

## **THE MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES**

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#### **THE MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES**

##### **ORDER 1**

##### **Commencement of Proceedings**

###### **Action that may be commenced in Lagos State.**

1. (1) Except where any Law or Rule is otherwise provided, an action may be commenced by claim in a Magistrates' Courts - if
  - (a) the defendant or one of the defendants resides or carries on business in Lagos; or
  - (b) the cause of action arose wholly or in part in Lagos.
- (2) Where the claimant sues as assignee of a debt or other thing in action, the action may be commenced in Lagos if the assignor might

have commenced it in Lagos but for the assignment.

### **Originating application that may be commenced in Lagos State**

2. Subject to any Law or Rule, an originating application may be commenced in the Magistrates' Courts –

- (a) if the claimant or one of the claimants resides or carries on business in Lagos;
- (b) the subject matter of the application is situated in Lagos; or
- (c) where no claimant is named in the application, if the claimant or one of the claimants resides or carries on business in Lagos.

### **Instances where Court may appoint a Guardian.**

3. Where proceedings in which a guardian is required are commenced without a Court may appoint guardian, the Court may –

- (a) appoint as a guardian, any person who consents to act and gives an undertaking;
- (b) order the proceedings to be struck out.
- (c) On giving the undertaking the guardian shall be liable for costs in the same manner and to the same extent as if he were himself a claimant; and,
- (d) if the proceedings fail or are discontinued, an order for payment of costs may be made against the guardian whether or not an order for costs is or is not made against the infant, and proceedings may be taken on order for the recovery of the costs as for the recovery of any amount payable under a judgment.

### **Civil proceedings to be commenced by claim.**



4. (1) Any person (referred to as "the claimant") desirous of instituting civil proceedings by action commenced by claim shall deliver to the Registrar for filing, a claim together with the particulars of his claim.

(2) The particulars shall be signed by the claimant or his legal practitioner where he sues on his behalf, and the legal practitioner shall provide an address at which he will accept service of documents on behalf of the claimant as well as a telephone number or in addition, an e-mail address at which the court and the other party may direct communications.

**Where claim discloses no cause of action.**

5. (1) The Magistrate shall strike out any action which on the face of it discloses no cause of action, or is in respect of a matter not within the jurisdiction of the Court, or the claimant fails to supply any one or more of the statements required by the Court.

(2) The claimant shall be at liberty to file a fresh action.

**Entry of claims.**

6. On the filing of the documents prescribed by this Rule and on payment of the required fees, the Registrar shall, subject to the provisions of these Rules as to giving security when required -

- (a) enter a claim in the Court Book kept for that purpose in his office, stating the names and places of residence or of business of the parties and the substance of the action intended to be brought;
- (b) number the action every year in the order in which it is entered;
- (c) direct service on the opposing parties; and
- (d) deliver such claims on the day of filing to the office of the Designating Magistrate.

**Causes of action may be joined.**

7. (1) A claimant may unite in the same claim several causes of action, but may be joined the Court, if it thinks that such cause of action or some of them cannot be conveniently tried together, may order separate trials.

(2) Where a claimant seeks to obtain payment or relief upon more than one cause of action, he shall in his particulars; state the grounds of each cause of action separately, and shall also state separately the payment or relief which he claims in respect of each.

**Originating applications.**

8. (1) Any proceedings authorised to be commenced in Court and not applications required by any Law or Rule to be commenced otherwise, may be commenced by originating application and shall be referred to as an "action".

- (2) An originating application shall be in writing and shall state the –
- (a) order applied for and sufficient particulars to show the grounds on which the applicant claims to be entitled to the Order;
  - (b) names and addresses of the persons intended to be served, referred to in this Rule as “the respondents”; and
  - (c) applicant's address for service where no person is intended to be served; .
- (3) The applicant shall deliver the application to the Registry for filing together with as many copies as there are respondents.
- (4) On the filing of the application –
- (a) the Registry shall enter the application in the records kept for that purpose and fix a day for the hearing of the application, and deliver to the applicant a claim; and
  - (b) a copy of the application shall be served on each respondent in the manner prescribed by the Rules for service of an ordinary summons.
- (5) The application shall be heard in chambers.

## **ORDER 2**

### **Ordinary summons, particulars, defence, counter-claims and admission.**

#### **Summons to issue**

1. (1) After a claim has been entered, the Magistrate or the Registrar, on the directive of the Magistrate, shall issue an ordinary summons directed to the defendant unless a summary summons has been applied for.
- (2) A copy of the particulars shall also be annexed to every summons for service.

#### **Court to fix time for appearance of defendant.**

2. Subject to the provisions of the Magistrates' Courts Law, and of Order 5 Rule

for appearance of 3 (5) of these Rules, the Registrar shall, where an ordinary summons is defendant issued, fix the date for the defendant to appear in Court to answer the claim:

Provided that such date shall not be less than five (5) days after ensuring service of claims has been effected on the defendant.

**Service to be effected within time.**

3. In case where an ordinary summons issued for the commencement of a cause

within time is not served within three (3) months from the date of issue it shall become void with liberty to file fresh action subject to any statute of limitation.

**Further particulars.**

4. (1) If the defendant requires further particulars, he or his legal practitioner may within six (6) days of the service of the summons on him, file a notice and a copy of the notice, specifying what further particulars he requires and request the Magistrate in chambers to cause such copy to be served on the claimant or his legal practitioner and such notice shall give the defendant or his legal practitioner's address for service in Lagos.

(2) The claimant or his legal practitioner shall, within two (2) days of the service of the notice for further particulars, file the further particulars together with a copy of it, and request the Magistrate in chambers to cause such copy to be served on the defendant or his legal practitioner as the case may be at the address for service given in accordance with the provisions of the last

preceding paragraph.

(3) If the notice is not complied with, the Court before or at the trial, if satisfied that the defendant is prejudiced in his defence, may

(a) order further particulars to be filed and served; and

(b) stay all proceedings until the order has been obeyed, and order

the action to be dismissed unless the order is obeyed within

such further time as the Court may allow.

(4) This Rule shall apply to a counterclaim as it applies to an action, with the necessary modifications.

#### **Counter - claims or defence.**

5. (1) Where a defendant on whom an ordinary summons has been served

or defence and intends to set up a counterclaim or set-off or a defence, he shall within six (6) days of the service of the summons on him file with the Registry for

service on the claimant the counterclaim or defence.

(2) Such counterclaim or defence shall be accompanied by a copy of the summon and the Registry shall cause the copy to be served on the claimant.

(3) Where a defendant has set up a counterclaim or set-off or a defence after the period of six (6) days prescribed above, the Court may, if satisfied

that the claimant has been prejudiced, adjourn the trial and order the defendant

to pay the costs properly incurred as a result of his delay.

#### **Counter-claim against person other than claimant.**

6. Where the defendant desires to set up a counterclaim against a claimant and

person other than some other person, he may apply to the Court for an order that the other claimant person be added as a defendant to the counterclaim, and the Court may make an order accordingly, and

may give all such directions as may be necessary to enable the questions at issue between all the parties be determined at the trial of the action.

**Admission and request for time.**

7. A defendant who has been served with an ordinary summons and who admits request for time his liability for the whole or part of any claim but desires time for payment, shall, within six (6) days of the service of the summons on him, deliver to the Registry, an admission.

(2) The Registrar shall upon the receipt by him of the admission send notice to the claimant.

(3) If the claimant elects to accept the amount admitted in satisfaction of his claim and the proposal as to time of payment, he shall send notice of acceptance to the Registrar within three (3) days of the receipt of the notice of admission, and judgment shall be entered as soon as practicable and the Magistrate shall make an order accordingly.

(4) If the claimant does not accept the amount admitted and the proposal as to time of payment, he shall within three (3) days of the receipt of the notice of admission send notice of non-acceptance to the Magistrate in chambers.

(5) If a defendant or claimant fails to deliver an admission or a notice of acceptance within the prescribed time by this Rule, the action may be set down for trial and the Court may order him to pay any costs properly incurred as a result of his delay.

(6) The delivery by a defendant of an admission containing a proposal as to time of payment shall relieve him from the obligation imposed by the

summons to appear in Court on the return day.

### **Tender**

8. Where the defence is tendered before action, the defendant shall pay into Court at the time of delivering the defence, the amount alleged to have been tendered, and if he fails to do so, the tender shall not be available as a defence unless and until the payment into Court has been made.

## **ORDER 3**

### **Summary summons.**

#### **Conditions for summary summons.**

1. In any action in a Magistrates' Courts for a debt or liquidated money demand, summary summons with or without a claim for interest, the claimant may file a claim and request by letter to the Registrar for the endorsement of the claim as a summary summons:

Provided that no summary summons shall be issued –

- (a) against an infant or a person of unsound mind or a person adjudged as a lunatic;
- (b) to recover money lent by a moneylender within the meaning of the Moneylenders Law, or interest on money so lent, or to enforce any agreement made or security taken in respect of money so lent;
- (c) on behalf of an assignee of a debt or other thing in action;
- (d) to recover money secured by a mortgage or charge; or
- (e) against a defendant who has to be served outside the jurisdiction.

**Issue of summary summons.**

2. The Registry shall endorse the claim to issue a summary summons.

**Defence, request for time.**

3. (1) A defendant in a summary action, who disputes his inability for the for time whole or part of any claim or desires time for payment or desires to set up a counterclaim, shall within five (5) days of the service of the summons on him, inclusive of the day of service, deliver to the Registrar –

(a) the form appended to the summons completed according to the circumstances of his case and stating the address for service and signed by him or by some person on his behalf; or

(b) a defence or an admission and a request for time for payment (in this Order called an admission) or a counterclaim, signed and accompanied by as many copies as there are claimants.

(2) Where the defence is tendered before action, the provisions of Order 2 Rule 8 shall apply.

**Judgment in default.**

4. (1) If the defendant does not within five (5) days of the service of the summons on him, inclusive of the day of service, pay into Court the total amount of the claim and costs or deliver at the Registry of the Court, a defence or an admission or a counterclaim, the service being duly proved, the claimant may have judgment entered against the defendant for the amount of the claim and costs, and the order shall be for payment immediately, or at such time or times as the claimant may request:

Provided that if the defendant delivers at the Court office a defence or an admission or a counterclaim after the said period of five (5) days has expired and before judgment has been entered, judgment shall not be entered under this paragraph but the procedure prescribed by Rule 5 or Rule 6 of this Order shall be followed.



(2) A judgment in default under this Rule for payment need not be drawn up or served, unless the judgment is for payment to the claimant or his legal practitioner, or unless the claimant has abandoned part of his claim and such shall be forwarded to the designating Magistrate for assignment.

