any time been in his possession, custody, power or control, when he parted with the same and what has become of it.

**Committal of party after service on legal practitioner.**

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

**Committal of legal practitioner.**

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

**Using answers to interrogatories at trial.**

13. Any party may at the trial of a cause or matter, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided that the judge may look at the whole of the answers and order that any of them may be put in.

**Discovery of documents in marine insurance policies.**

14. (1) where in any action arising on a marine insurance policy, an application for discovery of documents is made by the insurer, the following provision shall apply-
  - (a) On hearing of the application, the Court or judge in Chambers may, subject as provided in sub-rule (2) of this rule, make any order in accordance with sub-rule 8 of this order;

- (b) Where in any case the Court or Judge in Chambers is satisfied, either on the original application or on a subsequent application, that it is necessary or expedient, having regard to the circumstances of the case, to make an order, for the production of ship's papers, the Court or Judge in Chambers may make the orders as in Form 33 to these Rules.
  - (c) In making an order under this rule the Court or judge in Chambers may impose such terms and conditions as staying proceedings or otherwise as the Court or judge in chambers in its or his discretion thinks just.
- (2) Rule 8 of this order shall not apply to any application made under this rule.

**Affidavit of documents.**

15. The affidavit to be made by any person against whom an order for documents has been made under rule 5 of this order or under sub-rule (a) or (b) of rule 14 of this order shall specify which, if any of the documents therein mentioned he objects to produce, and it shall, except in the case of an order made under sub-rule (b) of rule 14 of this order be as in Form 33 to these Rules with such variations as circumstances may require.

**Power to order list of documents in lieu of affidavit.**

16. (1) On the hearing of any application for discovery of documents the Court or judge in Chambers in lieu of ordering an affidavit of documents to be filed may order that the party from whom discovery is sought delivers to the opposite party a list of the documents which are or have been in his possession, custody or power, relating to the matters in question.
- (2) The list shall, as nearly as may be, follow the form of the affidavit as in Civil Form 31 in the Appendix to these Rules.
- (3) The ordering of the list shall not preclude the Court or judge in Chambers from afterwards ordering the party to make and file an affidavit of documents.

**Production of documents.**

17. The Court or a judge in Chambers may at any time during the pendency of an action, order the production by any party, upon oath, of such of the documents in his possession or power, relating to any matter in question in the action as the Court or judge in chambers shall think right, and the Court may deal with the documents, when produced, in such manner as appears just.

**Inspection of documents referred to in pleadings or affidavits**

18. (1) Every party to a cause or matter shall be entitled at any time, by notice in writing, to give notice to any party in whose pleadings or affidavits reference- is to any document to produce the document for the inspection of the party giving the notice, or of his legal practitioner, and to permit him or them to take copies thereof.
- (2) Any party not complying with the notice shall not afterwards be at liberty to put such documents in evidence on his behalf in that action, unless he shall satisfy the Court or a Judge in Chambers that the document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or Judge in Chambers deems sufficient for not complying with the notice, in which case the Court or judge in Chambers may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or judge in Chambers may think fit.

### **Notice to produce Civil Form 34.**

19. Notice to any party to produce any document referred to in his pleadings or affidavit shall be in Form 34 to these Rules with such variations as circumstances may require.

### **Time for inspection when notice given under rule 19.**

20. (1) The party to whom notice is given under rule 19 of this order shall, within two days from the receipt of the notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in sub- rule 16 of this order, or if any of the documents referred to in that notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice slating a time within seven days from the delivery thereof at which the documents, or such of them as he does not produce, may be inspected at the office of his legal practitioner, or in the case of banker's book or other books of account, or books in constant use for the purpose of any trade or business, at their usual place of custody and stating which (if any) of the documents he objects to produce, and on what ground.

Form of notice. Civil Form 34.

- (2) The notice shall be in **Form 34** in Appendix to these Rules with such variations as circumstances may require.

### **Order for inspection.**

21. (1) If the party served with notice under rule 19 of this order omits to notify a time for inspection, or objects to give inspection, or offers inspection elsewhere than at the office of his legal practitioner, the Court or a Judge in Chambers may, on the application of the party desiring it, make an order for inspection in such place and in such manner as the Court or Judge in Chambers may think fit.
- (2) The order shall not be made when and so far as the court or judge in chambers is of opinion that it is not necessary either for disposing fairly of the action or for saving costs.
- (3) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party

### **Verified copies**

22. (1) Where inspection of any business book is applied for; the Court or a judge in chambers may, if it or he thinks fit, instead of ordering inspection of the original books, order a copy of any entry therein to be furnished and verified by the affidavit of some person who has examined the copy with original entries, and the affidavit shall state whether or not there are in the original books any and what erasures, interlineations, or alterations.
- (2) Notwithstanding that such copy has been supplied, the Court or Judge in Chambers may order inspection of the book from which the copy was made.
- (3) Where, on an application for an order for inspection, privilege is claimed for a document, it shall be lawful for the Court or a judge in Chambers to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

Power to order discovery of particular document or class of documents.

- (4) The Court or a Judge in Chambers may, on the application of any party to an action at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any particular document or documents or any class or classes of documents, specified or indicated in the application, is or are, or has or have at any time been, in his possession, custody, or power, when he parted with the same and what has become of it.
- (5) Application for the order shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has or has at some time had in his possession, custody or power the document or documents, or the class or classes of documents specified or indicated in the application and that they relate to the matters in question in the action, or to some or one of them.

**Premature discovery.**

23. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a Judge in Chamber may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first and reserve the question as to the discovery or inspection.

**Non compliance with order for discovery.**

24. (1) if any party fails to comply with order to answer interrogatories or for discovery or inspection of documents, he shall be liable to committal.
- (2) The party shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and if a defendant, to haw his defence, if any, struck out and to be placed in the same position as if he had not defended, and the party interrogatim<sup>1</sup> may apply to the Court or a judge in chambers for an order to that effect and an order may be made accordingly.

**Service on legal practitioner of order for discovery.**

25. (1) Service of an order for interrogatories or discovery or inspection made against any party or legal practitioner shall be sufficient service to found an application for an attachment for disobedience to the order.
- (2) The party against whom the application for attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

**Liability of legal practitioner.**

26. A legal practitioner upon whom an order against any party for interrogatories or discovery or inspection is served under rule 25 who neglects without reasonable excuse to give notice thereof to his client shall be liable to pay the costs occasioned thereby.

**Using answer to interrogatories at trial.**

27. (1) Any party may, at the trial of a cause, matter or issue use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer.
- (2) In such case the Judge may look at the whole of the answers, and if he is of opinion that any of them is so connected with those put in that those put in ought not to be used without them, he may direct them to be put in.

**Discovery against sheriff.**

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

**Order to apply to infants.**

29. This order shall apply to infant plaintiffs and defendants, and to their next friends and guardians and litem.

**Power to revoke order made.**

30. Any order made under the provisions of this order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court or a Judge in Chambers made or given at or before trial.

**ORDER 44**

**ACCOUNTS AND INQUIRIES**

**Summary order for account.**

1. (1) where a writ is endorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time, after the defendant has entered an appearance or after the time limited for appearing, apply for an order for an account under this rule.
- (2) An application under this rule shall be made by summons and supported by affidavit or other evidence filed on a plaintiff's behalf, stating concisely the grounds of his claim to an account.
- (3) On the hearing of the application, the Court may, unless satisfied by the defendant, by affidavit or otherwise, that there is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

**Court may direct taking of accounts, etc.**

2. (1) The court may, on application made by summon at any stage of proceedings in a cause or matter, direct any necessary accounts or inquiries to be taken or made.
- (2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the Judgment or order so that, as far as may be, each distinct account and inquiry may be designed by a number.

### **Directions as to manner of taking account.**

3. (1) Where the Court orders an account to be taken, it may by the same or subsequent order give directions with regards to the manner in which the account is to be taken or vouched.
- (2) Without prejudice to the generality of sub-rule (1) of this rule, the Court may direct that in taking the account, the relevant books of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objections thereto as they think fit.

### **Account to be made, verified, etc.**

4. (1) Where an account has been ordered to be taken, the accounting party shall make out his account and, unless the Court otherwise directs, verify it by an affidavit to which the accounts shall be exhibited.
- (2) The items on each side of the account shall be numbered consecutively.
- (3) Unless the order for the taking of the account otherwise directs, the accounting party shall lodge the account with the Court and shall at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

### **Erroneous account.**

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

### **Delay in prosecution of account, etc.**

6. (1) If it appears to the Court that there is undue delay in the prosecution of accounts, or inquiries, or in other proceedings under any Judgment or order, the Court may require to explain the delay and may then make such order for staying the proceedings or for expediting them or for the conduct thereof and for cost as the circumstances require.
- (2) The Court may direct any party or legal practitioner to take over the conduct of proceedings in question and to carry out any direction made by an order under this rule and make such order as it thinks fit as to the payment of legal practitioner's costs.

### **Distribution of fund before all persons entitled; to be ascertained.**

7. Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons ascertained without reserving any part of the shares to meet the subsequent cost ascertaining those other persons.

## **ORDER 45**

### **ARREST OF ABSCONDING DEFENDANT**

### **Defendant leaving jurisdiction or removing property.**

1. If in any suit the defendant is about to leave Nigeria or has disposed of or removed from the country his property or any part thereof or is about to do so, the plaintiff or applicant may make an application to the Court that security be taken for the appearance of the defendant to answer to satisfy any Judgment that may be passed against him in the suit.

### **Warrant to arrest.**

2. (1) If the judge after making such investigation as he may consider necessary shall be of opinion that there is probable cause for believing that the defendant is about to leave Nigeria or has disposed of or removed his property or any part thereof out of the country while the suit is pending and that by reason thereof the execution of any Judgment which may be made against him is likely to be obstructed or delayed, the judge shall issue a warrant to bring the defendant before him, that he may show cause why he should not give good and sufficient recognizance for his appearance.
- (2) The defendant shall be brought to Court within two days of the execution of the warrant.

### **Bail for appearance or satisfaction.**

3. If the defendant fails to show cause, the judge shall order him to give recognizance for his appearance at any time when called upon while the suit is pending, until execution i ii satisfaction of any Judgment that may be passed against him in the suit, or to give recognizance for the satisfaction of such Judgment; and the surety or sureties shall undertake in default of such appearance or satisfaction, to pay any sum of money that may be adjudged against the defendant in the suit, with costs.

### **Deposit in lieu of bail.**

4. (1) Where a defendant offers to deposit a sum of money in lieu of recognizance for his appearance, sufficient to answer the claim against him, with costs of the suit the judge may accept such deposit and direct that the deposit be paid into an interest yielding account in a bank.
- (2) Where a defendant offers security other than money in lieu of bail for his appearance, sufficient to answer the claim against him, the judge may accept such security and make such order as he may deem fit in the circumstance.

### **Committal in default of security.**

5. (1) If the defendant fails to furnish security or offer a sufficient deposit the judge may commit him into custody until the decision of the suit or if Judgment has been given against the defendant until execution of the Judgment.
- (2) Committal to custody under this rule shall not exceed a period of six months at a time.
- (3) The judge may at any time upon reasonable cause being shown and upon such terms as to security or otherwise as may seem just, release the defendant.

### **Costs of subsistence of person arrested.**

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

### **ORDER 46 COURT SITTING AND VACATION**

#### **Days of sittings.**

1. A court may at its discretion, appoint any day(s) and any place(s) from time to time for the hearing of actions as circumstances require.

#### **Public or private sittings of Court.**

2. The sittings of a Court for the hearing and determination of the rights and obligations of the parties shall be public, but subject to the provisions of the Constitution of the Federal Republic of Nigeria, the Court may, for special reasons, hear any particular action in the presence only of the parties, with their legal practitioners (if any) and the officers of the Court.

#### **Office hours.**

3. The several offices of the Court shall be open at such times as the Chief judge shall direct.

#### **Days of sitting: long vacation.**

4. Subject to the directions of the Chief Judge, sittings of the Court for the dispatch of civil matter will be held on every weekday except:
  - (a) On any public holiday;
  - (b) During the week beginning with Easter Monday;
  - (c) During the period beginning on 23<sup>rd</sup> December and ending on the 5<sup>th</sup> January next following;
  - (d) During the long vacation, i.e. the period beginning in any day in August and ending on a date not less than six weeks later ending on a Friday as the Chief Judge may by notification in the Gazette appoint.

#### **Vacation Courts.**

5. (1) Despite the provisions of rule 4, an action may be heard by a Judge in Court during any of the periods mentioned in rule 4 (1) (b) or (c), except on a Sunday or public holiday), or sub rule (d), where the action is urgent or a judge, at the request of all the parties concerned, agrees to hear the action.
  - (2) An application for an urgent hearing shall, be made by summons in Chambers, and the decision of the Judge on the application shall be final.

#### **Vacation not reckoned in computing time for pleadings etc.**

6. The time for filing and service of pleadings as well as delivery of rulings and Judgments shall not run during the long vacation, Christmas or Easter vacations or on any public holiday declared by the Federal Government unless otherwise directed by the Chief judge.