**Defence or Counter- claim.**

5. If within the period of five (5) days prescribed by Rule 3 of this Order, or counterclaim before judgment has been entered, the defendant delivers at the registry of the Court Registry a defence not accompanied by an admission of any part of the claim or delivers a counterclaim, the Registry shall fix a day for the trial of the action and shall give not less than five (5) clear days notice to the claimant and defendant annexing to the notice given to the claimant a copy of the defence or counterclaim.

**Admission.**

6. (1) If within the period of five (5) days prescribed by Rule 3 of this Order, or before judgment has been entered, the defendant delivers at the Registry of the Court an admission of the whole or part of the claimant's claim, not accompanied by a counterclaim, the Registry shall upon the receipt of the admission, send notice of it to the claimant annexing a copy of the defence, if any, as to part of the claim.

(2) If the claimant elects to accept the amount admitted in satisfaction of his claim and the proposal as to mode of payment, he shall, within five (5) days of the receipt of the notice of admission, send notice of acceptance to the Registry, and judgment shall be entered accordingly as soon as practicable if the Magistrate is satisfied that the admission bears the defendant's signature.

(3) If the claimant does not elect to accept the amount admitted or the

proposal as to mode of payment, he shall, within five (5) days of the receipt of the notice of admission, send notice of non-acceptance to the Registry who shall –

(a) if the whole claim is admitted, fix a day (in these Rules called the day fixed for the disposal of the action) on which the action will be disposed of and the decision of the Court will be given as to the date of payment or the instalments by which payment is to be made, and not less than five (5) clear days' notice of the day so fixed shall be given to the claimant and to the defendant; or

(b) if part only of the claim is admitted, fix a day for the trial of the action and give not less than five (5) clear days' notice to the claimant and the defendant.

#### **Power to let defendant defend.**

7. If the Magistrate is satisfied that the defendant when he delivered his defendant defend admission intended to dispute the whole or any part of the claim or to set up a counterclaim, he may give the defendant permission to defend the action or to set up a counterclaim on such terms as to costs or otherwise as he thinks fit, and if he gives such permission, he shall fix a day for the trial of the action and give notice of it to the claimant and defendant.

#### **Power to Strike Out.**

8. Where three (3) months have expired from the date of service of a summary Out summons, and

(a) no defence or admission or counterclaim has been delivered and judgment has not been entered against the defendant; or

(b) an admission has been delivered but no notice of acceptance or non acceptance has been received from the claimant by the Registrar who shall forward same to the Magistrate in chambers, the action shall be struck out and no extension of

time shall be granted beyond the three (3) months.

**Exchange of summary summons for ordinary summons.**

9. A summary summons which has not been served may at the request of the summary summons for claimant, be exchanged after the payment of the prescribed fees for an ordinary summons ordinary summons within three (3) months of the issue of the summons.

**Provisions common to ordinary and summary actions.**

10. Rules 6 and 8 of Order 2 shall apply to an action in which a summary to ordinary and summons has been issued as they apply to an action in which an ordinary summary actions summons has been issued.

**ORDER 4**

**Parties**

**PART 1- GENERAL**

**Joinder of claimants.**

1. (I) All persons may be joined as claimants in an action where right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if they brought separate actions, common question of law or fact would arise:

Provided that if on the application of any defendant it appears that any joinder may embarrass or delay the trial, the Court may order separate trials, or make such other order as it thinks fit.

(2) Judgment may be given to any claimant for the relief to which he is entitled, but any defendant, though unsuccessful, may be awarded any extra costs caused by joining any person who is not found entitled to relief.

### **Joinder of defendants.**

2. (1) All persons may be joined as defendants in an action where the right to any relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate actions were brought any common question of law or fact would arise, the claimant may at his option join as parties to the same action all or anyone of the persons severally or jointly and severally liable on any contract.

(2) Judgment may be given against one or more of the defendants as may be found to be liable according to their respective liabilities.

(3) Where two or more persons are made defendants, whether jointly or severally liable, the claimant may have judgment against anyone or more of the defendants and may issue execution, without prejudice to proceed with the action.

(4) It shall not be necessary that every defendant to an action shall be interested as to all the relief claimed, or as to every cause of action, but the Court may make an order that may prevent any defendant from being embarrassed or put to any unnecessary expense by being required to attend any proceedings in which he has no interest.

### **Contribution.**

3. (1) Where judgment is given against two or more defendants jointly and

severally they shall be entitled to contribution among themselves and any defendant who satisfies the judgment may apply to the Court for an order of contribution against any other defendant.

(2) The provisions of this Rule shall not affect the rights and liabilities between joint tortfeasors.

#### **Persons jointly liable.**

4. (1) Where claimant has a demand recoverable against two or more persons

jointly liable jointly liable, it shall be sufficient to serve any of these persons with process, and judgment may be obtained, and execution issued, against any person so served, notwithstanding that others jointly liable may not have been served or sued or may not be within the jurisdiction of the Court.

(2) Where judgment is obtained against one person and is he shall be entitled to recover in the Court contribution from any other person jointly liable with him.

(3) Where a claimant does not proceed against all or several persons jointly liable, every defendant sued may set up any defence or counterclaim which he would have been entitled to set up if all the persons liable had been made defendants.

#### **Partners.**

5. Where partners sue or are sued in the name of their firm, the partners may be ordered by the Court, on application by any other party, to furnish a statement

verified by affidavit of the names and addresses of the persons who were partners in the firm when the cause of action arose and, in default of compliance, the proceedings shall be stayed or the partners shall be barred from defending the action, according to whether they are claimants or defendants.

#### **Representative proceedings.**

6. (1) Where there are numerous persons having an interest in one action, proceedings one or more of them may sue or be sued, or may be authorised by the Court, before or at the trial, to defend, on behalf of all persons so interested.

(2) Where a defendant desires to defend on behalf of numerous persons having an interest, he shall, within five (5) days of the service of the summons on him.

(a) file in the Court's registry an affidavit stating the facts on which he relies,

(b) give the partners, addresses and occupations or, where appropriate, a collective description of the persons on behalf of whom he desires to defend;

(c) serve on the claimant a copy of the affidavit together with notice of the defendant's intention to apply to the Court upon a day and at a time to be named in it for permission to defend.

(3) If an order is made for a defendant to so defend -

(a) the names or collective descriptions of the person to whom the order relates shall be added to the name of the defendant in the Court's records;

(b) notice shall be sent to the claimant and other persons affected by the order and shall be notified in such manner as the Court may direct; and

(c) any person whose name has been entered in the Court's records or who is included in the collective description may, at the trial, object to the defendant defending on behalf of all or any of the persons to whom the order relates, and the Court may, if it thinks fit, direct that the names of all or any of them be struck out from the Court's records or that the collective description be amended.

**Representative capacity to the stated.**

7. The fact that the claimant sues, or any defendant is sued in a representative capacity, shall be expressed in the title of proceedings.

**Misjoinder and nonjoinder**

8. (1) The Court may at any stage strike out the names of any parties

nonjoinder improperly or unnecessarily joined, and may, after due notice given to the parties affected, add the names of parties whose presence is necessary in order to dispose finally the matter in dispute, and on proof of such notice, the

parties so served, whether they have appeared or not, shall be bound by the proceedings in the action:

Provided that no person shall be added as a claimant without his consent in writing, or in the case of a person under disability without the consent in writing of the next friend or committee or other person acting on behalf of the person under disability.

(2) No action shall be defeated by reason of the misjoinder or nonjoinder of parties.

**PART 2****PERSONS UNDER DISABILITY****Suits by infants and Persons of unsound mind.**

9. (1) An infant may sue by his guardian and may defend by his guardian.  
persons of unsound mind

(2) A person who has been adjudged a lunatic may sue or may defend by his guardian.

**Appointment of Guardian by the Court.**

10. (1) Where it appears on the face of the proceedings that a defendant is an

Guardian by the infant or a person of unsound mind that he is unable to defend the action, Court the Magistrate may at any time after the service of the summons and not less than five (5) clear days before the return day, on the application made to him on behalf of the infant or person of unsound mind, appoint by order a fit person to be guardian ad litem; provided that such guardian has consented in writing to act and the application shall be supported by an affidavit.

(2) Where no application is made on behalf of the infant or person of unsound mind within the time specified in the last preceding paragraph, the Magistrate in chambers shall, on the fifth (5th) day before the return day, notify the claimant that he must apply to the Magistrate for an order that some proper person be appointed guardian ad litem to the defendant and the claimant must comply with such notice before taking any further steps in the proceedings.

(3) The Magistrate, on application being made, may appoint the person proposed by the claimant or any other proper person who is willing to act, or who the Magistrate directs.

(4) Before such an order is made pursuant to this Rule, the Court shall cause such notice to be served on, or left at the dwelling-house of the person with whom, or under whose care, the defendant is, unless the Court sees good reason to the contrary, in the case of an infant not residing with or not under the care of his parent or guardian, shall be served on or left at the dwelling-house of his parent or guardian.

#### **Appointment of Guardian in the course of proceedings.**

11. (I) Where it is discovered in the course of proceedings that any defendant guardian in the is an infant or a person of unsound mind not adjudged a lunatic, the following course of proceedings provision shall apply-

(a) If the infant is in Court and there is a person in Court willing to act as guardian of the infant, that person may be appointed guardian or such person as the Magistrate may direct; and

(b) In any other case the claimant shall be ordered to apply for an order that some proper person be appointed guardian ad litem



to the infant or person of unsound mind and the provisions of paragraph (2) of the last preceding Rule shall be followed with the necessary modifications.

**Entry of appointment.**

12. Where a guardian is appointed under either of the two preceding Rules, his appointment shall be entered in the record of the Court and in the title of the action for the purpose of all subsequent proceedings.

**Guardian may have recourse to assets or property of infant defendants or persons of unsound mind.**

13. A guardian to an infant or a person of unsound mind not adjudged a lunatic

recourse to assets or shall not be personally liable but may have recourse to any assets or properties property of infant standing to the credit of the infant or the person with unsound mind for any defendants and persons costs not occasioned by his personal negligence or misconduct.

**Action by infant for wages.**

14. Notwithstanding the provisions of this Order, any person under the age of

for wages eighteen (18) years may bring an action in the Court for any sum of money which may be due to him for wages or piece of work or for work as a servant, in the same manner and in all respects as if he were of full age.

**Compromise or payment out in case of infants.**

15. (1) In any action in which money or damages is or are claimed by or on

payment out in behalf of or for the benefit of an infant or a person of unsound mind –

(a) no settlement or compromise or acceptance of money paid into

Court, whether before or at or after the trial, shall be valid without the

sanction of the Magistrate; and

(b) no money or damages recovered or awarded in any such action

whether by settlement, compromise, payment into Court or

otherwise before, at, or after the trial shall be paid to the

guardian of any party or to any party's legal practitioner, unless

the Magistrate so directs.

(2) Where the sole object of the proceedings is to obtain the sanction of

the Magistrate to a settlement or compromise, the particulars of claim shall

contain a brief statement of the cause of action together with a request for the

approval of the settlement or compromise.