### **Chambers.**

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

### **ORDER 47**

#### **CAUSE LISTS**

#### **Weekly cause list.**

1. The Registrar shall keep a weekly cause list of all actions which are ready for trial or hearing.

#### **Posting of weekly cause lists.**

2. (1) The Registrar shall post up every Thursday a weekly cause list which shall set out the arrangement of causes before each of the sittings in Court, during the following week.
- 3.
4. (2) Nothing in this rule shall preclude the Chief Judge from making special arrangements, whenever necessary or convenient, for the disposal of causes and matters included in the list.

#### **Where any Thursday is a public holiday.**

3. Where any Thursday is a public holiday, the weekly cause list shall be posted up on the day last preceding which is not a public holiday.

#### **Notice Boards**

4. The weekly cause lists and other such lists shall be posted up on one or more notice boards set up in such place or places within or near the Court premises as the Chief Judge may designate.

#### **Weekly cause list.**

5. Copies of the weekly cause list shall be made available for purchase upon payment of the prescribed fees.

### **ORDER 48**

#### **COMPUTATION OF TIME**

#### **Computation of time.**

1. Where, by any law or order made by a judge, a time is appointed or limited for the doing of any act, the period shall be reckoned:
  - (a) As excluding the day on which the order is made or on which the event occurs;
  - (b) Where the last day of the period is a holiday the time shall continue until the end of the next day following which is not a public holiday;

- (c) Where the act is required to be done within a period which does not exceed six days, holidays shall be left out in computing the period.

### **Holiday**

2. In this order holiday means a day, which is a Sunday or a public holiday as declared by the Federal Government.

### **Time of service**

3. (1) No pleading, summons, motions, orders, originating process, documents and other processes shall be served before 6.00 a.m. or after 6.00p.m. Service effected after 6.00p.m. shall be deemed to have been effected the following day provided that service effected after 6.00p.m. on Saturday shall be deemed to have been effected on the following Monday.
- (2) Service before 6.00a.m shall for the purposes of these Rules be deemed defective service.

### **Court may extend time.**

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

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

### **No enlargement of time by consent of parties.**

5. Parties cannot consent to enlarge any of the times fixed by the provisions of these Rules for taking any step, filing any document, or giving any notice.

## **ORDER 49 TRANSFER**

### **Transfer of cause or matter.**

1. A cause or matter may, before evidence is taken, and at the request of either party to the suit be transferred by a judge before whom the cause or matter is pending to another court of the same division.

### **Re-assignment of cause or matter.**

2. A cause or matter may at any stage of the proceedings be re-assigned to another judge of the same Division or of any other Division by the Chief Judge whether or not the cause or matter is being heard before him.

### **Action by the Chief Judge on transfer**

5. If for any reason a judge hearing a cause or matter, and who has taken any step in the proceedings, considers it necessary, either at his own opinion or upon application of any party to the proceedings, to have the cause or matter transferred to another Judicial Division,, the judge shall refer the cause or matter to the Chief Judge who may direct that the matter be transferred to the appropriate Judicial Division in accordance with these Rules.

**Evidence of part-heard cause or matter.**

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

**Transfer of proceedings from the Court to a High Court.**

5. Where a judge has in the exercise of the powers conferred by Section 22 (2) of the Act directed that any cause or matter be transferred to the High Court of a State or the Federal Capital Territory the judge shall make an order under his hand to that effect to the Chief judge of the High Court of the State of the federal capital territory to which the matter is to be transferred.

**Transmission of order and copies of entries to the appropriate High Court.**

6. The Registrar shall forthwith send a copy of the order made under rule 5 above duly certified by him to the Registrar of the state High Court named in the order together with certified copies of all entries in the books of the court relating to the cause or matter in question.

**ORDER 50  
WITHDRAWAL AND DISCONTINUANCE**

**Withdrawal of appearance.**

1. A party who has entered an appearance in an action may withdraw the appearance at any time with leave of the Court.

**Discontinuance of action without leave.**

2. (1) The plaintiff in an action may, without the leave of the Court, discontinue the action, or withdraw any particular claim made by him therein, as against any or all the defendants at any time not later than fourteen days after service of the defence on him or, if there are two or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned.
- (2) A defendant may, without leave of Court-
  - (a) Withdraw his defence or any part of it at any time.

- (b) discontinue a counter-claim, or withdraw any particular claim made by him therein, as against any or all of the parties against whom it is made, at any time not later than fourteen days after service on him of a defence to the counter-claim or, if the counter-claim is made against two or more parties, of the defence to the counter-claim last served, by serving a notice to that effect on the plaintiff or other party concerned.
- (2) Where there are two or more defendants to an action, not all of whom served a defence on the plaintiff and the period fixed by or under this rule for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, sub-rule (1) of this rule shall have effect as if the reference therein to the service of the defence last served, were a reference to the expiration of that period.
- (3) Sub-rule (3) of this rule shall apply in relation to a counterclaim as it applies in relation to an action, with the substitution for references to a defence, to the plaintiff and to sub-rule (1) of this rule, of references to a defence to counter-claim, to the defendant and to sub-rule (2) of this rule respectively.
- (4) If all the parties to action consent, the action may be withdrawn without leave of the Court at any time before trial by filing in the Registry a written consent to the action being withdrawn signed by all the parties and the action shall thereafter be struck out by the Court.

**Dis-continuance of action. Etc with leave.**

- 3. (1) Except as provided by rule 2 of this order, a party may not discontinue any action or counter-claim, or withdraw any particular claim made by him therein without leave of the court, and the court hearing an application for the grant of the leave may order the action or counter claim to be discontinued or any particular claim made therein to be struck out, as against any or all of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.
- (2) An application for the grant of leave under this rule may be made by summons or motion on notice.

**Effect of discontinuance.**

- 4. Subject to any terms imposed by the Court in granting leave under rule 3 of this order, the fact that a party has discontinued an action or counter-claim or withdrawn a particular claim made by him therein shall not be a defence to a subsequent action for the same, or substantially the same cause of action.

**Stay of subsequent action until costs paid**

- 5. Where a party has discontinued an action or counter-claim or withdrawn any particular claim made by him therein, and he is liable to pay costs to any other party of the action or counter-claim or the costs occasioned to any other party by the claim withdrawn, then if, before payment of those costs, he subsequently brings an action for the same or substantially the same cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.

### **Withdrawal of summons.**

6. A party who has taken out a summons or filed a motion in a pending cause or matter may not withdraw it without leave of the Court.

## **ORDER 51**

### **EFFECT OF NON-COMPLIANCE**

#### **Effect of non-compliance.**

1. (1) Where in beginning or purporting to begin any proceeding or at any stage in the course of or in connection with any proceeding, there has by reason of anything done or left undone, been failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure may be treated as an irregularity and if so treated, will not nullify the proceedings, or any document, Judgment or order therein.
- (2) The Court may on the ground that there has been such a failure as mentioned in sub-rule (1) of this rule and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, Judgment or order therein, or it may exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

#### **Application to set aside for irregularity.**

2. (1) An application to set aside for irregularity any proceeding, any step taken in any proceeding or any document, Judgment or order therein, shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step in the proceedings.
- (2) Any application under sub-rule (1) of this rule may be made by summons or motion on notice, and the grounds of objection shall be stated in the summons or motion on notice.

## **ORDER 52**

### **ARBITRATION**

#### **A - REFERENCE TO ARBITRATOR**

##### **Nomination of Arbitrators and appointment.**

1. Where in any case a matter is referred to one or more Arbitrators under the provisions of the Arbitration and Conciliation Act, the Arbitrators shall be nominated in the parties in such manner as may be agreed upon between them.

##### **Court may appoint Arbitrators.**

2. Where the parties cannot agree with respect to the nomination, or if the persons nominated refuse to act, and the parties are desirous that the nomination be made by the Court, the Court shall appoint the Arbitrators.

**Form or order of reference.**

3. The court shall by an order under its seal refer to the Arbitrators the matter in difference in the suit which they may be required to determine, and shall fix a time for the delivery of the award, and the time so fixed shall be stated in the order.

**Umpire where necessary.**

4. Where reference is made to two or more Arbitrators, provision shall be made in the order for a difference of opinion among them, by the appointment of an umpire, or by declaring that the decision shall be with the majority, or by empowering the Arbitrators to appoint an umpire, or otherwise as may be agreed between the parties, or if they cannot agree, as the Court may determine.

**Attendance of witnesses.**

5. When reference to arbitration is made by an order of Court, the same process to the parties and witnesses, whom the Arbitrators or umpire may desire to have examined, shall issue as in ordinary suits and persons not attending in compliance with such process, or making any other default, or refusing to give evidence, or being guilty of any contempt of the Arbitrators or umpire during the investigations of the suit, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the Arbitrators or umpire, as they would incur for the same offences in suits tried before the Court.

**Extension of time for making award.**

6. (1) When the Arbitrators are not able to complete the award within the period specified in the order for want of the necessary evidence or information, or other good and sufficient cause, the Court may, from time to time, enlarge the period for delivery of the award, if it thinks it proper.
- (2) Where in any case an umpire is appointed, it shall be lawful for him to enter on the reference in lieu of the Arbitrators, if they have allowed their time, or their extended time, to expire without making an award or have delivered to the Court, or to the umpire, a notice in writing stating that they cannot agree.
- (3) An award shall not be liable to be set aside only by reason of its not having been completed within the period allowed by the Court, unless on proof that the delay in completing the award arose from misconduct of the arbitrators or umpire, or unless the award shall have been made after the issuance of an order by the Court superseding the arbitration and recalling the suit.

**Power of Court in case of death, incapacity, or refusal to act**

7. (1) When, in any case of reference to arbitration by an order of court, the Arbitrator or umpire dies, or refuses or becomes incapable of acting, it shall be lawful for the Court to appoint a new Arbitrator or Arbitrators or umpire in place of such person or persons.
- (2) Where the Arbitrators are empowered by the terms of the order or reference to appoint an umpire, and do not appoint any umpire, any of the parties may serve the Arbitrators with a written notice

to appoint an umpire and if within seven days after the notice is served, no umpire is appointed, it shall be lawful for the Court upon the application of the party having served such notice as aforesaid and upon proof to its satisfaction of such notice having been served, to appoint an umpire. (3) In any other case of appointment under this rule, the Arbitrators or umpire so appointed shall have the like power to act in the reference as if their names had been inserted in the original order of reference.

### **Finding.**

8. (1) the award shall contain a conclusive finding, and may not find on the contingency of any matter of fact being afterwards substantiated or deposed to.
- (2) The award shall comprehend a finding on each of the several matters referred.

### **Special case for opinion of the Court.**

9. It shall be lawful for the Arbitrators or umpire upon any reference by an order of Court, if they think fit, and if it is not provided to the contrary, to state their awards as to the whole or any part thereof in the form of a special case for the opinion of the court.

### **Court may modify or correct award.**

10. The Court may, on the application of either party, modify or correct an award where it appears that a part of the award is upon matters not referred to the Arbitrators, (provided that, that part can be separated from the other part, and does not affect the decision on the matter referred); or where the award is imperfect in form, or contains any obvious error which can be amended without affecting the decision.

### **Power as to costs.**

11. The court may also on the application, make such order as it thinks just, respecting the costs of the arbitration, if any question arises about the costs or their amount, and the award contains no sufficient provision concerning them.

### **Power of court to remit award for reconsideration.**

12. In any of the following cases the court shall have power to remit the award, or any of the matters referred to arbitration, for reconsideration by the arbitrators or umpire, upon such terms as it thinks proper-
  - (a) If the award has left undetermined some of the matters referred to arbitration;
  - (b) If it has determined matters not referred to arbitration.
  - (c) If the award is so indefinite as to be incapable of execution;
  - (d) If an objection to the legality of the award is apparent upon the face of the award.

### **Setting aside Award.**

13. (1) No award shall be liable to be set aside except on the-ground of perverseness or misconduct of the Arbitrators or umpire.

- (2) Any application to set aside an award shall be made within three months after the publication thereof.

**Filing award; effect of.**

14. If no application is made to set aside the award, or to remit it or any of the matters referred, for reconsideration, or if the Court has refused any such application, either party may file the award in Court, and the award shall thereupon have the same force and effect for all purposes as a Judgment.

**B - ARBITRAL PROCEEDINGS**

**Applications under Arbitration and Conciliation Act.**

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

**C - ENFORCEMENT OR ARBITRAL AWARDS**

**16. Mode of enforcing awards.**

- (1) An application to enforce an award on an arbitration agreement in the same manner as a Judgment or order may be made ex parte, but the Court hearing the application may order it to be made on notice.
- (2) The supporting affidavit shall-
  - (a) exhibit the arbitration agreement and the original award or in either case certified copies of each;
  - (b) state the name, usual or last known place of abode or business of the applicant and the person against whom it is sought to enforce the award;
  - (c) state as the case may require either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

**D - REGISTRATION OF FOREIGN ARBITRAL AWARDS**

**Awards made in proceedings in foreign territory.**

17. Where an award is made in proceedings on an arbitration in a foreign territory to which the foreign Judgment (Reciprocal Enforcement) Act extends, if the award was in pursuance of

the law in force in the place where it was made; it shall become enforceable in the same manner as a Judgment given by a court in the place and the proceedings of the Foreign Judgments (reciprocal Enforcement) Act shall apply in relation to the award as it applies in relation to a Judgment given by that court.

### **ORDER 53**

## **APPEALS AND APPLICATIONS UNDER THE TRADE MARKS ACT AND PATENTS AND DESIGNS ACT**

### **A - GENERAL**

#### **Application of general procedure rules.**

1. (1) the rules under the general procedure rules shall apply with necessary modifications where there are no specific rules under this order.
- (2) Every appeal or application to the Court under this order shall be begun by originating motion.
- (3) Notice of the motion by which any appeal or application is made shall be served on the Registrar.

Appeal from Registrar.

- (4) Where the registrar refers to the Court an application made to him under the Trade Marks Act or the Patents and Designs Act, as the case may be, unless within one month after receiving notification of the decision to refer, the applicant makes to the court, the application referred to it by the Registrar, the applicant shall be deemed to have abandoned the application.

#### **Notice of motion, etc.**

2. (1) Every notice of motion by which an appeal is brought shall state the ground of the appeal and if the appeal is against a Judgment, an order or any other decision of the Registrar, the notice shall state whether the appeal is against the whole or a part of the decision, and if against part only, shall specify the part.
- (2) The notice shall be served, and the appeal entered within thirty days after the date of the order, determination or other decision against which the appeal is brought.
- (3) The period specified in sub-rule (2) of this rule shall be calculated from the date in which notice of the decision or in a case where a statement of the grounds for a decision was given later than that notice on which the statement was given to the appellant by the person who made the decision or by a person authorized in that behalf to do so.
- (4) The filing of an appeal under this order shall not operate as a stay of proceedings on the Judgment, determination or other decision against which the appeal is brought, unless the Court by which the appeal is to be heard so orders.

#### **Time within which appeal may be heard.**

3. Unless the Court otherwise directs, an appeal under this order shall not be heard sooner than twenty-one days after service of notice of the motion by which the appeal is brought.

**Amendment of notice of motion.**

4. (1) The notice of the motion by which an appeal is brought may be amended by the appellant without leave, by supplementary notice served not less than seven days before the day appointed for the hearing of the appeal on each person on whom the notice to be amended was served.
- (2) Except with the leave of the Court hearing any such appeal, no grounds other than those stated in the notice of motion by which the appeal is brought or any supplementary notice under sub-rule (1), may be relied upon by the appellant at the hearing; but the Court may amend the grounds so stated or make any other order, on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

**Power of the Court on appeal.**

5. (1) upon the first hearing of the motion the Court shall give directions as to the procedure of appeal.
- (2) The Court shall have power to receive further evidence on questions of fact, and the evidence may be given in such manner as the Court may direct either by oral examination in Court, by affidavit, by deposition taken before an examiner or in any other manner.
- (3) The appellant shall apply to the Registrar for a signed copy of any note made to him of the proceedings and furnish the copy to the Court for the use of the Court; and in default of production of any such note, or if the note is incomplete, in addition to the note, the Court may hear and determine the appeal on any other evidence or statement of what occurred in those proceedings as appears to the Court to be sufficient.
- (4) The Court may give any Judgment or decision or make any order which ought to have been given or made by the Registrar, and make such further or other orders as the case may require or may remit the matter with the opinion of the Court for re-hearing and determination by the Registrar.
- (5) The Court may, in special circumstances, order such security to be given for the costs of the appeal as may be
- (6) The Court shall not allow an appeal on the ground merely of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court, substantial wrong or miscarriage of justice has been occasioned thereby.
- (7) Where an appeal is against the refusal of a trade mark application by the Registrar, the Registrar shall appear or be represented and be heard in the proceedings on the appeal.

**Reference by Registrar.**

6. (1) **the Registrar-**
  - (a) may refer any application; and

- (b) shall refer any application where the issue refers to a question of law to the court for determination.
- (2) Any reference made under sub-rule (1) to the Court shall be made by originating motion and shall be served on every party to the proceedings to which the application relates.
- (3) The notice of motion shall state the grounds of the application, the question of law for determination, and the contentions of the Registrar and of other parties if any, on the question of law to which the reference relates and other relevant matters.
- (4) Unless the Court otherwise directs, the motion shall not be heard sooner than fourteen days after service of notice thereof on all parties concerned.
- (5) The Registrar shall appear or shall be represented and be heard in the proceedings of a matter referred to the Court.

## **B - TRADE MARKS**

### **Procedure for action on infringement or registered trade mark.**

- 7. (1) Every action for infringement of a registered trade mark shall be commenced by a writ of summons as provided in order 3 of these Rules.
- (2) Where in any proceeding a claim is made for relief for infringement of the right to the use of a registered trade mark, the party against whom the claim is made may, in his defence, put in issue the validity of the registration of that trade mark or may counter-claim of an order that the register of trademarks be rectified by canceling or varying the relevant entry or both.
- (3) A party to any such proceeding who in his pleadings (whether a defence or counter-claim) disputes the validity of the registration of a registered trade mark shall serve along with the pleadings, particulars of the objections to the validity of the registration on which he relies in support of the allegation of invalidity.
- (4) A party to any such proceeding who counter-claims for an order that the register or trademarks be rectified shall serve on the Register of trademarks, a copy of the counterclaim together with a copy of the particular mentioned in sub-rule (2); and the Registrar of trademarks shall take part in the proceeding as he may think fit but may not serve a defence or other pleadings unless ordered to do so by the Court.

## **C - PATENTS AND DESIGNS**

### **Procedure for nullification of patents or designs.**

- 8. (1) an application for the nullification of a patent or a design, as the case may be, shall be by petition.
- (2) The respondent to a petition shall serve an answer to the petition within twenty-one days after service of the petition on him.

- (3) A petitioner shall serve along with his petition or other pleadings, particulars of the objections to the validity of the patent or design on which he relies.
- (4) The particulars given pursuant to sub-rule (3) of this rule shall state every ground on which the validity of the patent or design is questioned and shall include such particulars as shall clearly define every issue which it is intended to raise.
- (5) If the grounds stated in the particulars of objections include want of novelty or want of any inventive step, the particulars shall state the manner, time, place of every prior publication or user relied upon and, if prior user is alleged, shall-
  - (a) Specify the name of every person alleged to have made the user;
  - (b) state whether the user is alleged to have continued until the priority date of the claim in question or of the invention as may be appropriate, and, if not, the earliest and latest date on which the user is alleged to have taken place;
  - (c) Contain a description accompanied by drawings, necessary, sufficient to identify the user; and
  - (d) If the user relates to machinery or apparatus, state whether the machinery or apparatus is in existence and where it may be inspected.
- (6) Where in the case of an existing patent or design-
  - (a) one of the grounds stated in the particulars of objections is that the invention, so far as claimed in any claim of the complete specifications, is not useful; and it is intended, in connection with the grounds stated in sub-rule 1 of this rule to rely on the fact that an example of the invention which is the subject of any claim cannot be made to work, either at all or as described in the specification, the particulars shall state that fact and identify each such claim and shall also include particulars of each such example, specifying the respect in which it is alleged that it cannot work or be made to work as described.

#### **Restriction on evidence.**

9. (1) Except with the leave of the judge hearing any action or other proceedings relating to a patent or a design, no evidence shall be admissible in proof of any alleged infringement, or of any objection to validity of the patent or design, if the infringement or objection was not raised in the particulars of infringements or objections, as the case may be.
- (2) In any action or other proceedings relating to a patent or a design, evidence which is not in accordance with a statement contained in the particulars of objection to the validity of the patent or design shall not be admissible in support of an objection unless the judge hearing the proceedings allows the evidence to be admitted.
- (3) If any machinery or apparatus alleged to have been used before the priority date mentioned in rule 8 (5) (b) of this order is in existence at the date of service of the particulars of objections, no evidence of its user before that date shall be admissible unless it is proved that the party relying on the user offered, where the machinery or apparatus is in his possession, inspection of it to the other parties to the proceedings or where it is not, used all reasonable endeavours to obtain inspection of it for those parties.

#### **Procedure for action on infringement of patent or design.**

10. (1) Every action for infringement of a patent or a design shall be commenced by a writ of summons.
- (2) In an action for infringement of a patent or a design (whether or not any other relief is claimed) and in proceedings by petition for the revocation of a patent or design-
  - (a) the plaintiff or petitioner shall within one month after service of a reply or answer or after the expiration of the period fixed for service thereof, take out a summons for directions as to the place and mode of trial returnable in not less than twenty-one days; and
  - (b) if the plaintiff or petitioner does not take out a summons in accordance with paragraph (a) of this sub-rule, the defendant or respondent, as the case may be, may do so, and the summons may be heard in chambers or in Court as the Court thinks fit.
- (3) The Court hearing a summons under this rule may give directions for-
  - (a) The service of further pleadings or particulars;
  - (b) The discovery of documents;
  - (c) Securing the making of admission;
  - (d) The service of interrogatories and of answers thereto
  - (e) The taking by affidavit, of evidence relating to matters requiring expert knowledge, and for the filing of such affidavits and the service of copies thereof on the other parties;
  - (f) the service on the other parties, by any party desiring to submit experimental proof, of full and precise particulars of the experiments proposed and of the facts which he claims to be able to establish thereby;
  - (g) The making of experiments, tests, inspections or reports;
  - (h) the hearing, as a preliminary issue, of any question that may arise (including any question as to the construction of the specification or other documents), or as the Court thinks necessary or expedient for the purpose of defining and limiting the issue to be tried, restricting the number of witnesses to be called at the trial of any particular issue and otherwise securing that the case shall be disposed of, consistently with adequate hearing, in the most expeditious manner.
- (4) Where evidence is directed to be given by affidavit, the deponent shall attend at the trial for cross-examination unless, with the concurrence of the Court, the parties otherwise agree.
- (5) On the hearing of a summons under this rule the Court shall consider, if necessary of its own motion, whether an expert shall be appointed under rule 11 to assist the Court.
- (6) No action for infringement or petition for the revocation of a patent or design shall be set down for trial unless and until a summons under this rule in the action or proceedings, has been taken out and the directions given on the summons have been carried out or the time fixed by the Court for carrying them out has expired.

### **Appointment of expert.**

11. (1) In any proceeding under the Patents and Designs Act, the Court may at any time, and on or without the application of any party, appoint an expert to assist the Court by inquiring and reporting on any question of fact or of opinion not involving a question of law or construction as the Court may direct.
- (2) The court may nominate the expert and, where appropriate, settle any question or instructions to be submitted or given to him.

- (3) Where the Court appoints an expert to inquire and report under sub-rule (1) of this rule, order 41 of these Rules shall apply in relation to his report as they apply in relation to a report made by a referee under that order.

**Interpretation under this order.**

12. In this order, "Registrar" means the Registrar of Trade Marks or the Registrar of patents and Designs, as the case may be.

**ORDER 54**

**APPEALS TO THE COURT FROM PROFESSIONAL BODIES**

**Application**

1. This order shall apply to any appeal to the Court against any such decisions of professional bodies under the provision of any written law which confers the right to appeal to the Court against any such decisions.

**Methods of appeal.**

2. An appeal to the Court from a decision of anybody other than those specified in this order shall be by notice of motion.

**Evidence.**

3. The evidence upon the hearing of the appeal shall be by affidavit except in so far as the Court at the hearing may direct oral evidence to be given.

**Service**

4. The notice of motion shall be served before the expiration of six weeks after the date of the decision to which it relates, upon the professional body.

**Content of notice and date of hearing.**

5. The notice of motion shall state the grounds of appeal, and the date mentioned in the notice for the hearing of the appeal shall be not less than twenty-eight days after the service of the notice.

**Reasons for appeal to be filed.**

6. (1) The appellant shall within seven days after service on the professional body of the notice of motion, file with the Registrar a copy of the notice and an affidavit or affidavits setting out the reasons stated by the professional body for its decision and the facts upon which the appellant intends to rely at the hearing and thereupon the motion shall be set down for hearing.

- (2) If the notice of motion is not set down in accordance with this provision, the professional body may apply to the Court, upon notice to the appellant, for an order discharging the notice of motion and for the costs of the application.

**Copies of affidavits to be served on the parties.**

7. The appellant shall deliver forthwith to the professional body, a copy of any affidavit filed under rule 6 of this order in support of the motion and any person intending to oppose the motion shall, four days at least before the hearing, deliver to the appellant a copy of any affidavit intended to be used by him in opposition to the motion.

**ORDER 55  
FEES AND ALLOWANCES**

**Fees; Appendix 2.**

1. (1) Subject to the provisions of any written law and of the foregoing orders the fees set out in Appendix 2 to these Rules shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in the Appendix.

**Exemptions.**

- (2) These fees are waived in respect of a party which is or represents a Government Ministry, non-ministerial Departments, Federal, State and Local Government or any of their agencies.

**Allowances Appendix 4**

- (3) The allowances set out in Appendix 4 to these Rules shall be payable to the various categories of witnesses mentioned therein by any person at whose instance they testify.
- (4) A witness who testified at the instance of the Court acting on its own motion shall be paid out of public revenue

**Regulations: Appendix 5**

2. The regulations set out in Appendix 5 to these Rules shall be observed by all officers of Court concerned with the rendering of services and or collection of fees payable under the provisions of the foregoing order.