(3) The sanction of the Magistrate may be given in chambers, whether Court proceedings are held on that day or not.

(4) All money or damages recovered or awarded shall, unless the Magistrate otherwise directs, be paid into Court to the credit of an account instituted in the action.

(5) An application to the Court as to the mode of dealing with the money and any interest on it may be made by or on behalf of any person interested.

(6) Nothing in this Rule shall prejudice the lien of a legal practitioner for costs.

(7) This Rule shall not apply to any case in which an infant sues as if he were of full age by virtue of Rule 14 of this Order.

**Consents for persons under disability.**

16. In any proceedings to which –

(a) an infant;

(b) a person of unsound mind, whether adjudged a lunatic or not;

or

(c) person under any other disability as to capacity,

is a party, any consent as to the mode of taking evidence or as to another procedure given by the guardian or any other person acting on behalf of the person under disability as to capacity shall, with the consent of the Court, have the same force and effect as if the party were under no disability and had given his

consent.

### **PART 3**

#### **CHANGE OF PARTIES**

##### **When Proceedings not abate.**

17. (1) An action shall not abate by reason of the marriage, death or bankruptcy of any party, if the cause of action survives or continues, and shall not become defective by the assignment, creation, change, transmission or

devolution of any interest, estate or title during the proceedings.

(2) Whether the cause of action survives or not, an action shall not abate by reason of the death of any party between the findings of fact and the judgment, but judgment may be entered notwithstanding the death.

##### **Change of a party's title or interest.**

18. (1) Where after the commencement of an action and before judgment title or interest there is any change or transmission or devolution of interest, estate or title or liability in relation to any party, any person interested may apply to the Court for an order enabling or compelling the proper parties to carry on the proceedings.

(2) Where an order is made ex parte under paragraph (1) of this Rule, any person served with such order may, within such time not exceeding five (5) days as the Court may direct, apply to the Court to discharge the order.

##### **Where persons entitled to proceed on death of party fails to do so.**

19. Where a claimant or defendant in an action dies, and the cause of action entitled to proceed survives, but the person entitled to proceed fails to proceed, the defendant (or on death of party the person against whom the proceedings may be continued) may apply to the fail to do so Court for an order directing the claimant to proceed within such time as may be ordered, and in

default the action may be struck out, and in a case where it is the claimant who has died, execution may issue for any costs awarded to the defendant.

**Alteration of records on change of parties.**

20. Where a claimant or defendant is substituted or added under any of the Rules

on change of parties of this Order, the record of the Court shall be altered accordingly and all subsequent proceedings shall be carried on under the altered title.

**Claim to money in court where change in parties after judgment.**

21. (1) Where any change has taken place after judgment by death, Court

where change in assignment or otherwise, in the parties to any action and there is money parties after judgment standing in Court to the credit of the action, any person claiming to be entitled to the money may write to the Magistrate of his claim, accompanied by an affidavit of the facts stated in the notice.

(2) The Magistrate in chambers may, if satisfied as to the right of the person so claiming, order payment to be made to such person or may, before deciding, require notice to be given to any other person or persons.

**ORDER 5**

**Service**

**Normal mode of services.**

1. (1) Subject to the provisions of any Law or Rule, service of an ordinary of service summons, a summary summons or other process shall be effected by delivering the summons or other process together with the particulars –

(a) if on an individual to him personally; or

(b) if on a partnership –

(i) to one of the partners personally; or

(ii) to any employee at the principal place of business of the partnership business:

Provided that, where the partnership has to the knowledge of the claimant been dissolved before the commencement of the action, the claimant shall apply for substituted service; and

(c) if on a statutory corporation, to the secretary personally or any other person with the executive authority.

(2) Where a person carrying on a business in a name other than his own, is sued in that name as if it were a firm name, the summons or other originating process shall be served in accordance with the provisions of this Rule as if he were a partner sued in the name of a firm and his business were a partnership.

(3) Where the defendant is a person of unsound mind, whether adjudged a lunatic or not, the summons or other originating process shall be delivered to the person with whom he resides or who has him under his care or control.

(4) Where a defendant is an infant, the summons shall be delivered to any of his parent or guardian, or, if he has no parent or guardian, to the person with whom he resides -

Provided that the Court may order that service personally on the infant shall be good service.

(5) The provisions of this Rule regarding mode of service shall apply to any process of whatever description issued by a Magistrate's Court.

#### **Substituted service.**

2. Where it appears to the Court, either with or without an attempt at service in

accordance with the provisions of Rule 1 of this Order that for any reason service of any process including a judgment summons cannot conveniently be effected, the Court, after being satisfied by affidavit that it is necessary so to do, may order that service be effected -

(a) by delivering the process together with a copy of the order 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;

(b) by delivery of the process through an accredited courier service in accordance to the Law and proof of delivery to the satisfaction of the Court;

(c) by advertisement in some newspaper circulating within the jurisdiction;

(d) by notice affixed in a conspicuous position at the Court house or some other place of public resort in that part of Lagos wherein the proceedings in respect of which the service is made have been instituted;

(e) by affixing the process together with a copy of the order in a conspicuous position at the entrance or on a door of the usual or last known place of abode or business of the person to be served; or

(f) in such other manner as the Court may direct, and upon compliance with the order, service shall be deemed to be good and sufficient service of the process on the person to be served.

**Service outside jurisdiction.**

3. (1) No summons for service on a defendant in Nigeria, outside of Lagos,

jurisdiction shall issue without the permission of the Court in writing.

(2) Every application for permission to issue shall be made within twenty four (24) hours to the Magistrate in chambers and where such permission is granted, an entry to that effect shall be made in the records of the Court.

(3) Every request shall be accompanied by affidavit or other evidence showing -

- (a) that the claimant has prima facie good cause of action;
- (b) that the relief sought is against any person ordinarily resident in Lagos;
- (c) that the claim is against a breach or alleged breach in Lagos of any contract wherever made, which, according to the terms of it, ought to be performed in Lagos;
- (d) that the claim is founded on a tort committed in Lagos;
- (e) that any injunction is sought as to anything done or to be done, in Lagos, or any nuisance in Lagos is sought to be prevented or removed;
- (f) that any person out of Lagos, is a necessary or proper party to any proceedings properly commenced in the Court against some person duly served in Lagos; or
- (g) that the cause of action arose, wholly or in part, at Lagos or that the thing that is the subject-matter of the proceedings is in Lagos.

(4) No such permission shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order and the Court may make it a condition that deposit for costs in a manner directed by a Magistrate shall be produced by the



claimant before the permission is granted.

(5) If it shall appear to the Court that there is a concurrent remedy in the part of Nigeria where service is sought to be made, the Court shall have regard to the comparative cost and convenience of proceeding in Lagos, or in the place of residence of the person to be served.

(6) The date specified in a summons served out of the jurisdiction under this Order for the appearance of the defendant in Court shall not be less than thirty (30) days after the service of the summons.

**Mode of service outside of the jurisdiction.**

4. (1) When an application for service out of Lagos has been granted, the out of the jurisdiction Court granting such application shall direct the mode for the service of the process outside Lagos.

(2) An order for service out of Lagos may be varied from time to time with respect to the mode of service directed by the order.

**Record and evidence of service.**

5. Evidence of service shall be kept in the record of proceedings in which the order for service was made.

**Who may effect services.**

6. Service of process shall be effected by a bailiff of the Court or a member of service the police force as provided by Section 51 of the Law but a Magistrate may order service to be effected by any person designated by him:

Provided that service of any notice of determination of tenancy or of intention

to recover possession under the Recovery of Premises Law may be served by the landlord or his agent as if he were a bailiff.

**Proof of service.**

7. (1) Where any process issued by the Court is served in accordance with the provisions of section 51 of the Law, service or such other proof of the person effecting the service setting out the fact, place, mode and date of service shall be prima facie evidence of the matters stated in the affidavit.

(2) Any proof of service that is not filed within two (2) days of service shall not be accepted by the Magistrate.

(3) Any bailiff who fails to serve within two (2) days of the receipt, without reasonable cause shall have his warrant to act as bailiff of the Magistrates' Courts suspended or withdrawn by the Sheriff.

(4) The return shall be handed in at the Registry of the Court of issue within two (2) days of date of service.

**Legal practitioner accepting service.**

8. Where a legal practitioner represents that he is authorised to accept service of accepting service an ordinary summons on behalf of a defendant, it shall be sufficient to deliver the summons to him, if he endorses upon the copy retained by the person serving the summons a memorandum stating that he accepts service thereof on behalf of the defendant, and giving an address for service in Lagos.

**Time for service.**

9. Service shall be effected between the hours of 6 a.m. and 6 p.m. on any week-day including Saturdays.

**How personal service may be effected.**

10. Where service is to be effected by delivering a document to the person to be

may be effected served by personal service and such person refuses to take the document, it is sufficient to inform such person of the nature of the document and to throw it down near him.

**Mode of service other than personal service by Court appointed Bailiff.**

11. Where in any proceedings in the Court any process is required to be served on other than personal any person and no other mode of service is prescribed by any Law or Rule, the service by Court following provisions shall apply –

(a) where an address for service has been given by the person to be served, service shall be sufficiently effected by sending the process to such address or by delivering the process at the last known address for service to an adult person employed or residing at such address;

(b) if the person to be served is the proprietor of a business, service shall be sufficiently effected by delivering the process at his place of business or sending it to his last known place of business; and

(c) where the person to be served is acting by a legal practitioner, service shall be sufficiently effected by delivering the process at or sending it to the legal practitioner's address for service.

**ORDER 6**

**Assignment, Transfer and Case Stated**

**Assignment of cases.**

1. (1) Upon receipt from the Registry, the designating Magistrate shall of cases ensure prompt assignment of cases.

(2) The case files of all new actions shall be transferred from the designating Magistrate to the assigned Magistrate after filing but before the

expiration of the time prescribed for service.

### **Application for transfer.**

2. (1) An application under Sections 43 and 44 of the Law for the transfer of transfer a civil cause or matter shall be made to the Magistrate in writing and state grounds on which it is based.

(2) Where a Magistrate, at his discretion or on application made by an interested party, is of opinion that a civil cause or matter ought to be transferred, he shall forward a report together with his remarks to the designating Magistrate.

(3) After a report has been forwarded as provided by the last preceding paragraph the trial of the cause or matter affected by the application shall not be proceeded with until the decision of the designating Magistrate has been communicated to the Magistrate in whose Court the cause or matter is pending.

(4) The Magistrate shall inform the parties concerned of the report.

(5) Process shall be completed within five (5) working days of the receipt of the request to transfer.

### **Statement of case to be sent to Chief Register of the High Court.**

3, Where a case has been stated, it shall be sent to the Chief Registrar of the..... to be sent to Chief High Court of Lagos and the proceedings before the Magistrate shall be stayed until the opinion of the High Court has been received.