**ORDER 56  
MISCELLANEOUS PROVISIONS**

**Orders to be made**

1. Subject to particular rules, the Court may in all causes and matters make any order which it considers necessary for doing justice, whether the order has been expressly asked for by the person entitled to the benefit of the order or not.

**Other procedure rules in Appendix 1**

2. (1) where no specific procedure is given in any of the enactments in Appendix 1 to these Rules, the rules and procedure in these Rules shall apply with necessary modification so as to comply with the subject matter the enactments in Appendix 1 to these Rules deal with.
- (2) The Chief Judge may modify or add to the list of rules set out in Appendix 1 to these Rules.

### **Recovery of penalties and costs**

3. All fines, forfeitures, pecuniary penalties and costs ordered to be paid may be levied by distress, seizure and sale of both movable and immovable property of the person making default in payment.

### **Notices**

4. In all cases in which the publication of any notice is required, the same may be made by advertisement in the Federal Gazette, unless otherwise provided in any particular case by any rule of Court or otherwise ordered by the Court.

### **Filing**

5. A document shall not be filed unless it has endorsed on it, the name and number of the case, the date of filing, and whether filed by plaintiff or defendant, on being filed the endorsement shall be initialed by the Registrar.

### **Fees: Appendix 3**

6. The fees set out in Appendix 3 to these Rules may be charged in respect of the duties of a notary public or of a notarial act and other duties therein mentioned.

### **Days of opening Registry to the public**

7. The Registries of the Court shall, subject to the directives of the Chief Judge, be opened to the public on every day in the year from 8 O'clock in the forenoon to 2 O'clock in the afternoon, except on Saturdays and Sundays or on any day declared as public holiday by the Federal Government.

### **Where no rules exist**

8. Where a matter arises in respect of which no provision or no adequate provisions are made in these Rules, the Court shall adopt such similar procedure in other Rules as will in its view do substantial justice between the parties concerned.

### **Forms of writ of summons (Civil Forms 1, 2, 3 and 4)**

9. All writ of summons, originating summons and petitions shall be recorded in a permanent form by the Registrar as in Forms 1, 2, 3, or 4 in Appendix 6 to these Rules.

## **POWERS OF THE CHIEF JUDGE TO AMEND RULES AND ISSUE PRACTICE DIRECTIONS**

### **Powers of Chief Judge over new Rules**

1. Whenever additional provisions are made to these Rules or any part thereof are amended or modified, the Chief Judge may issue directives for addition, publication or reprint of supplements to these Rules.

### **Publication of new Rules**

2. Whenever the Chief Judge makes amendment or modification to these Rules it shall be sufficient to publish same as supplemental provisions without the necessity of new body of Rules except when necessary.

### **Chief Judge's Powers to issue practice directions etc**

3. The Chief Judge shall have the power to issue practice directions, protocols, directives and guidance towards the realization of speedy, just and effective administration of justice.

### **Practice directions etc to be published**

4. Such practice directions, protocols, directives and guidance shall be published and be given effect towards the realization of the fundamental objective of these Rules.

## **ORDER 58**

### **ESTABLISHMENT OF COMMUNICATIONS AND SERVICE CENTRE FOR E-FILING**

#### **Powers of the Chief Judge**

1. The Chief Judge may issue directions to establish a Communications and Service Centre for the purpose of achieving the fundamental objectives of these Rules, which may include designated electronic filing sites for On-line filing of processes and documents.

#### **Further Rules thereof**

2. The Chief Judge shall make such further Rules to guide the effective operation of the Communications and Service Centre for E-filing

#### **Time for establishment**

3. The establishment of the Communications and E-filing Service Centre shall be as soon as practicable.

## **APPENDIXES**

### **APPENDIX 1**

1. Fundamental Rights (Enforcement Procedure) Rules 1979

2. Federal High Court (Tax Appeals) Rules 1992
3. Admiralty Jurisdiction Procedure Rules 1993
4. Companies Proceedings Rules 1992
5. Companies Winding Up Rules 2001
6. Bankruptcy Rules 2001

**APPENDIX 2**  
**FEES PAYABLE**

**1. For the Recovery of a specified sum -**

	N	:	K
(a) Not exceeding N20,000	1,000	:	00
(b) Exceeding N20,000; but not above N100,000,00	1,500	:	00
(c) Exceeding N100,000; but not above N1,000,000	2,500	:	00
(d) Exceeding N1,000,000 per N100,000 or part thereof	1,500	:	00
(e) Maximum fee	50,000	:	00
(f) Claim in foreign currency shall be converted into the Local currency as assessed above			

2. (a) For the recovery of an unspecified sum the fee payable is the same as the maximum payable per relief
- (b) For set off or counter-claim; the same as payable Under Item 1

**3. For an account to be taken and payment of the sum Found due**

(a) Initial fee	1,000	:	00
(b) Second fee (payable before setting down for Judgment): per N 100 or part of thereof found due in excess of N200	1,000	:	00
(c) Maximum fee	5,000	:	00

**4. Originating Summons -**

(a) Originating summons	2,000	:	00
(b) Oaths	100	:	00
(c) Filing	100	:	00
(d) Double sealing	200	:	00
(e) each exhibit	20	:	00
(f) service same as in item 37 of this appendix			

**5. Motion on Notice**

(a) Motion on notice	200	:	00
(b) Oaths	100	:	00
(c) Filing	100	:	00
(d) sealing	100	:	00
(e) Each exhibit	20	:	00
(f) Service, same as in item 37 of this appendix			

**6. Motion Ex parte**

(a) motion ex parte	200	:	00
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(b)	oaths	100 :	00
(c)	filing	100 :	00
(d)	scaling	100 :	00
(e)	Each exhibit	20 :	00
7.	For any other relief or assistance not specially provided for Applications, Affidavits, Judgments, Orders, Security Bonds, Warrants and Writs	100 :	00
8.	on application for warrant to detain a ship	2,500 :	00
9.	on application for a writ of Habeas Corpus	500 :	00
10.	On filing any other application		
(a)	if on notice	200 :	00
(b)	if ex parte	200 :	00
(c)	If accompanied by other papers same as payable Under item 4, 5 & 6		
11.	On filing an affidavit	100 :	00
12.	On filing a security bond	200 :	00
13.	On filing any other paper	100 :	00
14.	On justification of sureties: for each surety	500 :	00
15.	For the issue of warrant to detain an absconding Defendant of a ship	500 :	00
16.	For the issue of a writ of Habeas Corpus	500 :	00
17.	For the drawing up of any order of judgment	200 :	00
18.	For an inquiry by a Court officer where so ordered For each sitting	2,000 :	00
19.	For an account taken by a Court officer where so Ordered: per N100 or part thereof found to have been Received.....	5 :	00
20.	For taking down a person's statement where so ordered As the Court may direct but not exceeding	100 :	00
21.	For searching the achieves: for each period of six months Or part thereof	500 :	00
22.	For drawing up a bill of costs were so directed; Per folio of 72 words	10 :	00
23.	For taking costs were so ordered: N10 or part thereof	1 :	00
24.	For preparing a copy where authorized: Per folio of 72 words	10 :	00
25.	(a) For every subpoena.....	200 :	00
(b)	Witness allowance, same as in Appendix 4		
26.	On warrant for prisoner to give evidence	500 :	00
27.	on commission to take evidence		
(a)	out of jurisdiction	5,000 :	00
(b)	within jurisdiction	2,000 :	00
28.	for attesting the execution or signature of an Instrument (Other than an instrument regarding Payment of pension by		

	Government) not otherwise provided for .....	100	:	00
29.	For sealing any document not in proceedings	200	:	00
30.	For certifying a copy as a true copy: per folio of 72 words or part thereof	10	:	00
31.	For certifying a record of proceeding per folio 72 words or part thereof	10	:	00
32.	For payment into Court (except when ordered by the Court or proceeds of execution)			
(a)	not exceeding N100 per N20 or part thereof	2	:	00
(b)	exceeding N100 per N100 or part thereof	10	:	00
(c)	on payment into an interest yielding account Part of interest paid unto Court	1	:	00
33.	On appointment of Commissioner to administer Oaths and take declarations (not being a Government Officer)	500	:	00
34.	sealing a letter of request	500	:	00
35.	On transfer of a foreign judgment	500	:	00
36.	For certificate of service of foreign process where not disallowed by convention	200	:	00
37.	For the service of any document or process initial Fees plus distance in kilometers			
(a)	Each service as per distance but not below or Within 12 kilometres from the Court	100	:	00
(b)	If beyond 12 kilometres for every subsequent 2 kilometres or part thereof (one way)	10	:	00
(c)	If outside jurisdiction and in addition the postage fee or courier charges as the case may be	100	:	00
38.	Late filing of memorandum of appearance	200	:	00perday

### APPENDIX 3

#### (O. 56 R. 6)

#### NOTARIES' FEES OF OFFICE

	N	:	K
Noting protest on bill or note	100	:	00
Extending protest on bills of exchange	200	:	00
Promissory note	200	:	00
Minuting or noting ship's protest	100	:	00
Extending ship's protest	200	:	00
Attestation to any document	100	:	00

#### TRANSLATIONS

For every folio of 72 words	10	:	00
Attestation to translation of any document	3,000	:	00

## FEES FOR REGISTRATION OF JUDGMENTS

Registration of a certificate of a judgment of a High Court	2,000	:	00
Registration of a certificate of a judgment of any Court	2,000	:	00

## REGISTRATION OF A CAVEAT

For filing a Caveat	2,000	:	00
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## APPENDIX 4

### (O. 55 r. 1)

## ALLOWANCE TO WITNESSES AND INTERPRETERS

			Per day
	N	:	K
1. Professional men, merchants, captains of ships Auctioneers, pilots, merchantile agents, bank managers, Chiefs, surveyors and any officer of the public service Whose salary is not less than Grade level 07	12,000	:	00
2. Merchantile assistants, other persons and officers in The public service whose salary is less than Grade level 07	5,000	:	00
3. Servant, labourers, canoe men and the like not Specifically provided for in the schedule	2,500	:	00
4. (a) Interpreter of Nigerian language	2,500	:	00 per day
(b) Interpreter of foreign language	5,000	:	00 per day

## TRANSPORT ALLOWANCE

(a) By private car per kilometre	20	:	00
(b) By private motorcycle per kilometre	10	:	00

## NOTE

The traveling expenses of witnesses shall be allowed according to the sums reasonably and actually paid. No allowance is made to an officer of the public service who is summoned as a witness by the Government or by any department of the government. In all other cases he is allowed costs and (raveling expenses as if he were not an officer in the public service. Fees, costs expenses payable to an officer in the public service shall be paid into revenue unless otherwise ordered.

**APPENDIX 5**

**(0.55 r. 2)**

**REGULATIONS REGARDING FEES**

- 1. No summons, warrant, writ or subpoena shall, except by special order of the Court, be issued until
  - (a) all fees payable thereon as contained in the appropriate Appendix of fees shall have been paid; and
  - (b) an account thereof, initialed as received is set forth by the officer issuing the process both in the margin and in the counter-foil thereof
- 2. All such fees shall be carried to account immediately on the process being signed by the Judge.
- 3. (1) Every document, for or in respect of which any fees has been paid shall bear an endorsement initialed by the Registrar or other officer showing the amount of the fee so paid and the number of the receipt referring to the payment.
   
(2) When any form of process specifies the fees thereof, it shall be for the Registrar or other officer to initial the amount of the fees appearing thereon, and to quote the number of the receipt.
- 4. Every Registrar or other officer submitting any writ of summons or other process whatever to be signed by a Judge shall at the same time produce the stamp of the receipt given for the fees of such process.
- 5. No document in respect whereof a fee is payable shall be used in am legal proceeding, unless it has been initialed as aforesaid by the Registrar or other officer or unless the Court is otherwise satisfied that the proper fees in respect thereof has been paid.
- 6. All fees for service, execution and distance in kilometers shall be paid into revenue.
- 7. No hearing fee or other fee shall be returned except upon a voucher payable at the Treasury, in favour of the party entitled to receive it and prepared at the direction of the Judge before whom the cause or matter is set down and comes on for hearing.

**APPENDIX 6**

**CIVIL PROCEDURE FORMS**

**FORM 1**

**(O. 3 r. 4)**

**GENERAL FORM OF WRIT OF SUMMONS**

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

In the Federal High Court

In the..... Judicial Division

Suit No.....

Between

A.B.....Plaintiff

And

C.D..... Defendant To C.D. of

..... in the ..... of

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

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

.....  
Registrar

**Memorandum to be subscribed on the writ**

**N.B:**

This writ is to be served within twelve calendar months from the date thereof or, if renewed, within six calendar months from the date of the last renewal including the day of such date, and not afterwards. The defendant may enter appearance personally or by legal practitioner either by handing in the appropriate forms duly completed at the Registry of the Federal High Court of the Judicial Division in which the action is brought or by sending them to the Registry by registered post.

**Endorsement to be made on the writ before issue thereof**

This plaintiff's claim is for etc (b) .....

The writ was issued by G. H. of.....Whose

Address for service (c) is..... agent for

..... Of ..... Legal

Practitioner for the said plaintiff who resides at (d) .....

(Mention the city town or district and also the name of the Street and number of the house of the plaintiff's residence, if any).