## **ORDER 7**

### **Third Party Procedure**

#### **Third-party notice**

1. (1) Where a defendant claims against any person not already a party to the

action (in this Order called “the third party”) that –

(a) he is entitled to contribution or indemnity;

(b) he is entitled to any relief or remedy relating to or connected with original subject-matter of the action and substantially the same as some relief or remedy claimed by the claimant; 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 claimant and the defendant, and should properly be determined not only as between the claimant and the defendant, but as between the claimant and the defendant and the third party, or between any or either of them, the defendant may apply to the Court on notice in chambers for permission to serve a "third party notice", and shall file a copy of the third party notice with the application.

(2) Notice of the application shall be served on the claimant and filed in the Court office within two (2) days of the service of the summons, inclusive of the day of service, and on receipt of the notice by the Court all other proceedings in the action shall be stayed until the day fixed for the hearing of the application.

(3) On the hearing of the application, the Court may grant or refuse permission, and, if permission is granted, shall give directions as to the time for service of the third-party notice and as to the date of trial, and, if the action is a summary action, judgment shall not be entered pending the trial.

(4) The notice shall 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.

(5) The notice shall be served on the third party personally, and shall be accompanied by a copy of the summons in the action and of the annexed

particulars.

(6) The third party shall, as from the time of the service upon him of the third party 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 sued in the ordinary way by the defendant.

**Default by third-party.**

2. (1) If a third party disputes the claimant's claim as against the defendant by third party whom the notice has been given or his own liability to the defendant, he shall –

(a) take the necessary steps for his defence and the provisions of Order 2, Rule 6 and Order 3, Rule 4 shall apply with necessary modifications; and

(b) appear at the Court on the day fixed for the trial of the action.

(2) If the third party does not appear at the trial, he shall be deemed to admit the validity of and be bound by any judgment given in the action whether by consent or otherwise and by any decision on any question specified in the notice, and when contribution or indemnity or some other relief or remedy is claimed against him in the notice, he shall be deemed to admit his liability in respect of such contribution or indemnity or other relief or remedy.

**At the trial.**

3. (1) Subject to any directions which may have been given by the Court before the trial, the Magistrate shall have full power at the trial to direct what part the third party shall take in the trial and generally how the trial shall be conducted.

(2) As between the defendant by whom the third-party notice has been

given and the third party, the Magistrate may grant to either party any relief or remedy which might properly have been granted if the claim against the third party had been made in a separate action, and may give such judgment for either party against the other as may be just:

Provided that execution against the third party shall not be issued without the permission of the Magistrate until the defendant has satisfied the judgment in the same action given against him.

#### **Fourth and subsequent parties.**

4. (1) Where a third party makes as against any person not already a party to subsequent parties the action such a claim as is defined in Rule 1 (I) of this Order, the provisions of this Order -regulating the rights and procedure as between the defendant and the third party shall apply as between the third party and such other person, and the expressions "third party notice" and "third party" shall apply to and include every notice issued against a fourth or subsequent party and every fourth or subsequent party served with such a notice respectively.

(2) Where a person served with a notice under this Rule by a third party in turn makes such a claim as is defined in Rule 1 (1) of this Order against another person not already a party to the action, this Order as applied by this Rule shall have effect as regards such further person and any other further person or persons so served and so on respectively.

#### **Co-defendants.**

5. Where a defendant makes against any other defendant in the same action such a claim as is defined in Rule I (1) of this Order, he may without any permission serve on such other defendant a notice making such claim, and the same procedure shall be adopted for the determination of the claim as would be appropriate under this Order if such other defendant were a third party:

Provided that nothing contained in this Rule shall prejudice the rights of the claimant against any defendant.

6. In this Order the words "claimant" and "defendant" respectively shall include a

claimant and a defendant to a counter-claim.

## **ORDER 8**

### **Amendment**

#### **Generally**

1. The Court may, on not more than one occasion –
  - (a) amend any defect or error in any proceedings whether the defect or error is that of the party applying to amend or not; and
  - (b) add, strike out or substitute any person either as claimant or defendant; and all such amendments as may be necessary for the purpose of determining the issues between the parties, and the proceedings shall continue in all respects as if they had been commenced in the form in which they appear after the amendment has been made:

Provided that, no person shall be added as a claimant without his consent in writing or in the case of a person under disability, without the consent in writing of the guardian.

#### **Service on added defendant.**

2. Where any person is ordered to be added or substituted as defendant, except added defendant under Rule 8 of this Order, the amended originating process shall be served on the added or substituted defendant according to the Rules applicable to the service of the originating process, and the proceedings as against him shall be deemed to have begun only on the service of the process on him.

#### **When amendment may be made.**

3. The amendment may be made at any stage of the proceedings before may be



made judgment by the Court or on the oral application of any party at the trial, or before the trial on notice.

**Abandonment of part of claim.**

4. A claimant may, at any time before an action is called on for trial, or in part of claim opening his case, abandon any part of his claim, and the abandonment shall be entered in the records of the Court.

**Change of defendant.**

5. Where a person other than the defendant appears at the trial and admits that he defendant is the person whom the claimant intended to sue, or ought to have sued, he

may, if the claimant consents, be substituted for the defendant, and the proceedings shall continue as if he had originally been made defendant and this shall not amount to an amendment.

**Effect of misnomer.**

6. No misnomer or inaccurate description of any person or place in any claim or misnomer summons shall vitiate the same, if the person or place is described so as to be identifiable.

**Clerical mistakes and errors.**

7. Clerical mistakes in judgments or orders or errors arising from any accidental and errors omission may at any time be corrected by the Court.

**Amendment of terms.**

8. The Court, when granting an application for the amendment, may impose such terms as it may think just.

**ORDER 9**

**Application and Directions in Civil Proceedings**

**General procedure**

1. Where by any Law or Rule any application in the course of an action before or after judgment is expressly or by implication authorised to be made to the Magistrate or to the Court, then, subject to the provisions of the particular Law or Rule applicable as far as it is not inconsistent, the following provisions shall apply:

(1) All interlocutory applications or request in writing shall be to the Magistrate in chambers, accompanied by an affidavit and a short statement of the law relied upon.

(2) All such interlocutory applications or request in writing shall be served on the other party prior to being delivered to the Magistrate in chambers.

(3) The party served with such an application may respond in writing attaching a counter affidavit if he so desires and short statement of the Law relied upon (if any) within two (2) days of delivery of the said application at the address provided for service or to his legal practitioner.

(4) The Magistrate shall deliver the Court's decision in writing the day following the receipt of the response from the party not applying and where there is no response shall deliver his decision.

(5) The decision of the Magistrate shall be available for collection upon payment of the prescribed fees.

(6) In exceptional cases the Court may permit the parties to bring interlocutory applications orally or in writing after the commencement of trials.

(7) All applications for stay of execution of a judgment or for permission to appeal the decision of a Magistrate shall be considered and determined in open Court.

**Power to impose terms.**

2. The Court may, as a condition of granting any interlocutory application or terms request in writing, impose such terms and conditions as it thinks fit, and without prejudice to the generality of the following provisions, may make orders requiring any party to –

- (a) give security;
- (b) give an undertaking;
- (c) pay money into Court; or
- (d) pay all or any part of the costs of the proceedings.

**Directions.**

3. (1) In any action the Court may at any time on the application on notice of any party or of its own motion give such directions as it thinks proper.

(2) Without prejudice to the generality of the last preceding paragraph, the Court may at any time on the application on notice of any party or at its discretion, order the parties to state more fully their respective cases and may thereupon frame issues before trial and determining the action; and in cases in which, owing to their difficult or complicated nature, pleadings are required, the Court may adjourn the trial and report to the Chief Judge with a view to the action being transferred to the High Court.

**Adjournment.**

4. (1) A Magistrate may adjourn from the date of commencement of trial and

during the proceedings for a period not exceeding ten (10) days.

(2) A Magistrate may, after the matter has been set down for trial at his discretion, grant in -

(a) uncontested civil cases, not more than two (2) adjournments; and

(b) contested civil cases, not more than four (4) adjournments.

(3) Subject to the provisions of this Rule, in the event that any of the parties to the action fails to, is unable to or refuses to attend Court or proceed with the cause or matter, the Magistrate shall strike the matter off the cause list and out of the Court or enter judgment in default against the defendant.

**Abridgement of time.**

5. (1) Subject to the provisions of these Rules, any of the times fixed by of time these Rules for –

- (a) taking any step in any proceedings;
- (b) filing any document; or
- (c) giving any notice; may be abridged by the Court on the application of any party.

(2) An order abridging time may be made although the application is not made by the Court in chambers.

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

6. Where any party desires before the trial, an immediate order – interim injunction

- (a) in the nature of an injunction;
- (b) for the appointment of a receiver;
- (c) for taking any accounts; or
- (d) for making any inquiries,

he may apply in accordance with Order 9 Rule 1.

#### **Interlocutory injunction on terms.**

7. The Court may grant an interlocutory injunction or make any interlocutory injunctions on terms order on such terms as to its duration, the giving of security or otherwise, as may seem just in accordance with Order 9 Rule 1.

#### **Application in chambers.**

8. Where the circumstance permits, an application may be made to the chambers chambers Magistrate in chambers for consideration on an ex parte basis.

#### **Notice**

9. Where an application is made ex parte for an interlocutory injunction or order, the Court may direct notice to be given to any person who may be affected by the order.

**Where order is made ex-parte.**

10 Any interim injunction or order granted or made ex parte shall be for such made ex parte limited time only as shall be stated and the injunction or order shall be served on the person affected.

**Discharge or variation of ex-parte order.**

11. Where an interim injunction or order is granted or made ex parte, such in variation of junction or order may be discharged or varied by the Court on application ex-parte order made by any person affected thereby, after notice given to the party who obtained such injunction or order.

**Recovery of goods where lien claimed.**

12. (1) Where in any action the claimant claims the recovery of specific where lien claimed property other than land, and the defendant admits the title of the claimant but claims to retain the property by virtue of a lien, or otherwise as security for the payment of a sum of money, the Court may order that the claimant be at liberty to pay into Court, to abate the event of the action, the sum of money in respect of which the defendant claims to retain the property and such further sum (if any) for interest and costs as the Court may think fit, and that upon such payment into Court the defendant shall return the property to the claimant.

(2) This Rule shall apply to a counterclaim as it applies to a claim, with the necessary modifications.

**Preservation of subject matter.**

13. When by any contract a prima facie case of liability is established, and there is

subject matter alleged, as a matter of defence, a right to be relieved wholly or partially from that liability, the Court may make an order for the preservation or interim custody of the subject matter of the action, or may order that the amount in dispute be brought into Court or otherwise secured.

#### **Order for detention.**

14. The Court may, upon the application of any party to an action, make any order for the detention, preservation, inspection, surveying, measuring, or weighing of any property or thing, being the subject of the action or as to which any question may arise and may authorise any persons to enter upon or into any

land or building in the possession of any party to the action, and authorise any samples to be taken, or any observation, plan, or model to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

#### **Order for sale of perishable.**

15. The Court may, upon the application of any party to an action, order the sale of perishables by a person to be named in the order, of any subject matter of the proceedings which –

- (a) is of a perishable nature;
- (b) incurs charges for food or keep; or
- (c) ought for any other sufficient reason to be sold at once.

**@@#ORDER IO#@@**

#### **Consolidation of Proceedings and Selected Actions**

##### **Generally.**

1. Actions or matters pending in the same Court may be consolidated by order of the Court, of its own motion or on the application of any party on notice.

##### **Selected action against several claimants.**

2. (1) Where several actions by different claimants against the same with



several claimants defendant are proceeding in the same Court, in respect of causes of action arising out of the same breach of contract, wrong or other circumstances, the defendant may, on filing an undertaking to be bound, so far as his liability in the several actions is concerned, by the decision in such one of the actions as may be selected by the Court, apply to the Court for an order to stay the actions, other than the one selected, until judgment is given in the selected action.

(2) An application under this Rule shall be made on notice to the claimants who would be affected by any order made.

**Where judgment is in favour of defendant in selected action.**

3. (1) If judgment in a selected action under Rule 2 of this Order is given in favour of the defendant, the defendant shall be entitled to his costs up to the defendant in date of the order staying proceedings against every other claimant whose selected action is stayed, unless any such claimant gives the Court, within five (5) days from the judgment, notice to set down his action for trial. .

(2) On judgment in the selected action being given, the Court shall notify every other claimant and if any such claimant makes a request to the Court to set down his action for trial, the Court shall appoint a day for trial, and send notice to both claimant and defendant not more than five (5) clear days before the day so appointed.

**Where judgment is against the defendant in selected action.**

4. (1) If judgment in a selected action is given against the defendant, the defendant claimant in the action stayed shall be at liberty to proceed for the purpose of in selected action ascertaining and recovering their debts or damages and costs.

(2) On judgment in the selected action being given, the Court shall notify each claimant and a claimant desiring to proceed, shall immediately make a request to the Court to set down his action for trial, and on receipt of the

request, the Court shall appoint a day for the trial, and notify both claimant and defendant, not less than five (5) clear days before the day so appointed.

**Selected action where there are several defendants.**

5. (1) Where several actions by the same claimant against several defendants

where several are proceeding in the same Court, and the event of the actions depends on the defendants finding of the Magistrate on some question common to all of them, the Magistrate may at any time select one of them for trial, and stay proceedings in all the others until judgment in the selected action is given.

(2) After judgment is given in the selected action, unless the claimant and the defendants in the other actions, or any of them, submit to have judgment entered in accordance with the judgment in the selected action, the other actions shall proceed.

(3) On receipt of the request from the claimant or defendant in any such action to set it down for trial, the Court shall appoint a day for the trial, and shall notify both claimant and defendant not more than five (5) clear days before the day so appointed.

**ORDER 11**

**Discontinuance by Claimant**

**Notice.**

1. If a claimant desires to discontinue wholly or in part any proceedings against all or any of the parties, he shall notify the Court and every party against whom he desires to discontinue.

**Costs.**

2. (1) Where a notice of discontinuance has been given the Court shall on the return day assess the costs incurred by the defendant before the receipt of the

notice, or, if the proceedings are not wholly discontinued, the costs incurred before the receipt of the notice in relation to the part discontinued.

(2) If such costs are not paid within five (5) days, the defendant shall be entitled to apply for an execution warrant in respect of the unpaid costs:

Provided that –

(a) if the proceedings are not wholly discontinued against the defendant, execution shall not issue before the proceedings are disposed of, except by permission of the Court; and

(b) discontinuance under this Order shall not be a defence to any subsequent proceedings, but if subsequent proceedings are brought for substantially the same cause of action before the payment of the costs mentioned, the Court may stay the proceedings until the costs have been paid.

## **ORDER 12**

### **Special Witness**

#### **Appointment of special witness.**

3. A Magistrate may, in circumstances considered appropriate, appoint a special witness who in the opinion of the Magistrate, has specialised knowledge on any matter that is in issue in any action or proceedings before the Court.

#### **Evidence of special witness.**

4. The special witness shall give evidence in person, on oath or by an affidavit.

**Remuneration of special witness.**

5. (1) The Court may direct that parties contribute to all expenses arising of special witness from the appointment of a special witness.

(2) Pending his appointment, a special witness shall be required to state all costs associated with the rendering of his opinion in Court.

**ORDER 13****Payment into Court in Action****Payment of claim and costs within six (6) days of service.**

1. (1) Where the only relief claimed is the payment of money, a defendant claim and costs may, within six days of the service of the summons on him, pay into Court in within six days of service satisfaction of the claim-

- (a) the whole amount of the claim and costs stated on the summons; or
- (b) so much of the claim as he admits to be due from him to the claimant together with the costs stated on the summons.

(2) Where the whole amount of the claim and costs is so paid into Court judgment shall be entered and the defendant shall not be liable for any costs except those stated on the summons.

(3) Where the amount so paid into Court is less than the amount of the claim and costs –

(a) if the claimant accepts the amount paid into Court, he shall within three (3) days after receipt by him of the notice of payment into Court, deliver at the Court office a notice of acceptance; and

(b) on receipt of the notice of acceptance the Court shall notify the defendant who shall not be liable for any costs except those stated on the summons and the action shall only be heard on the disputed amount.

**Liability admitted unless denied.**

2. A defendant in an action may at any time before judgment pay money into unless denied Court –

- (a) in satisfaction of the claim, or where several causes of action are joined in one action, in satisfaction of one or more of the causes of action; or
- (b) on account of a sum admitted by him to be due to the claimant.

(1) Money may be paid into Court under the last preceding paragraph by one or more of several defendants sued jointly or in the alternative.

(2) A payment made under this Rule shall be deemed to be made with an admission of liability, unless accompanied by a notice stating that liability is denied.

**When payment deemed to be on account.**

3. Where the amount paid into Court under the last preceding Rule is less than deemed to be the amount claimed, the payment shall be deemed to be made on account of on account the amount claimed, unless accompanied by a notice stating that it is made in satisfaction of the claim or, where several causes of action are joined in one action, in satisfaction of one or more of the causes of action.

**Several causes of action.**

4. Where a payment under Rule 2 of this Order is made in satisfaction of one or of action more of several causes of action, the payment shall be accompanied by a

notice specifying the cause or causes of action in respect of which it is made, and the sum paid in respect of each cause of action.

**Tender.**

5. A payment made in pursuance of Order 2 Rule 8 or Order 3 Rule 3 (2) shall be accompanied by a notice stating that it is made with a defence of tender.

**Defendants sued jointly in a alternative.**

6. Where a payment under Rule 2 of this Order is made by one or more of jointly or in alternative several defendants sued jointly or in the alternative, it shall be accompanied by a notice stating the name and address of the defendant or defendants making the payment.

**Notice of payment into Court.**

7. The Court shall on receipt of any payment under this Order, if time permits into Court notify the claimant and if the payment was made by one or more of several defendants sued jointly or in the alternative, notify every other defendant.

**Where whole claim is paid after seven days of service or without costs.**

8. Where in any case to which Rule 1 (1) (a) of this Order does not apply, the claim paid after seven only relief claimed is the payment of money and the whole amount of the (7) days of service claim is paid into Court, the following provisions shall apply –

(1) Proceedings in the action, except those authorised by this Rule, shall be stayed, and the defendant shall not be liable for any costs incurred after the receipt by the claimant of the notice of payment into Court.

(2) The claimant shall not be entitled to have the amount in Court paid out to him without the written approval of the Magistrate.

(3) If the amount of the costs entered on the summons is not paid into Court with the amount of the claim, the claimant may have judgment entered for such costs or any balance unpaid and the costs of entering judgment.

**Where money paid into Court is accepted.**

9. Where in any case to which Rule 1 (1) (b) of this Order does not apply, the paid into Court accepted amount paid into Court is less than the amount of the claim, or where the whole amount of the claim is paid into Court but there is a claim for some relief other than the payment of money, and the claimant elects to accept the sum or any one or more of specified sums paid into Court in satisfaction of his claim or of the cause or causes of action to which the specified sum or sums relate, the following provisions shall apply –

- (a) the claimant shall within three (3) days after the receipt by him of the notice of payment into Court, notify the Court of his acceptance, following which the Court shall stay proceedings in the action or in respect of any cause of action to which the notice relates;
- (b) the Court shall also notify every defendant; and
- (c) the claimant shall not be entitled to have the accepted sum or sums paid out to him without the written approval of the Magistrate.

**Defendant's costs.**

10. If a claimant fails to give notice of acceptance within the time limited by Rule 1 or Rule 9 of this Order, he may give notice of acceptance subsequently, but the Court may order the claimant to pay any costs reasonably incurred by the defendant since the date of payment into Court, including the costs of



attending Court to obtain the order.

**Counter-claim.**

11. A claimant or other person made defendant to a counterclaim may pay money into Court as if he were a defendant to an action, and Rules 2 to 10 of this Order shall apply with the necessary modifications.

**Payments into Court not to be communicated to Magistrate.**

12 Except in an action to which a defence of tender before action is pleaded, no Court statement of the fact that money has been paid into Court under this Order shall at the trial of any action be made to the Magistrate until all questions of liability and amount of debt or damages have been decided, but the Magistrate shall in exercising his discretion as to costs take into account both the fact that money has been paid into Court and the amount of the payment:

Provided that this Rule shall not apply where money in Court has been accepted or taken out in satisfaction.

**Paying out.**

13. Money paid into Court under the provisions of this Order shall not be paid out without the approval in writing of the Magistrate.

**ORDER 14**

**Evidence and Witnesses**

**Admission by any party.**

1. Any party to an action may give notice to any other party that he admits the any party truth of the whole or any part of the case of the other party, and no costs incurred after the receipt of the notice in respect of the proof of any matters admitted shall be allowed.

**Evidence to be taken orally.**

2. Except as otherwise provided by these Rules or any applicable Law, the be taken orally evidence of witnesses at the trial of any action shall be taken orally on oath or affirmation, and where, by these Rules, evidence is required or permitted to be taken by affidavit, it shall nevertheless be taken orally on oath or affirmation if the Court, on any application before or at the trial, so directs.

**Power to order proof by affidavit.**

3. Where for the purpose of establishing any fact to which an exhibit to an proof by affidavit affidavit is required, the following shall be acceptable as exhibits to the affidavit –

- (a) print out of e-mails;
- (b) print out of short message service from the network provider;
- (c) image recording of any fact submitted in the manner acceptable to the Court, stating in writing, the existence of such video recording; and
- (d) audio recording.

**Use of affidavit without order.**

4. Where the circumstances require, a party may use an affidavit to establish the without order existence of any fact so long as he provides the other party the opportunity to have notice of the content of the affidavit and to respond in order to contradict or accept the content of the affidavit.