**Endorsement to be made on copy of writ forthwith after service-**

This writ was served by me at .....on the defendant (here insert mode of service) on the ..... day of ..... 20..... Endorsed the.....day of.....20.....

(Signed) .....

Address .....

Note

- (a) Heading and Title - If the action is for administration, the writ must be headed "In the matter of the Estate of..... (Deceased)" If it is a debenture holder's action, the writ must be headed "In the matter of the A.B. Company" and in a probate action in the Estate of A.B. (Deceased). A writ of summons claiming administration of a trust or settlement may be titled "In the matter of the (trust or settlement)

- (b) Endorsement of Claim –if the plaintiff sues, or defendant is sued, in a representative capacity, the endorsement must state in what capacity the plaintiff sues or the defendant is sued. If the claim is for a debt or liquidated demand only, the endorsement, even though not special, must strictly comply with the provisions of the Act including a claim for four days' costs.
- (c) Address for Service-See O.4 r. 5. The address must be within the jurisdiction.
- (d) Address of Plaintiff- In the case of a company in liquidation the plaintiff s address should run ".....plaintiffs, who are a company in liquidation. The liquidator is (name of liquidator, address of liquidator)". In the case of a foreign corporation within the meaning of the Companies and Allied Matters Act, the plaintiffs' address should run thus:  
  
“.....plaintiffs, who are a foreign corporation within the meaning of the Companies and Allied Matters Act, the registered name .Hid address of the person to be served are (here add registered name and address)".

**Endorsement of Service – See O.6 r. 13.**

Before the writ is issued the following certificate must be indorsed on it.

The Registry, Federal High Court

In the.....Judicial Division

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

.....  
(Signature of Registrar)

**FORM 1 (A)**

**(O. 3r. 3(1) (e))**

**CIVIL SUMMONS TO WITNESS REQUIRING SUBPOENA**

In the Federal High Court

In the ..... Judicial Division

Suit No .....

Between

..... Plaintiff(s)And  
.....Defendant(s)

**Whereas** the plaintiff/defendants has listed your name as a prospective witness in this case and has indicated that a subpoena will be needed to get you to testify at the trial:

**Whereas** the rules of practice and procedure of this Court, requires every witness to reduce his intended testimony in writing under oath for same to be filed in the Registry of the Court by the party calling the witness for service on the opposite party;

Now therefore, you are commanded in the name of the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria to deliver to the above named plaintiff(s)/defendant(s) or his /her legal practitioner at the address indicated below, on or below the ..... day of ..... 20 .... your written statement (i.e. your intended testimony) on oath, concerning case.

**Take Notice** that if you fail to deliver the statement as aforesaid, you will be guilty of contempt of the Court and a Bench warrant for arrest and or committal to prison may be issued against you.

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

Address at which the statement is to be delivered:

To plaintiff(s)/defendant(s)

C/O.....

.....

.....

.....

Registrar

Note:

- (a) This summons is to be served with the pleading of the party calling the witness.
- (b) This witness will still be required to attend Court when duly notified, for a formal adoption of the written statement on oath and to tender exhibits if need be; and be cross-examined.

**FORM 2**

**(O. 3 r. 5 & O. 6 r. 18)**

**WRIT FOR SERVICE OUT OF JURISDICTION**

**(HEADING AS IN FORM 1)**

To C. D. of.....

You are hereby commanded that within ..... (here insert the number of days directed by the Court or Judge ordering the service or notice) after service of this writ (or notice of writ, as the case may be) on you, inclusive of the day of such service, you do cause an appearances to be entered for you in the ..... Judicial Division of the Federal High Court in an action at the suit of A.B. and take notice that in default of your so doing the plaintiff may proceed therein and judgment may be given in your absence.

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

By order of the Court

.....  
Registrar

**MEMORANDUM TO BE SUBSCRIBED ON THE WRIT**

**N.B:**

This writ is to be served within twelve calendar months from the date thereof, or if renewed within six calendar months from the date of the last renewal, including the days of such date, and not afterwards.

The defendant (or defendants) may appear hereto by entering appearance (or appearances) either personally or by legal practitioner at the Registry of the Judicial Division in which the writ is issued.

This writ was served, etc (as in Form 1)

Endorsement to be made on the writ before the issue thereof:

**N.B:**

This writ is to be used where the defendant or all defendants or one or more defendants is or are out of jurisdiction

When the defendant to be served is not a citizen of Nigeria and is in the commonwealth, notice of this writ and not the writ itself is to be upon him.

**Note:**

The above endorsement "N.B." must be on every writ or concurrent writ for service out of the jurisdiction, or of which notice is to be served out of jurisdiction. The endorsement "N.B." need not be made on a writ against defendants domiciled abroad, but on whom it is intended to serve within the jurisdiction.

**Endorsement:**-If the claim is for a debt or liquidated demand only, the endorsement, even though not special, must strictly comply with the provisions of O.4 r. 3, including a claim for costs.

See also notes to Form 1, supra.

**FORM 3**

**(O. 3 r. 9)**

**GENERAL FORM OF ORIGINATING SUMMONS**

In the Federal High Court

In the ..... Judicial Division  
(If the question to be determined arises in the administration of an estate or a trust entitle it: In the matter of the estate or trust).

Between

A.B..... Plaintiff(s) and  
C.D and E.F .....Defendant(s)

Let .....of.....in.....within thirty days after service of this summons on him, inclusive of the days of such service, cause an appearance to be entered for him to this which is issued upon the application.....of .....of .....who claims to be (state the nature of the claim), for the determination of the following questions: (state the questions).

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

This summons was taken out by.....legal practitioners for the above-named..... The defendant may appear hereunto by entering appearance personally or by a legal practitioner either by filing the appropriate processes (as in Order 7) in response at the Registry of the Court where the summons was issued or by sending them to that office by any of the methods allowed by these Rules.

Note: If the defendant does not respond within the time at the place above mentioned, such orders will be made and proceedings may be taken. The Judge may think just and expedient.

**FORM 4**

**ORIGINATING SUMMONS UNDER**

**(O. 3 r. 9)**

**(Headings as in Form 1)**

**In the Federal High Court**

In the .....Judicial Division In the matter of A.B. a legal practitioner (Re Taxation of costs, etc.) (or as may be).

Let A.B. of .....attend before the Judge, or (Chief Registrar's Office) Federal High Court Registry.....on the .....day of.....20.....at 9 O'clock in the forenoon (on the hearing of an application on the part of .....(state relief sought). (If for leave to enforce award under the Arbitration Act add, "And that the respondent do pay the costs of this application to be taxed".

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

This summons was taken out by.....

**Note:**

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

**FORM 5**

**(O. 3 r. 9)**

**FORM OF EX PARTE ORIGINATING SUMMONS**

In the Federal High Court

In the .....Judicial Division

Suit No.....

In the matter of A. B. an infant (or, as may be)

LET ALL PARTIES concerned attend before the Judge or (Chief Registrar's Office), Federal High Court, at the time specified in the margin hereof, on the hearing of an application on the part of the above named A.B. an infant by C.D. his next friend, that etc.

This summons was taken out by.....of..... (agent for of .....of .....)

.....  
Legal practitioners for the applicant

**FORM 6**

**(O. 3 r. 17)**

**FORM OF MEMORANDUM FOR RENEWED ORIGINATING PROCESS**

**(Heading as in form No. 1)**

Seal renewed Originating Process in this action endorsed as follows:

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

(Copy original originating process and the endorsements)

**FORM 7**

**(O.6 r. 19 and 26)**

**REQUEST TO MINISTER OF FOREIGN AFFAIRS TO TRANSMIT NOTICE OF WRIT TO FOREIGN GOVERNMENT**

**(Heading as in Form 1)**

The Chief Judge of the Federal High Court presents his compliments to the Minister of Foreign Affairs and encloses herewith a notice of writ of summons issued in an action of.....versus.....pursuant to Order, out of the .....Judicial Division of the Federal High Court for transmission to the Ministry of Foreign Affairs in..... (name of country) with the request that the same may be served personally upon.....(name of defendant to be served) against whom proceedings have been taken in the.....Judicial Division of the Federal High Court and with the further request that such evidence of the service of the same upon the said further request that such evidence of the service of the same upon the said defendant may be officially certified to the Federal High Court or declared upon oath or otherwise in such manner as is consistent with the usage or practice of the Courts of the (name of country) in proving service of legal process.

The Chief Judge further requests that in the event of efforts to effect personal service of the said notice of writ proving ineffectual, the Government or Court of the said country be requested to certify the same to the Federal High Court.

.....  
Chief Judge

**FORMS 8**

**(O. 6 r.19,26and 28)**

**REQUEST FOR SERVICE ABROAD**

**(Heading as in Form 1)**

I (or we) hereby request that a notice of summons in this action be transmitted through the proper channels to (name of country) for service or substituted service) on the defendant (name him) at (address of defendant) or elsewhere in (name of country), and I (or we) hereby personally undertake to be responsible for all expense incurred by the Ministry of Foreign Affairs in request of the service hereby requested and on receiving due notification of the amount of such expense, I (or we) undertake to pay the same into the Federal High Court Registry for transmission to the Permanent Secretary of the Ministry of Foreign Affairs.

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

.....  
Signature and address of  
Legal practitioner

**FORM 9**

**(O. 6 r. 19, 26 and 27)**

**LETTER FORWARDING REQUEST FOR SUBSTITUTED SERVICE**

**(Heading as in Form 1)**

The Chief Judge of the Federal High Court presents his compliments to the Minister of Foreign Affairs and encloses herewith a notice of a writ of summons in the case of.....versus.....in which the plaintiff has obtained an order of the.....Judicial Division of the Federal High Court (which is also enclosed) giving leave to bespeak a request that the said notice of writ may be served by substituted service on the defendant.....at .....in the.....(Name of country)

The Chief Judge requests that the said notice of writ and order may be forwarded to the proper authority in..... (name of country) with the request that the same may be transmitted by post addressed to the defendant at.....(the last known place of abode or the place of business) of the said defendant or there delivered in such manner as may be consistent with the usage or practice of the Court of.....(name of country) for services of legal process where personal service cannot be effected and with the further request that the same may be officially certified to the.....Judicial Division of the Federal High Court of declared upon oath or otherwise, in such manner as is consistent with the practice of the Court of..... (Name of country) in proving service of legal process.

.....  
Chief Judge

**FORM 10**

**(O.6rr.19and27)**

**REQUEST TO MINISTER OF FOREIGN AFFAIRS TO TRANSMIT NOTICE OF WRIT TO A FOREIGN GOVERNMENT CIVIL AVIATION ACT**

**(Heading as Form 1)**

The Chief Judge of the Federal High Court presents his compliments to the Minister of Foreign Affairs and enclosed herewith a notice of a writ of summons issued in an action.....of..... versus ..... (insert name of the defendant high contracting party) pursuant to order, out of the..... Judicial Division of the Federal High Court for delivery to the Government of .....(insert name of the country of the high contracting party) and to request that an official certificate may in due course be dispatched to the said Judicial Division of the Federal High Court stating that the notice of writ of summons has been so delivered and on what date.

.....  
Chief Judge

**FORM 11**

**(0.7 r 1)**

**MEMORANDUM OF APPEARANCE IN THE FEDERAL**

**HIGH COURT OF NIGERIA**

In the.....Judicial Division

Suit No.....

Between

.....Plaintiff (a)

And

.....Defendant (b) Please enter an appearance for .....(give full name of defendant wishing to appear), (sued as).....(give name by which defendant is described in writ if this differs from defendant's full name, otherwise delete words in square brackets).

In this Action

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

Signed..... (by defendant or legal practitioner entering the appearance) whose address for service is..... (a defendant entering in person must give his residence or some other place within the.....Judicial Division of the Federal High Court to which communication for him should be sent. Where he appears by a legal practitioner, the legal practitioner's place of business).

Note:

1. (a) The defendant must give his or her full name.
- (b) Give name by which the defendant is described in the writ if this differs from defendant's full name, otherwise delete words
- (c) A defendant appearing in person must give his residence or some other place within the Judicial Division of the Federal High Court to which communications for him should be sent. Where he appears by a legal practitioner, the legal practitioner's place of business
2. Where the defendant is a firm, the appearance must be entered by the individual partners by name with the description "Partner in the firm of....."
3. Where the defendant is an individual trading in a name other than his own, the appearance must be entered by him in his own name with the addition of the description "Trading as".
4. Where the defendant is a limited liability company, the appearance must be entered by a legal practitioner.
5. Where the appearance is being entered by leave of the court, a copy of the order granting leave must accompany this form.

6. Where the defendant has no defence or admits the plaintiff's claim, the entry of appearance will delay judgments and may increase the costs payable by the defendants.

7. Acknowledgment of service shall be as follows:

I, .....acknowledge that on the.....day of.....20.....at (a time and place) received the following processes:

- (a) .....
- (b) .....
- (c) .....

I also acknowledge that I am the person referred to in the sealed copy of the originating process.