**Service of summons to witness.**

5. Any of the parties to any cause or action may request the Court to issue witness summons witness summons, with or without a clause requiring the production of the books, deeds, papers and writings in the possession or control of the person summoned as a witness and such summons shall be served by delivery to the person summoned.

**Witnesses in general to be out of hearing.**

6. Immediately prior to the trial of any cause or action in which witnesses are to be examined the Court may direct that all witnesses shall leave the Court and

out of hearing shall be kept out of Court as provided by Section 187 of the Evidence Act:

Provided that the Magistrate may in his discretion permit professional and technical witnesses to remain in Court: and

Provided further, that failure to comply with the provisions of this Rule, shall not invalidate the proceedings.

**Penalty for disobeying witness summons.**

7. (1) Subject to the provisions of the Evidence Act any person summoned as a witness in civil proceedings who –

- (a) refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced; or
  - (b) refuses to be sworn or make an affirmation or give evidence;
- shall pay a fine of a sum not exceeding forty thousand Naira (N40,000:00) as the Magistrate may direct:

Provided also that, where the person so summoned, has not appeared, penalty shall not be pronounced until a notice has been served upon him personally.

(2) Any person present in Court who is required to give evidence but refuses without sufficient cause to be sworn or make an affirmation or to give evidence shall be liable to pay a fine referred to in this Section.

(3) The Magistrate may in his discretion direct that the whole or any part

of any such sum, after deducting the costs, shall be applicable towards indemnifying the party injured by the refusal or neglect.

(4) Any sum forfeited under this Rule shall be treated as if it were a judgment debt and shall be payable forthwith to the Court unless time for payment is allowed by the Magistrate.

#### **Evidence of witness about to leave Lagos.**

8. (1) At any time after an action is begun and before the trial, the Magistrate witness about to may take the evidence of a witness who is about to leave Lagos or who, from leave Lagos illness or old age or any other sufficient cause, is not likely to be able to be present at the trial. Such evidence may be taken at some convenient place outside the Court, if necessary.

(2) The note of the evidence shall be signed at the time by the Magistrate taking the same.

(3) The evidence so taken and recorded may not, except for special reasons to be recorded in the Magistrate's notes, be admitted as evidence at the trial unless it is shown that the party against whom it is offered had an opportunity of being present and of cross examining the deponent.

#### **Prisoners as witnesses.**

22. (1) It shall be lawful for the Court to issue an order to bring up any person witnesses confined as a prisoner under any sentence or order of commitment for trial, or otherwise, or under civil process, to be examined as a witness in civil proceedings pending in the Court:

Provided that such order shall not be made as of course, unless the Court shall have reasonable grounds for believing that the evidence of the prisoner is likely to be material.

(2) The officer in charge of the prison or person in whose custody such prisoner may be, shall obey such order by bringing the prisoner to the Court in his custody, or by delivering him to an officer of the Court as the order may direct, and if the prisoner shall under the terms of the order be delivered to any officer of the Court, the officer in charge of the prison or other person shall not be liable for the escape of such prisoner:

Provided that the officer in charge of the prison or other person as aforesaid shall not be bound to obey the order unless there is tendered to him a reasonable sum for the conveyance and maintenance of a proper officer or officers and of the prisoner, in going to, remaining at and returning from the Court.

**Use of evidence taken at trial.**

10. Evidence taken at the trial of an action may be used at any subsequent taken at trial stage of the same proceedings.

**Practice as to taking evidence.**

24 The practice with reference to the examination, cross examination and re-taking evidence examination of a witness at the trial of an action shall extend and be applicable to oral evidence taken in any proceedings at any stage.

**ORDER 15**

**Affidavits and Documentary Evidence**

**Contents of affidavits.**

25. (1) All affidavits shall be made by some person who has knowledge of the affidavits facts stating –

- (a) the deponent's residence and occupation;
- (b) what facts are within his own knowledge and his means of knowledge; and

(c) what facts are deposed to on information derived from other sources and what the sources are.

(2) Affidavits shall be expressed in the first person and shall be drawn up in numbered paragraphs.

**Cross-examination of deponent.**

2. Subject to the provisions of these Rules and the Evidence Law, where a party desires to cross-examine a deponent who has made an affidavit filed on behalf of the other party in any proceedings, the following provisions shall apply –

(a) he may cause to be served on the other party through the Court a notice requiring the production of the deponent for cross-examination at the trial; and

(b) a witness summons may be issued on the application of the party served with the notice for the purpose of summoning the deponent to attend for cross-examination.

**Documents admitted in evidence.**

3. Every document admitted in evidence shall be put in and read or taken as read in evidence by consent and shall be marked by the Court with a distinguishing mark or letter, and a note of the date and character of all material documents admitted in evidence shall be made by the Court in the record of the case, and each document admitted shall be retained by the Court until the proceedings have been concluded and the period for filing a notice of appeal has elapsed:

Provided that the Court may, in special circumstances, return a document to the party who put it in, on such party giving an undertaking deemed sufficient by the Court, to keep the document marked and to return it to the Court if an

appeal is lodged. After a notice of appeal has been filed, the Court or Magistrate shall not allow a document to be returned to the party who put it in at the trial unless the permission of the appeal Court has first been obtained.

**Documents not admitted in evidence.**

4. Where the Court does not allow a document to be produced, the document admitted in evidence shall be marked as having been offered in evidence but rejected.

**ORDER 16**

**Mediation and Conciliation**

**Order to attend Mediation.**

1. At any stage of the proceedings, where parties to the action consent, the Court mediation may make an order referring disputes to the Citizens' Mediation Centre.

Duration of 2. Mediation proceedings shall not in any event exceed five (5) days.  
mediation proceedings

**Time within which to take any step.**

3. The time within which to take procedural steps under this Rule shall not run to take any step during the period of mediation.

**Cost of mediation.**

4. The cost of mediation shall be without charge.

**Report**

5. A Court appointed mediator shall report the outcome of the mediation to the Court in writing to be made a consent order of the Court within three (3) days of the end of the mediation whether or not a settlement had been achieved.

## **ORDER 17**

### **Trial**

#### **Setting down for trial.**

1. (1) The claimant shall not later than ten (10) days after filing his claim, write to the Magistrate requesting the Magistrate to fix a date for trial.

(2) Where the claimant fails to make a request for a trial date, the Court may strike out the matter.

(3) Where the Magistrate fixes a date for trial, a hearing notice shall be issued by the Court and served on the parties within three (3) days, subject to the payment of the prescribed fee by the claimant.

#### **Trial in open Court .**

2. Trial of civil actions shall be held in open Court:

Provided that a Magistrate may order a trial to be held in camera where a public trial would defeat public interest:

Provided also that this Rule shall not be deemed to be infringed by the provisions of Order 14 Rule 3 (c).

#### **Where claimant does not appear.**

3. (1) If the claimant does not appear at the trial of an action, then, except as does not appear otherwise provided in these Rule and an order for costs shall be made against the claimant.



(2) Where any action has been struck out under these Rules, the Court may reinstate it for trial on the same or any subsequent day on such terms as the Court may deem just and the provisions of paragraph (2) of the next succeeding Rule shall apply as regards any costs awarded against the claimant under this Rule as if the claimant had been non-suited.

(3) Where the claimant does not appear at the trial but the Court has received from him an affidavit which is admissible in evidence by virtue of any Law or Rule, the proceedings shall not be struck out but the claimant shall be deemed to have appeared at the trial and to have tendered the evidence in the affidavit.

**Where claim is not proved.**

4. (1) Where the claimant appears but does not prove his claim to the satisfaction not proved of the Court, it may either non-suit him, or give judgment for the defendant.

(2) Where after a claimant has been non-suited, a subsequent action for the same or substantially the same cause of action is brought before payment of any costs awarded to the defendant when the claimant was non-suited, the Court may stay the subsequent action until such costs have been paid.

**Judgment where defendant does not appear.**

5. If the defendant does not appear, the Court, upon proof of service and of facts defendant does entitling the claimant to relief, may give such judgment or make such order as not appear may be just.

**Defendant appearing and admitted claim.**

6. Where the defendant appears on the day fixed for the trial and admits the claim, the Court shall give judgment or make such order as may be just.

**If proceedings discontinued, counter-claim may proceed.**

7. Where the defendant sets up a counterclaim and the claim of the claimant is discontinued, struck out, stayed or dismissed, the counter-claim may be proceeded with and the defendant, on proof of it, may have judgment.

**Non-appearance on counter-claim.**

8. If a person, not originally a party to the proceedings, who has been served with a counterclaim, does not appear at the trial, the Court may proceed with the trial and may give such judgement or make such order as may be just against the person so served, or may adjourn the trial and give such directions as it thinks fit.

**Exclusion of counter-claim.**

9. Where the Court is of opinion that a counterclaim could be better disposed of in independent proceedings, the Court may of its own motion or on the application of any party order the counterclaim to be excluded.

**Judgment where counter-claim.**

10. (1) Where a counterclaim is established against the claim of the claimant and there is a balance in favour of one of the parties, the Court may give judgment accordingly.

(2) Nothing in the preceding paragraph shall affect the discretion of the Court to award costs in such proportions as it thinks fit.

**Misjoinder of claimant not to defeat counter-claim.**

11. Where any person has been improperly or unnecessarily joined as a claimant, a defendant who has set up a counterclaim may proceed with the counterclaim against the other claimant.

**Injunctions.**

12. (1) In any proceedings in which an injunction has been or might have been claimed, a claimant may, before or after judgment, apply for an injunction to restrain the defendant from -

- (a) the repetition or continuance of the wrongful act or breach of contract complained of; or
- (b) the commission of any wrongful act or breach of contract of a like kind, relating to the same property or right or arising out of the same contract; and the Magistrate, in addition to giving judgment for such damages and costs as the claimant may be entitled to, may grant the injunction on such terms as may be just.

(2) An application under this Rule may be made -

- (a) before the trial of the action in accordance with Order 9 Rule 6;
- (b) at or immediately after the trial, in which case the order shall be included in the judgment; or
- (c) after judgment, on notice and supported by affidavit.

**Inspection by Magistrate.**

13. (1) The Magistrate may inspect any property or thing concerning which any question may arise in any proceedings.

(2) The expenses of any inspection under this Rule shall be paid in the first instance by the party on whose application the inspection is made or ordered, or, if made or ordered without an application, by the claimant, and shall be costs in the proceedings unless the Magistrate otherwise orders.

**Evidence and the records of proceedings.**

14. (1) At the trial of any proceedings, Court records shall be taken by Court recorded in the manner prescribed by law.

(2) The record of proceedings shall be certified when endorsed by the presiding Magistrate and the Court Recorder who transcribed the Court proceedings.

(3) The record of the Court proceedings shall be made available to any member of the public upon payment of the prescribed fees.