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

.....  
Signature

**FORM 12**

**(O. 9 r. 18)**

**THIRD PARTY NOTICE CLAIMING INDEMNITY OR  
CONTRIBUTION OR OTHER RELIEF OR REMEDY**

In the Federal High Court

Suit No.....of

Between

A.B ..... Plaintiff and

C.D .....Defendant

And

E.F .....Third party

**THIRD PARTY NOTICE**

Issued pursuant to the order of the Hon. Justice .....

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

To E. F. of.....in the ..... of .....

Take notice that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant (here state concisely the nature of the plaintiff's claim) as appears from the endorsement

on the writ of summons (or originating summons) (or statement of claim) a copy whereof is delivered herewith (together with a copy of the statement of claim). The defendant claim against you (here state concisely the nature of the claim against the third party as for instance to be indemnified against the plaintiff's claim and the cost of this action or contribution to the extent of (one-half) of the plaintiff's claim) or (the following relief or remedy namely .....or the grounds, namely that (she concisely the grounds of the claim against the third party).

And take Notice that if you wish to dispute the plaintiff's claim against the defendant or the defendant's claim against you, you must cause an appearance to be entered for you within eight days after the service of this notice upon you. In default of your entering such appearance, you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and your liability to indemnify the defendant or to contribute to the extent claimed or to (stating the relief or remedy sought) and the validity of any judgment that may be given in the action and you will be bound by such judgment and such judgment may be enforced against you.

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

Signed .....  
Legal Practitioner for the defendant

The third party may appear hereto by entering appearance, personally or by legal practitioner by handing in the appropriate forms, duly completed at the Registry of the..... Judicial Division of the Federal High Court.

The appropriate forms may be obtained from the Registrar.

**FORM 13**

**(0.9 r. 18)**

**THIRD PARTY NOTICE WHEN QUESTION OR  
ISSUE TO BE DETERMINED**

In the Federal High Court

In the..... Judicial Division

Between

A. B..... Plaintiff and

C.D..... Defendant

And

E.F..... Third party

Issued pursuant to the order of the Hon. Justice ..... date

The.....day of .....20..... of

To: E. F. of..... in the ..... of .....

Take Notice that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant (here state concisely the nature of the plaintiff's claim) as appears from the endorsement on the writ of summons (or originating summons) (or statement of claim) a copy whereof is delivered herewith (together with a copy of the statement of claim).

The defendant claims that the following question or issue, viz (here state concisely the question or issue to be determined) should be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and yourself.

And take Notice that if you wish to be heard on the issues or question or to dispute the defendant's liability to the plaintiff or your liability to the defendant you must cause an appearance to be entered for you within eight days after service of this notice upon you.

In default of your so doing you will be deemed to admit the validity of the said question or issue and you will be bound by any judgment of decision in the action so far as it is relevant to the said question or issue and the judgment may be enforced against you in accordance with the provisions of the Decree.

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

(Signed)  
Legal Practitioner for defendant

The third party may appear hereto by entering appearance, personally or by the legal practitioner by handing in the appropriate forms duly completed at the Registry, of the.....Judicial Division of the Federal High Court. The appropriate forms may be obtained from the Registrar.

**FORM 14**

**(O. 13 r. 3(2), 35(7) and (8))**

**NOTICE OF COUNTER-CLAIM**

In the Federal High Court

Between

A. B. .... Plaintiff and

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

To the within name X. Y

Take NOTICE that if you do not appear within eight days from the service of this, defence and counter-claim upon you, you will be liable to have judgment given against you in your absence

Appearance to be entered at the ..... Judicial Division of the Federal High Court Registry

**FORM 15**

**(O. 13 r. 35(14))**

**CONCESSION TO DEFENCE**

In the Federal High Court

In the ..... Judicial Division

Between

A. B..... Plaintiff and

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

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

**FORM 16**

**(O. 19 r. 3)**

**JUDGMENT FOR DISMISSAL**

In the Federal High Court

In the..... Judicial Division

Suit No.....

Between

A.B..... Plaintiff And

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

Dated and entered the ..... day .....20.....  
This action having on the ..... day of..... 20.....  
been called on for hearing before .....  
and the plaintiff having failed to appear and the defendants having thereupon become entitled under  
order..... to judgment dismissing the action and the said.....having  
ordered that judgment be entered accordingly.

Therefore it is adjudged that this action do stand dismissed out of this Court with costs.

And it is further adjudged that the defendants recover against the plaintiff their costs to be awarded by the  
Court.

**FORM 17**

**(O. 20 r. 6(a))**

**LEGAL PRACTITIONER'S UNDERTAKING AS**

**TO EXPENSES**

**(Heading as in Form No.1)**

I (or we) hereby undertake to be responsible for all expenses incurred by the Ministry of Foreign Affairs in  
respect of the letter of request issued herein and on receiving due notification of the amount of such expenses  
undertake to pay the same as directed by the Chief Registrar of the Federal High Court.

The following have been appointed as agents for the parties in connection with the execution of the above letter  
of request.

Plaintiff's Agent ..... of (full address) .....

Defendant's Agent ..... of (full address) .....

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

.....  
Legal practitioners for

.....  
.....

**FORM 18**

**(O.20r.6(b))**

**LETTER OF REQUEST RO TAKE EVIDENCE (CONVENTION COUNTRY)**

**(Heading as in Form 1)**

To the competent judicial authority of..... in the ..... of.....

Whereas a civil (commercial) action is now pending in the .....Judicial Division of the Federal High Court of the Federal Republic of Nigeria, in which.....is the plaintiff and .....is the defendant.

And in the said action the plaintiff claims.....

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

Now, I .....the Chief Judge of the Federal High Court of the Federal Republic of Nigeria, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing to so summon) to attend at such time and place as you shall appoint before you, or such other person as according to your procedure is competent to take the examination of witnesses, and that you will cause such witnesses to be examined (upon the interrogatories which accompany this letter of request and viva voce) touching the said matters in question in the presence of the agents of the plaintiff and defendant or such of them as shall on due notice give, attend such examination.

And I further have the honour to request that you will permit the agents of both the said plaintiff and defendant or such of them as shall be present to be at liberty to examine (upon interrogatories and viva voce upon the subject-matter thereof or arising out of the answers thereto) such witnesses as may, after due notice in writing, be produced on their behalf, and give liberty to the other party to cross-examine the said witnesses (upon cross-interrogatories and viva voce upon the subject-matter thereof or arising out of the answers thereto) such witnesses as may, after due notice in writing, be produced on their behalf, and give liberty to the other party to cross-examine the said witnesses (upon cross-interrogatories and viva voce) and the party producing the witnesses for examination, liberty to re-examine him viva voce.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses and all additional viva voce questions, whether in examination, cross-examination or re-examination the evidence of such witnesses to be reduced into writing and all books, letter, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same together with (the interrogatories and cross-interrogatories) and a note of the charge and expenses payable in respect of the execution of this request, through the Ministry of Foreign Affairs from whom the name was received for transmission to the said Federal High Court of Nigeria.

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

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

.....  
Chief Judge

**FORM 19**

**(0.20 r. 7)**

**ORDER FOR APPOINTMENT OF THE NIGERIAN DIPLOMATIC AGENT AS SPECIAL EXAMINER (IN CONVENTION COUNTRY)**

**(Heading as in Form No. 1)**

Upon hearing the legal practitioners on both sides and upon reading the affidavit of.....

It is ordered that the Nigerian Diplomatic Agent or his Deputy at .....be appointed as Special Examiner for the purpose of making the examination, cross-examination, and re-examination, viva voce, on oath or affirmation, of.....witnesses on the part of the.....at .....aforesaid. The examiner shall be at liberty to invite the attendance of the said witnesses and the production of documents, but shall not exercise any compulsory powers; otherwise such examination shall be taken in accordance with the Nigerian Federal High Court Procedure. The.....legal practitioners to give to the.....legal practitioners.....days notice in writing of the date on which they propose to send out this order to.....for execution and that.....days after the service of such notice the legal practitioners for the plaintiffs and defendants respectively do exchange the names of their agents at.....to whom notice relating to the examination of the said witnesses may be sent. That.....days (exclusive of Sunday) prior to the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party unless such notice is dispensed with). That the depositions when taken together with any documents referred to therein or certified copies of documents, or of extracts therefrom, be transmitted by the examiner under seal, to the Chief Registrar of the Federal High Court of Nigeria, on or before the.....day of.....next, or such further or other days as may be ordered, there to be filed in the proper office. That either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions. That the trial of this action be stayed until the filing of such depositions. That the costs incidental to this application and in such examination be costs in the action.

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

**FORM 20**

**(O. 20 r. 19)**

**FORM OF PRAECIPE**

In the Federal High Court

In the ..... Judicial Division

Suit No .....

Between

A. B..... Plaintiff And

C.D. and others..... Defendants

Seal writ of subpoena..... on behalf of.....on

(1) .....of.....

(2) .....of.....

(3) .....of.....

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

(Signed).....

(Address).....

Legal practitioner for the.....

**FORM 21**

**(O.20 r. 20)**

**SUBPOENA AD TESTIFICANDUM**

**In the Federal High Court**

In the.....Judicial Division

Suit No.....

Between

..... Plaintiff

And

..... Defendant

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

You are commanded in the name of the President and Commander in-Chief of the Armed Forces of the Federal Republic of Nigeria to attend before this Court at..... on .....the..... day of ..... 20 ..... at ..... O'clock in the forenoon, and so from day to day till the above case is tried, to give evidence on behalf of the

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

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

.....  
Judge

**FORM 22**

**(O. 20 r. 20)**

**HABEAS CORPUS AD TESTIFICANDUM**

In the Federal High Court

In the ..... Judicial Division

Suit No.....

Between

.....Plaintiff and  
..... Defendant

The Controller of Prison, at..... You are commanded in the name of the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria to have ..... who it is said is detained in your custody in Prison, at..... before the Court ..... at ..... on ..... the ..... day ..... at

..... O'clock in the forenoon, and so from day to day until the above action is tried, to give evidence in the above-named cause, and immediately after the said.....shall have so given his evidence you shall duly conduct him to the prison from which he shall have been brought.

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

.....  
Judge

**FORM 23**

**(O. 20 r. 20)**

**SUBPOENA DUCES TECUM**

In the Federal High Court

In the ..... Judicial Division

Suit No.....

Between

..... Plaintiff and

..... Defendant

To.....of .....You are commanded in the name of the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria to attend before the Court at..... on.....the .....day of ..... 20.....at the hour of.....O'clock in the forenoon, and so from day to day until the above cause is tried, to give evidence on behalf of the .....and also to bring with you and produce at the time and place aforesaid.....(Specify documents to be produced)

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

**FORM 24**

**(O. 40 r. 2 (1))**

**FORM OF GUARANTEE FOR THE ACTS AND**

**DEFAULTS OF A RECEIVER**

In the Federal High Court

Suit No.....

Re.....v ..... guarantee for N ..... Annual premium  
N.....

The guarantee is made the ..... day of ..... 20 .....  
Between..... (Receiver) of ..... (Hereinafter called "the Receiver")  
of the first part, the above-named (name of surety).....the registered office of  
which is at ..... in ..... (hereinafter called "the Surety") of the second  
part and the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, an  
order of the ..... Judicial Division of the Federal High Court dated  
the..... day of ..... 20 ..... and made in the above  
mentioned action the Receiver has been appointed to receive (and manage) (follow words of the order).  
And it was ordered that the receiver should give security to the satisfaction of the Judge on or before the  
..... day of ..... 20 .....

And whereas the Surety has agreed at the request of the Receiver to issue this guarantee in consideration  
of the annual premium above-mentioned (the first payment of which the surety hereby acknowledges)  
which guarantee has been accepted by the Judge as a proper security pursuant to the said order in  
testimony whereof one of the Registrar-of the Federal High Court has signed in the margin hereof.

**Now this guarantee witnesses as follows:**

1. The Receiver and the Surety hereby jointly and severally covenant with the President and  
Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria and his successors,  
that the Receiver shall and will from time to time duly account for what he has already received since  
the date of the said order appointing him and shall hereafter receive or for what since the date of  
the said order appointing him he has or shall hereafter be or become liable to pay or account for  
as such Receiver (and Manager) as aforesaid including as well every sum of money or other property  
so received during the period for which he has been appointed and also every sum of money or  
other property so received in respect of any extended period which he may be appointed and shall  
and will pay or deliver every such sum or property as the Court or Judge thereof may direct.
2. **Provided always that it is hereby mutually agreed sis follow-**
  - (a) If the Receiver, shall not, for every successive twelve months to be computed from the date of  
his appointment as such Receiver as aforesaid or within fifteen days after the expiration of such  
twelve months pay at the office of the surety, the annual premium or sum of  
N.....then, the Surety shall be at liberty to apply by summons at Chambers in the  
said action to be relieved from all further liability as such surety under this guarantee save and

except in respect of any damage or loss occasioned by any act or default of the receiver in relation to his duties as such Receiver (and Manager) prior to the hearing and determination of such summons.

- (b) A statement under the hand of any Registrar of the Federal High Court of the amount which the Receiver is liable to pay and has not paid under this guarantee and that the loss or damage has been incurred through the act or default of the Receiver shall be conclusive evidence in any action or information by the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria against the Receiver and Surety or either of them or by the Surety against the Receiver of the truth of the contents of such statement and shall constitute a binding charge not only against the Receiver and his personal representatives, but also against the Surety and its funds and property without its being necessary for the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria to take any legal or other proceedings against the Receiver for the recovery thereof and without any further or other proof being given in that behalf in any action to enforce this guarantee
- (c) The liability of the Surety under this guarantee is limited to the sum of N.....

Provided nevertheless that a Registrar of the Federal High Court may by his Signature to the endorsement on this guarantee (in the form printed thereon), reduce the said liability of the Surety still further or (but only with the consent of the Surety by an instrument in writing duly executed), increase such liability as may be necessary and upon such endorsement this guarantee shall continue in full force but in that case the premium shall be correspondingly reduced or increased.

- 3. It is hereby further agreed between the Receiver and the Surety as follows:
  - (a) The Receiver will on being discharged from his office or on ceasing to act as such Receiver (and Manager) as aforesaid, forthwith give written notice thereof to the Surety by courier service and also within seven days of such notice furnish the surety free of charge an office copy of the order, if any, of the Judge discharging him.
  - (b) The Receiver and his personal representatives shall and will at all times hereafter indemnify the Surety and its property and funds against all loss, damages, costs and expenses which the Surety or its funds or property may or might otherwise sustain by reason of the Surety having executed this guarantee at his request.

In Witness Whereof the Receiver has hereunder set his hand and seal and the Surety has caused its Common Seal to be affixed the.....day of.....20.....

Signature

Name

Address

Occupation

In the matter of ..... increased liability (To be attached by way of endorsement guarantee)

The liability of the Surety under the within written guarantee has with the consent of the Receiver and the Surety been increased from N.....to N.....in respect of any acts or omissions to which the within written guarantee and this endorsement being limited to the increased sum above relates committed by the Receiver subsequent to the date hereof the total liability of the Surety in respect of both the within written guarantee stated.

Sealed with the seal of the Receiver and also the Common Seal of the Surety this ..... day of..... 20..... as evidence of such increased liability and the admission thereof by the Receiver and the Surety respectively.

Signed, sealed and delivered by the Receiver in the presence of ..... The Common Seal of the Surety was hereunto affixed in the presence of.....

Signature

Name

Address

Occupation

..... Chairman Receiver Secretary

**FORM 25**

**(O. 40 r. 2 (2))**

**RECEIVER'S SECURITY BY UNDERTAKING**

In the Federal High Court

In the ..... Judicial Division  
(Title) Suit No.....

Re..... V.....

I, .....of.....Receiver (and Manager) appointed by order dated..... (or proposed to be appointed) in this action hereby undertake with the Court, to duly account for money and property received by me as such Receiver (or Manager) or for which I may be held liable and to pay the balances from time to time found from me and to deliver all property received by me as such Receiver (or Manager) at such time and in such manner in all respects as the Court or a Judge shall direct.

And we.....hereby jointly and severally (in the case of guarantee or other company strike out jointly and severally") undertake with the Court to be answerable for any default by the

said.....Such Receiver (or Manager) and upon such default to pay to any person or persons or otherwise as the Court or a Judge shall direct, any sum or sums not exceeding in the whole N..... that may from time to time be certified by a Registrar of the Federal High Court to be due from the said Receiver and we submit to the jurisdiction of the Court in this action to determine any claim made under this undertaking.

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

(Signature of Receiver, his surety or sureties. In the case of a Surety being a guarantee or other company it must be sealed or otherwise duly executed).

**FORM 26**

**(O. 40 r. 4(1))**

**RECEIVER'S ACCOUNT**

**(Heading as in Form 1)**

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

**REAL ESTATE RECEIPTS**

No of Items	Date when Received	Tenant's Name	Description on of Premises	Annual Rent	Arrears due at	Amount received	Arrears remaining	Observations
1.								
2.								

**PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE**

No of Items	Date of Payment of Allowance	Names of Persons to whom paid or allowed	For what purpose paid or allowed	Amount
1.			One year's Insurance of due...	N
2.			Bill for repairs at house to let	
			Allowance for a half years income	
			Tax due.....	
			Total Payments	
			N	

**Receipts on Account of Personal Estates  
Personal Estate**

**Payment and Allowances  
on Account of**

No of Items	Date when received	Names of Persons from whom received	On what Account Received	Amount Received N	No. of Items	Date when paid or allowed	Names of Persons to whom paid or allowed	For what purpose paid or allowed	Amount paid or Allowed N

**Summary**

Amount of balance due from Receiver on account of real Estate on last account N.....

Amount of receipts on the above account of real estate N.....

Balance of last account paid into Court N.....

Amount of Payments and allowances on the above Account of real estate N.....

Amount of Receiver's costs of passing this account As to real estate N.....

Balance due from the Receiver on account of real Estate N.....

Amount of balance due from Receiver on last account Of personal estate N.....

Amount of receipts on the above account of Personal estate N.....

Balance of last account paid into Court N.....

Amount of payments and allowances on the above Account of personal estate N.....

Amount of Receiver's cost of passing this account As to personal estate N.....

Balance due from the Receivers on account of Personal estate N.....

.....  
Receiver/Manager

**FORM 27**

**(O. 42 r. 1(6))**

**NOTICE OF PAYMENT INTO COURT**

In the Federal High Court

Between

A. B..... Plaintiff and

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

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

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

P.Q. legal practitioner for the defendant, C.D

To X.Y., the Plaintiff's legal practitioner, and to Mr. R. S. legal practitioner for the Defendant E.F

To be filled in by the Cashier, Federal High Court

Received the above sum of N ..... into Court in this action

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

**FORM 28**

**(O. 42 r. 2(1))**

**ACCEPTANCE OF SUM PAID INTO COURT**

In the Federal High Court

In the..... Judicial Division

Between

A. B..... Plaintiff and

C.D. E.F. and GH..... Defendants

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

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

.....  
X.Y Plaintiff's  
Legal Practitioners

(To: Mr. P. Q. legal practitioner for the defendant C.D. and Mr. R. S. legal practitioner for the Defendant E.F.)

**FORM 29**

**(O. 42 r. 4(2) and (4))**

**ACCEPTANCE OF SUM PAID INTO COURT BY ONE OF SEVERAL DEFENDANTS**

In the Federal High Court

In the ..... Judicial Division

Between

A. B..... Plaintiff and

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

Take Notice that the Plaintiff accepts the sum of N.paid by the defendant C.D. into Court in satisfaction of his claim against the defendant C.D.

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

.....  
X.Y. Plaintiffs  
Legal Practitioner

(To: Mr. P. Q. legal practitioner for the Defendant C.D. and Mr. R.S. legal practitioner for the Defendant E.F.)

**FORM 30**

(O. 43 r. 2)

**INTERROGATORIES**

(Headings as Form 1)

In the..... Judicial Division

Between

A. B..... Plaintiff

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

Interrogatories on behalf of the above-named (plaintiff or defendant C.D) for the examination of the above-named (defendants E.F. and G.M. or Plaintiff)

- 1. did not, etc
- 2. has not, etc

(The defendant E.F. is required to answer the interrogatories numbered.....)

(The defendant G.H. is required to answer the interrogatories numbered)

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

.....  
Legal practitioner

**FORM 31**

(O. 43 r. 6 and 16(2))

**ANSWER TO INTERROGATORIES**

In the Federal High Court

Suit No.....

In the ..... Judicial Division

Between

A. B..... Plaintiff and

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

The answer of the above mentioned defendant E.F. to the interrogatories for his examination by the above-named plaintiff

In answer to the said interrogatories, I the above-named E.F. make oath and say as follows:

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

**FORM 32**

**(O. 43 r. 8 (2))**

**AFFIDAVIT AS TO DOCUMENTS**

In the Federal High Court

Suit No.....

In the..... Judicial Division

Between

A. B..... Plaintiff and

C.D. E.F. and GH..... Defendants

- I. The above-named defendant C.D. make oath and say as follows:
  - 1. I have in my possession or power the documents relating to the matter in question in this suit set forth in the first and second parts of the first schedule hereto.
  - 2. I objects to produce the said documents set forth in the second part of the said, first schedule hereto (state ground of object).
  - 3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.
  - 4. The last-mentioned documents were last in my possession or power on (state when, and what has become of them and in whose possession they now are).
  - 5. To the best my knowledge, information and belief I have not now, and never had in my possession, custody or power, or in the possession, custody or power of my legal practitioners or agents

(Legal Practitioner or Agent) or in possession, custody or power of any other persons or person on my behalf, and deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing or any copy of or extract any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedule hereto

Dated at..... this ..... day of .....20.....  
(ILLITERATE JURAT) (Where applicable)

**FORM 33**

**(O. 43 r. 14(1) (b))**

**ORDER FOR PRODUCTION OF SHIP'S PAPERS**

**In the Federal High Court**

In the..... Judicial Division  
Suit No.....

Between

A. B..... Plaintiff and

C.D. E.F. and GH..... Defendants

Upon hearing the legal practitioners or agents for all parties, it is ordered that the Plaintiff and all persons interested in these proceedings and in the insurance, the subject of this action, do produce and show to the defendant his legal practitioner or agents upon oath all insurance slips, policies, letters of instruction or other orders for effecting such slips or policies or relating to the insurance of the subject matter of the insurance on the ship..... or the cargo on board thereof or the freight thereby and also all documents relating to the sailing or alleged loss of all letters and correspondence with any person or person in any manner relating to the effecting of the insurance on the said ship, the cargo on board thereof or the freight thereby, or any other insurance whatsoever on the voyage insured by or relating to the policy used upon in this action or any other policy whatsoever effected on the said ship or the cargo on board thereof or freight thereby on the same voyage. Also all correspondence between the captains or agents of the vessel and any other person, with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened. Also all protests, survey, log-books, charter-parties, trade men's bills for repairs, average statements, letters, invoices, bills of parcels, bills of lading, manifest, accounts, account-current, account sales, bill of exchange, receipts, vouchers, books, documents, powers of attorney, correspondence, papers, and writings (whether originals, duplicates or copies) respectively which now are in the custody, possession or power of the plaintiff or any other person, his or any of either of their brokers, legal practitioners nr agents any way relating to or referring to the matters in questions in this action, with liberty for the defendant, his legal practitioners or agents to inspect and take copies of or extracts whom the same or any by either of them and that in the like manner the plaintiff and the said

other persons interested as aforesaid do account for all such documents as were once but are not now in his, their or any or either of their possession, custody or power and that in the meantime all further proceedings be stayed and that the costs of and occasioned by this application be costs in the action.

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

**FORM 34**

**(O. 43 r. 19 & 20)**

**NOTICE TO PRODUCE (GENERAL FORM)**

In the Federal High Court

Suit No .....

Between

A. B..... Plaintiff and

CD. E.F. and G.H..... Defendants

Take Notice that you are hereby required to produce and show to the Court on the trial of this ..... all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power containing any entry, memorandum or minute relating to the matters in question in this ..... and particularly.....

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

To the above-named (Signed).....of.....

.....Agent for.....