(4) The record of proceedings in these Rules shall include the verbatim minutes of the proceedings; and all other documents, letters, exhibits, affidavits, judgments and decisions used in the action.

(5) Where at the hearing of any Court proceedings and the Court Recorder is not available for any reasons whatsoever, the Magistrate shall take a record of proceedings by hand and this shall not invalidate the trial.

**Procedure when both parties appear.**

15. If on the day of trial, both parties appear, the claim shall be read to the defence and the Magistrate shall require him to make his answer or defence, and on such defence or answer being made, the Magistrate shall immediately record the same and shall, except where the Court considers it necessary to order otherwise, proceed in a summary way to hear and determine the cause, without further pleading or formal joinder of issue.

**Evidence may be given of any claim which is not in summons.**

16. Where the Magistrate deems it necessary, evidence may be given in every case that will enable the Magistrate to determine the issues in controversy

which is not in summons between the parties.

**Order of proceedings at trial of action.**

17. (1) The party on whom the burden of proof lies shall be entitled to address the Court at the commencement of the case. When the party who began has closed his case, his opponent shall, provided there is any case to answer, announce whether he intends to adduce evidence or not; and if he announces that he does not intend to call evidence the party beginning shall be entitled to address the Court for a second time, for the purpose of summing up his evidence, and his opponent shall have a right of reply.

(2) When the party beginning has concluded his case, if the opponent decides to call witnesses, he shall be at liberty in his turn, to open his case, call his witnesses and sum up and comment not only on his own evidence but on the whole case.

(3) If the party opposed to the party who begins adduces evidence, the party beginning shall be at liberty to reply generally on the whole case.

**Examination of witnesses.**

18 The Magistrate after an opening address, if any has been made, shall proceed to hear the claimant and such witnesses as the claimant may call and examine such other evidence as he may adduce in support of his claim and also to hear the defendant and such witnesses as he may call and examine and such other evidence as he may adduce in his defence and also to hear such other witnesses as the claimant may, with leave of the Court, call and examine in reply:

Provided that where the party on whom the burden of proof lies is not the claimant, the foregoing provisions of this paragraph shall apply as if the party on whom the burden of proof lies were the claimant.

## **ORDER 18**

### **Oral Address**

#### **Court may order oral address.**

(1) The court may order oral address by the parties.

#### **Oral address to be brief and concise.**

(2) An oral address to the court shall be brief and concise and shall not exceed 20 minutes by each party except as the Magistrate otherwise directs.

## **ORDER 19**

### **Judgments and Orders**

#### **Giving and entering judgment.**

1. (1) At the conclusion of the hearing of an action the Court shall either at the same or at a subsequent sitting deliver judgment or make a final order in the action and every judgment or final order shall be in writing and signed by the Magistrate.

(2) If the parties to a proceeding in the Magistrate's Court have reached an agreement about a matter in dispute in the proceedings, the Court may, on application by the parties, make an order or judgment on the terms of the agreement.

(3) If an order is made by consent, that fact should be stated on the face of the order.

#### **Orders of Court.**

2. Upon payment of the prescribed fee, a person shall be entitled to obtain an extract of any ruling or judgment containing the orders of a Court with or without the record of proceedings.

#### **Service of judgments and orders.**

3. Except in cases where disobedience to an order entails attachment or judgments and orders committal for contempt, it shall not be necessary to serve judgments and orders unless the Court otherwise directs.

#### **Judgment to state time for doing an act ordered.**

4. Every judgment or order requiring any person to do an act other than the payment of money or costs, shall state the time within which the act is to be done  
act ordered and where no time is stated, the provisions of Rule 7 shall apply.

#### **Judgment in action for recovery of chattel.**

5. If the claimant in an action for the recovery of any chattel or thing establishes his claim, judgment shall be given either for the delivery of the chattel or thing or for payment of the value as proved at the trial, as the Court may think fit, and in either case the Court may award in addition such damages as the justice of the case may require.

#### **Orders to be made.**

6. Subject to particular Rules, the Court may in all actions make any order which the circumstances of the action justify and which it considers necessary for doing justice, whether such order has been expressly asked for by the person entitled to the benefit of the order or not.

**Order to be obeyed without demand.**

7. A person directed to pay money or do any other act is bound to obey the order without any demand for payment or performance. If no time is specified for the doing of any act (not being payment of money), the act shall be done within five (5) days after the order has been made unless the Court shall enlarge the time by the same or any subsequent order.

Rule 12 of this Order shall regulate the time for complying with orders for payment of money.

**Payment and suspension of judgments and orders.**

8. (1) When a judgment is given or an order is made by a Court under which a sum of money of any amount is payable, whether by way of satisfaction of judgments and orders the claim or counterclaim in the proceedings or by way of costs or otherwise, the Court may, as it thinks fit, order the money to be paid either –

(a) in one sum, immediately or within such period as the Court may fix; or

(b) by such instalments payable at such times as the Court may fix.

(2) Where a judgment has been given or an order made for the payment of any sum by instalments or otherwise, and it appears to the Court that the person liable under the judgment or order is unable to pay the sum ordered to be paid at the time or by the instalments ordered, the Court may, on the application of such person made on notice, order the amount unpaid under the judgment or order to be paid by instalments, or, if already payable by instalments, by the same or smaller instalments, and may from time to time vary such order.

**Execution and power to stay execution.**

9. The issue of any execution in any proceedings shall be in accordance with the to stay execution provisions of the Sheriffs and Civil Process Law.



(2) If at any time it appears to the satisfaction of the Magistrate that any party to any proceedings is unable from any cause to pay any sum recovered against him, whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise, or any instalments, the Magistrate may in his discretion, stay any execution issued in the proceedings for such time and on such terms as the Magistrate thinks fit, and so from time to time until it appears that the cause of inability has ceased.

#### **Finality of Judgment.**

10. Every judgment and order of the Court shall, except as provided by the Law or any other Law, be final and conclusive between the parties; but the Court shall have power to non-suit the claimant in every case in which satisfactory proof shall not be given entitling either the claimant or defendant to judgment.

#### **Where money to be paid to a party.**

11. Where money payable under a judgment or order is directed to be paid by one party to another party or his legal practitioner instead of into Court, a direction to that effect shall be inserted in the judgment or order.

#### **Time for payment of a judgment debt or costs.**

12. (1) Where judgment is given or an order is made for the payment of, otherwise than by instalments of a sum of money and costs or for the payment of costs, the money and costs or the costs shall be payable on such day as may be specified in the judgment or order or if no day is specified then at the expiration of five (5) days from the date of the judgment or order:

(2) Notwithstanding the provisions of the last preceding paragraph, the

Court may at any time before the expiration of the period allowed for payment, on application made on notice, make an order for payment at an earlier date.

**Payment in reduction of amount under judgment.**

13. A person liable to pay money under a judgment or order may at any time pay money into Court in reduction of the amount payable by him:

Provided that where no order has been made for payment by instalment, the registrar shall not receive any sum less than the full amount payable, if the person entitled to the benefit of the judgment or order has, at or before the time when such sum becomes payable, given written directions to the registrar not to receive any sum less than the full amount payable, and if in any such case, any less sum is paid into Court and is inadvertently received, the Court shall, if so directed in writing by the person entitled to the benefit of the judgment or order, place the sum so paid to credit of the person by whom it was paid, and shall on request, return the amount to him.

**Notice of payment into Court.**

14. Where any payment into Court is made under a judgment or order, the Court shall notify the person entitled to the money.

**Where duty is payable.**

15. Before executing any order directing the payment or transfer of any fund in respect of which any duty is payable to the revenue, it shall be the duty of the registrar, before making the payment or transfer, to acquire a certificate from the proper officer of, or the production of the receipt for the payment of the duty chargeable.

**Orders enforceable by committal.**

16. (1) Orders in the nature of an injunction and all orders within the competence of the Court which, if they were made in an action in the Court, could in that Court be enforced by attachment, committal, seizure or sale, may be enforced by order of the Magistrate by committal.

(2) The Magistrate may give judgment for one party against another in relation to the whole or any part of a proceeding if the Court is satisfied that the other party has no reasonable justification of successfully defending the whole or any part of the proceeding.

**ORDER 20****Fees**

Fees Subject to the provisions of the Magistrates' Courts Law, the fees set out in the Schedule to these Rules shall be paid in the Registry at or before the time of the issue or filing of the process or document to which such fees relate or, where a fee is prescribed for the performance of any act, before such act is performed.

**ORDER 21****Costs****Fees.**

1. Subject to the provisions of any Law or Rule, the costs of proceedings on the civil side in a Magistrate's Court shall be in the discretion of the Court and the Court shall have power to grant a lump sum.

**Costs.**

2. (a) In all civil proceedings, it shall be the duty of every legal practitioner

to write a letter of demand before commencing action in a Magistrates' Court.

(b) Failure to write the letter or failure to comply with the requirements of letter of demand shall be considered in determining cost to be awarded to the appropriate party.

**Counsel cost.**

3. Where the act or conduct of any legal practitioner appearing on behalf of the party is in the opinion of the Court directly responsible to the events leading to an award of cost, the legal practitioner shall be personally responsible for the payment of the costs.

**Consideration for award of cost.**

4. (a) In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been necessarily put in the proceedings, as well as compensation for his time and effort in coming to Court. The Magistrate may take into account all the circumstances of the case.

(b) When costs are ordered to be paid, the amount of such costs shall, if practicable, be summarily determined by the Magistrate at the time of delivering the judgment or making the order.

**Enforcement.**

5. An order for the payment of costs may be enforced in like manner as any other order of a Magistrate's Court for the payment of money.

**Stay of proceedings where Order for costs is not complied with.**

6. Where the Court orders cost to be paid, or security to be given for costs by

any party, the Court shall order all proceedings by or on behalf of that party in costs is not complied with the same suit or proceeding, or connected therewith, 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.

**Security for costs.**

7. (1) In all proceedings the Court may either of its own motion or on the application of any defendant, if it deems it fit to require any claimant or defendant to any suit, either at the commencement or at any time during the progress, to give security for the costs of any particular proceeding to the satisfaction of the Court, by deposit or otherwise.

(2) The general principle to be applied by the Court when ordering a claimant to give security for costs is that no person shall be precluded on the ground of poverty from commencing an action except in special circumstances such as where the claimant does not reside, or is only residing temporarily in Lagos, or where the claimant has already failed to pay costs awarded against him.

(3) A defendant shall not be ordered to furnish security for costs except in special circumstances, for example, where he is pursuing a distinct counterclaim or applies for a transfer of the action to the High Court although the action is within the jurisdiction of the Magistrate's Court.

**Mode of giving security.**

8. The provision of these Rules shall be followed when security for costs is to be security given by bond or by a deposit of money.