G.H. legal Practitioner  
Legal Practitioner for the above-named or agent













































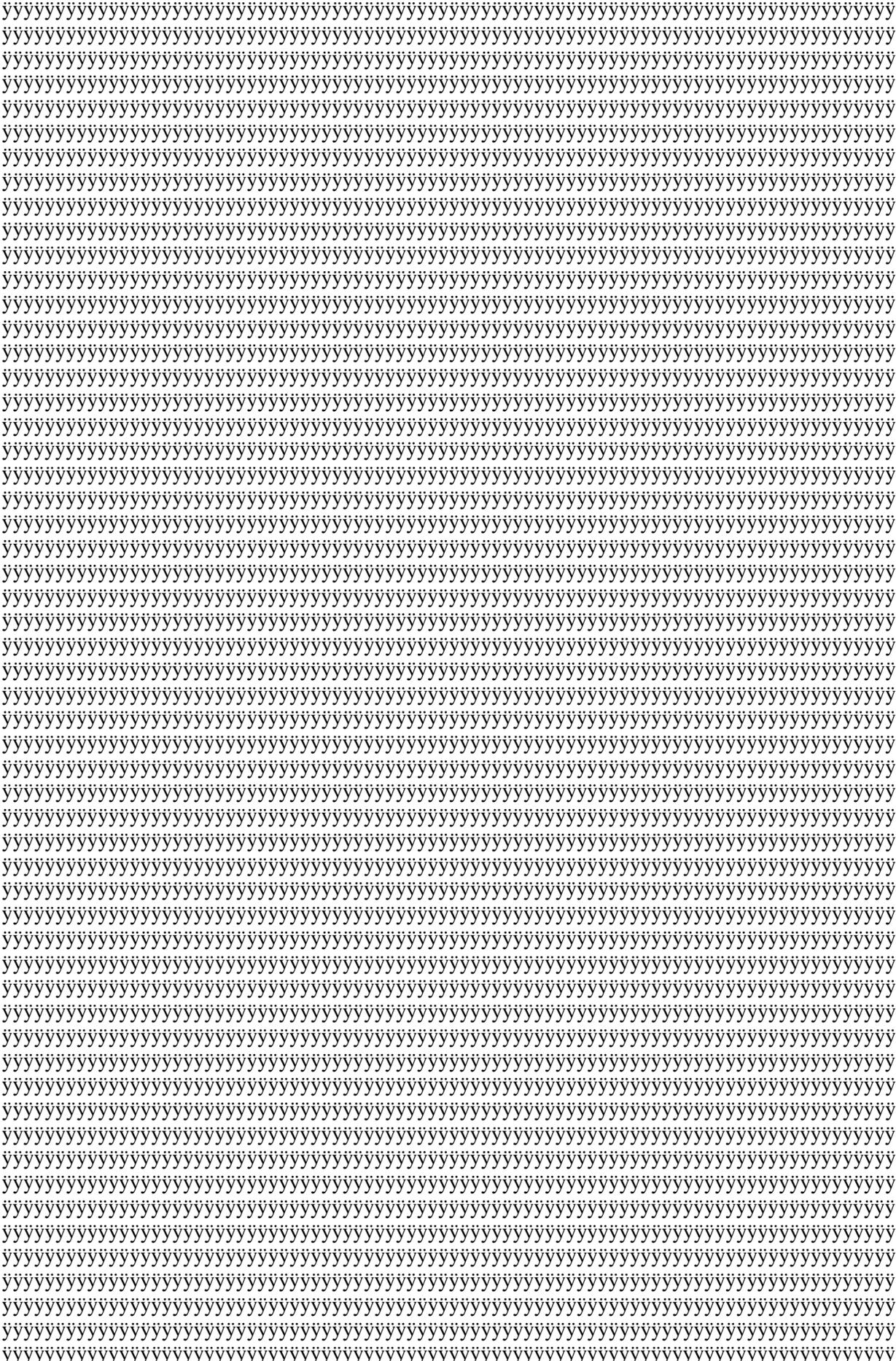
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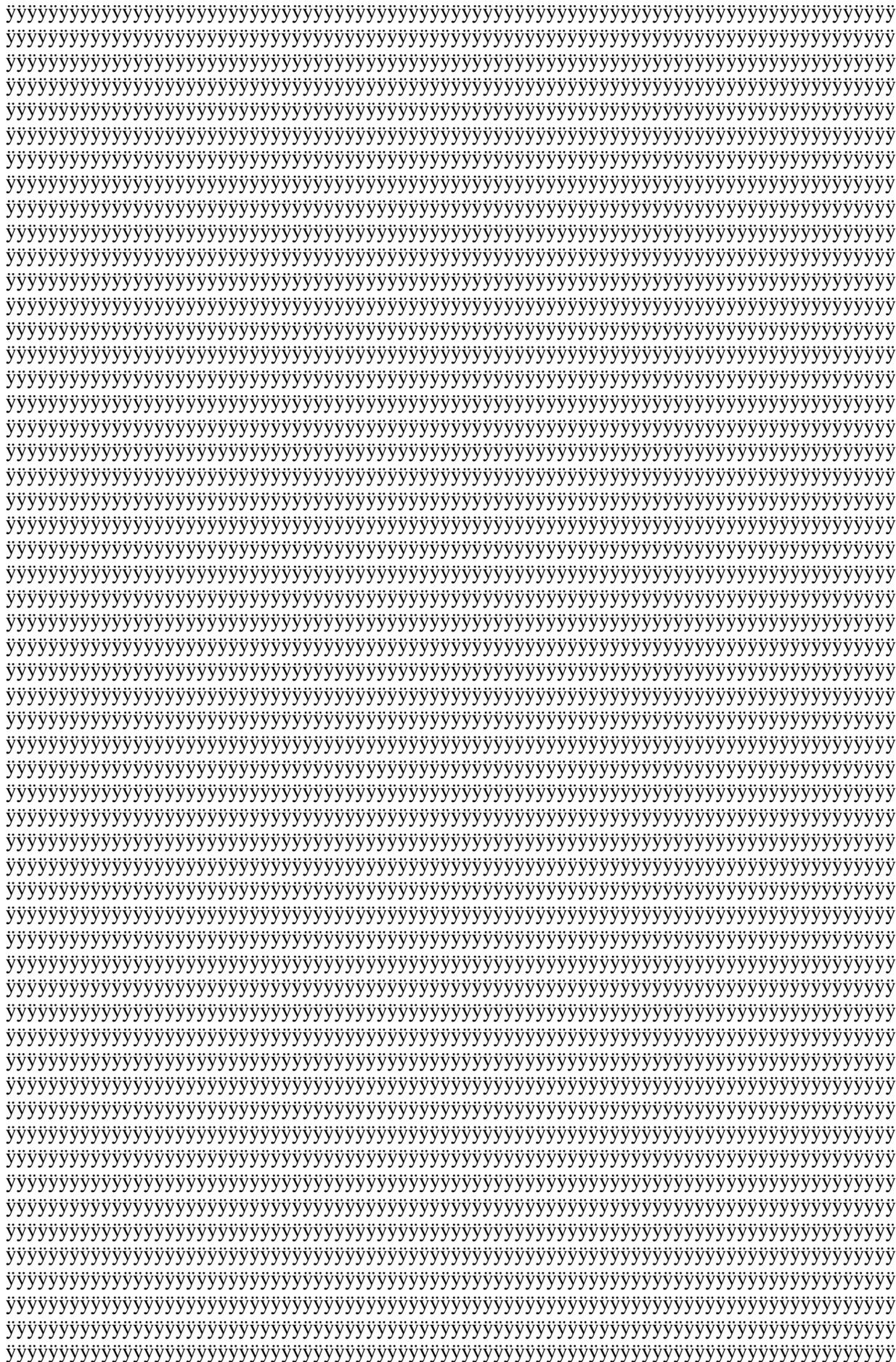


























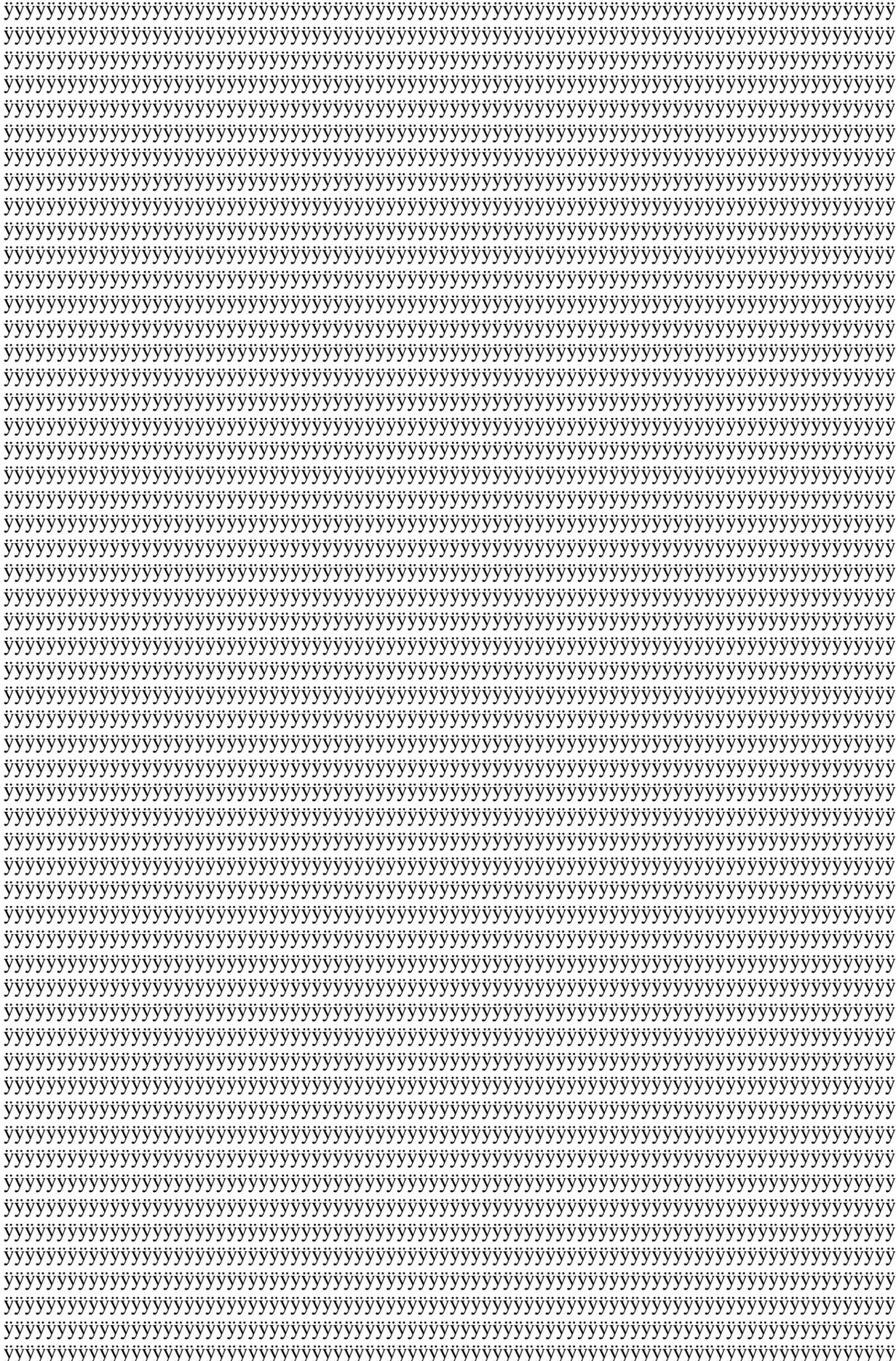








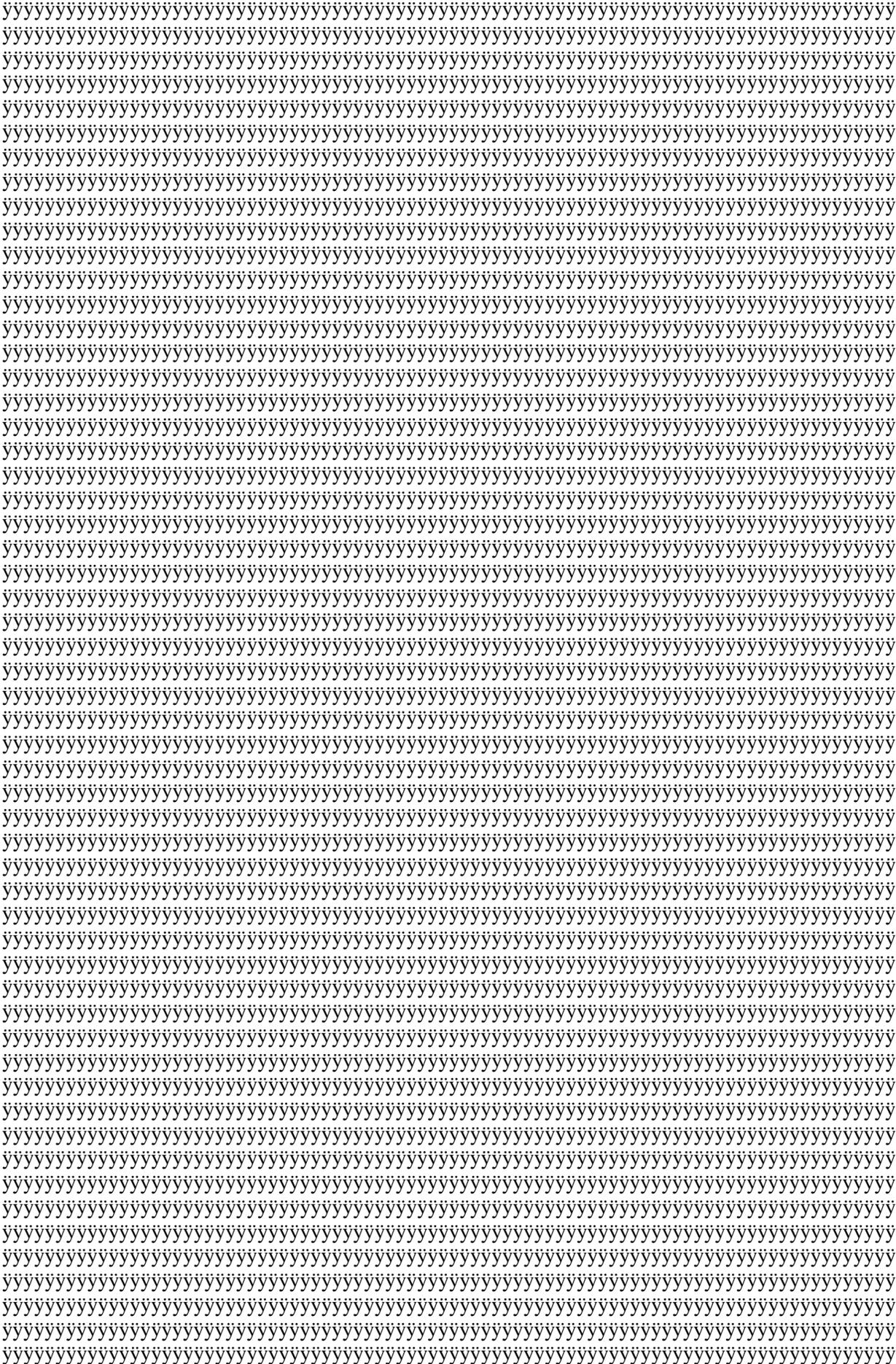








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