**ORDER 22**

**Receivers**

**Appointment.**

1. (1) Where before, or at the hearing of any proceedings it appears to the Court expedient that a receiver be appointed, such an appointment may be made by the Magistrate of his own motion or on application.

(2) The order shall be in writing.

**Receiver to give security.**

2. Every Receiver other than an officer of the Court shall, unless otherwise

security ordered, give such security to the Registrar for the faithful discharge of his duties, and the payment over of money, as the Magistrate shall direct.

**Remuneration.**

3. Every Receiver shall, unless otherwise ordered, be allowed proper remuneration.

**Accounts.**

4 (1) Every Receiver shall deliver at the Registry of the Court for examination by the Registrar such accounts at such time or times as the Magistrate may direct.

(2) Every such account shall unless otherwise ordered be verified by affidavit.

(3) When any such account has been delivered, the Court shall fix a time for the passing of the account and shall give notice of it to the Receiver and the parties.

**Passing account.**

5. At the time appointed for the passing of the account, the Receiver and any party may, and if required by the Registrar, attend at the Registry and the Registrar may require the Receiver to produce any voucher necessary for verifying the account and may disallow any item not proved to his satisfaction.

**Registrars certificate.**

6. The Registrar shall after examining the account make and sign a certificate

stating the result of the examination.

**Review by Magistrate.**

7. The Receiver or any party dissatisfied with the allowance or disallowance by the Registrar of any item in the account may apply to the Magistrate in chambers for a variation or review of the decision as contained in a certificate of account and the Magistrate may make such further order on the application as he thinks fit.

**Payment of balance into Court.**

8. Any balance certified to be due from the Receiver shall, subject to the next Succeeding Rule, be paid into Court within seven (7) days of the date of the Registrar's certificate.

**Payment direct to Party entitled.**

9. The Magistrate may at any time order the Receiver to pay over to the party entitled to the beneficial interest or to the guardian of any infant any accruing rents or interest instead of paying them into Court, and may authorise the Receiver to take credit for such payments in his accounts.

**Default by Receiver**

10. Where any Receiver has failed to deliver or pass any account or to make any payment certified to be due from him, the Magistrate may require the Receiver to attend before him to show cause why such default has been made and may make such order as he deems fit, including a direction to charge the Receiver with interest at five per cent (5%) per annum on any balance which has remained in his hands for more than seven (7) days from the date on which it was certified to be due or the Magistrate may discharge the Receiver and appoint another and make such order as to costs as he deems fit at the Central Bank of Nigeria approved rate of interest.



## **ORDER 23**

### **Miscellaneous**

#### **Effect of non-compliance.**

1. (1) Where in beginning or purporting to begin any proceedings there has by non-compliance reason of anything done or left undone, been a failure to comply with the requirements of these Rules, the failure shall nullify the proceedings.

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

#### **Notices.**

2. All notices required by these Rules shall be in writing unless expressly authorised by the Court to be given orally.

#### **Computation of time.**

3. (1) Where anything is required by these Rules to be done within a specified of time period of or after the happening of a particular event, the period shall be computed from the end of the day on which the event happens unless the period is expressed to be inclusive of such day.

(2) Where anything is required by these Rules to be done within a period not exceeding forty-eight hours or where a period not exceeding forty-eight hours is

required by these Rules to elapse between the doing of an act and the happening of a particular event, no Sunday or public holiday shall be included in the computation of that period.

(3) Where the time prescribed for doing any act expires on a Sunday or public holiday and for that reason the act cannot be done on that day, the act shall be in time if done on the next day on which the registry of the Court is open.

#### **Legal Practitioner.**

4. Where a legal practitioner signs on behalf of a claimant the particulars required for practitioner the entry of a claim or signs on behalf of the defendant a memorandum of acceptance acting for party of service of a summons, or a defence, counterclaim or admission, the legal practitioner shall be considered the legal practitioner for the claimant or defendant as the case may be until the action is finally concluded or notice of change of legal practitioner is given in accordance with this Rule.

(2) Where a party for whom a legal practitioner has acted desires to change his legal practitioner, he or the new legal practitioner shall give not less than forty-eight hours' notice to the Court and to every other party of the appointment of the new legal practitioner with the new legal practitioner's address for service.

(3) Where a party for whom a legal practitioner has acted desires to act in person, he shall give notice to the Court stating his intention to act in person and giving an address for service.

(4) Where a legal practitioner who is acting for a party desires to withdraw before the action is concluded, he shall write to the Magistrate in chambers for permission to withdraw and shall give reasons for his application and the Court may, if it deems proper, grant such permission.

(5) Any Rule which requires as many copies of documents as there are claimants or defendants to be filed, served, delivered, sent or given, shall be sufficiently complied with, as regards two or more claimants or defendants represented by the same legal practitioner, if one copy of the documents is filed, served, delivered, sent or given in respect of the claimants or defendants so represented.

**Officer not to sign ledger on behalf of party or become surety in any civil proceedings.**

5 No officer of a Magistrate's Court shall –

- (a) sign any document or any other book of the Court, or receive money,  
or become sureties on behalf of any party to proceedings in the Court; or
- (b) become a surety in any proceedings where security is required.

#### **Payment of Court Fees.**

6. Any obligation imposed by these Rules on the Court to do any act at the instance of any party to proceedings in the Court shall be subject to the provisions of Order 19 requiring the payment of a Court fee on the proceedings, and accordingly the Magistrate may, notwithstanding anything in these Rules, postpone the doing of the act until any obligation to pay fees has been discharged.

#### **Expense of Advertisement.**

7. The expense of advertisement in any proceedings in the Court shall be in the first instance by such party as the Court may direct, and shall be paid to the registry before the advertisement is inserted.

#### **Security**

8. Where by or under any Law or Rule any person is required to give security in relation to proceedings in the Court, then subject to any express provision in any Law or Rule the –

- (a) security shall be given by a deposit of money or by a bond;
- (b) amount of the security and the number of sureties (if any) shall be  
fixed by the Magistrate; and

- (c) the person giving the security shall give it at his own expense.

#### **Deposit.**

9. Where security is given by a deposit of money, the following provisions shall apply –

- (1) The person giving security shall deposit the money in the registry of the Court

and shall file a memorandum signed by him or his legal practitioner and approved by the Court stating the conditions on which the deposit is made.

(2) Upon the deposit being made, the Registry shall issue to the person making the deposit a receipt and shall deposit a copy in the Court's file.

(3) The Magistrate may order the money to be paid out at such time and to such person as he thinks fit.

### **Bond**

10. Where security is given by a bond, the following provisions shall apply –

(1) The bond shall be given by the person giving security and by the sureties (if any are required).

(2) Where the bond is to be given by the person giving security and sureties –

(a) each surety shall make an affidavit and file it in the Court;

(b) the Court shall give notice to the parties and shall state in the notice to the obligee that any objection which he may have to make to the sureties or any of them must be made on the day stated in the notice;

(c) the bond shall be executed before a Commissioner for Oaths and filed in Court upon payment of the prescribed fees; and

(d) no officer of the Court shall become surety to a bond.

(3) The bond shall be deposited with the Court until the proceedings are finally disposed of.

### **Duplicates.**

11. In the event of any warrant, order or other document issued by the Court being lost or destroyed, a duplicate may be issued from time to time, upon payment of the prescribed fees and upon proof by affidavit or otherwise to the satisfaction of the Magistrate, of the loss or destruction of the document.

**Copies.**

12. A copy of any document in the custody of the Court shall be prepared by the Registrar for any person entitled to require it upon payment of the prescribed fees.

**Impounding documents.**

13. (1) The Court may order any document put in evidence at any stage of an documents action to be impounded.

(2) A document which has been impounded shall not be delivered out of the custody of the Court or inspected, except on an order signed by the Magistrate:

Provided that upon the request in writing of a Law Officer of the Lagos State the impounded document shall be given into the custody of such Law Officer.

**Filing.**

14. No document shall be filed unless it bears the reference number of the proceedings and the names of the parties and unless the prescribed fee has been paid.

**Interpreters.**

15. Persons appointed as interpreters to the Court shall be sworn on first appointment and need not be sworn at each trial thereafter.

**Custody of records.**

16. All books and records kept for the purposes of the Law shall remain in the custody of records the Court, but may be removed by leave of the Magistrate.

**ORDER 24****Custody of Money****Court Administrator to take charge of fees and other payments.**

1. All fees payable in respect of civil proceedings under the Law, and all penalties, forfeitures and fines imposed under the Law or any other law, if not by the relevant take charge of fees Law directed to be otherwise applied, shall be paid to the Registry and accounted for and other payments by the Court Administrator to the Accountant-General of the State.

**Court Administrator to account to Accountant-General.**

2. The Court Administrator from time to time as often as he shall be required so to do by the Accountant-General of the State, shall account in full to the said Accountant- to account to General for all moneys which have been received by him under these Rules and shall

Accountant-General produce for examination all books and papers which the said Accountant-General shall consider necessary for the elucidation of such accounts and the proper checking of same.

**Audit of accounts.**

3. All accounts kept by the Court Administrator shall be audited at such time and in such manner as the Auditor-General of Lagos State may require.

**Court Administrator to enter all moneys in Cash Book.**

4. All moneys coming into the Registry of every Court building in the course of business of the Court including deposits and payments into that Court shall be entered enter all moneys into a book to be kept for that purpose, to be called the Cash Book, which shall record in Cash Book the number of the actions in respect of which each sum is paid, and (in the case of civil actions) the suit number of the action. Every entry in the Cash Book shall show whether the payment is made by claimant or defendant, and whether for Court fees, fine, penalty, forfeiture, award, or costs as the case may be.

**Court Administrator to comply with financial instructions.**

5. All moneys coming into the registry of every Court building in the course of the business of the Court shall be retained, deposited and paid out in accordance with comply with the provisions of the Government financial instructions or regulations for the time financial instructions being in force.

**Interpretation**

6. In these Rules, unless the context otherwise requires;

**“ address for service”** means the address of a place where any document may be left for, or sent by post to, the party giving the address;

**"admission"** and **"counterclaim"** mean respectively any document, which shows that the defendant desires to ask for time for payment of the amount of the claim and costs, or to set up a counterclaim.

**“date of commencement of trial”** shall have the same meaning as contained in Section 42 of the Magistrates’ Courts Law;

**“guardian”** includes guardian ad litem, committee and next friend;

**"Lagos"** means Lagos State;

**"Magistrate's Court"** means a court established by the Magistrates' Courts Law;

**“Magistrate in chambers”** means the Magistrate carrying out judicial or other functions prescribed by Law other than in open Court;

**"process"** includes any summons to appear and answer a claim, any order made by the Court and any other document or notice required, for any purpose connected with the Court, to be served on any person;

**“Registrar”** means registrar of the Magistrate's Court;

**"Registry"** means the Court office occupied by the Registrar and other officers of the Court.

#### **Citation**

7. These Rules may be cited as the Magistrates' Court (Civil Procedure) Rules 2009.