

**GOVERNMENT OF
AKWA IBOM STATE OF NIGERIA**



**HIGH COURT
CIVIL PROCEDURE
RULES, 2024**



AKWA IBOM STATE HIGH COURT (CIVIL PROCEDURE) RULES, 2024

www.sabilaw.org

Printed by
Modern Business Press Ltd.
modernbiz61@gmail.com

GOVERNMENT OF AKWA IBOM STATE OF NIGERIA
HIGH COURT CIVIL PROCEDURE RULES, 2024
(1ST DAY OF NOVEMBER, 2024)

In exercise of the authority conferred on me by Section 274 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 76 of the High Court Law, Cap. 55, Laws of Akwa Ibom State of Nigeria, 2000, the High Court Rules Committee pursuant to its power under Section 77 (1) of the High Court Law aforesaid and all other enabling powers on that behalf hereby make these Rules.

.....
HON. JUSTICE EKAETE F. FABIAN-OBOT
CHIEF JUDGE OF AKWA IBOM STATE

www.sabilar.org

AKWA IBOM STATE HIGH COURT (CIVIL PROCEDURE) RULES

CONTENTS

ORDER 1

Citation and Interpretation

1. Citation.
2. Interpretation.

ORDER 2

Place of instituting and trial of suits

1. Suits relating to land and property distrained or seized.
2. Suits for recovery of penalties, forfeitures and against public officers.
3. Suits upon contract
4. Other suits.
5. Suits commenced in the wrong Judicial Division.

ORDER 3

Court Documents

1. Scope of this Order.
2. Preparation of documents.
3. Filing of documents
4. Signature on documents by mechanical means.
5. Manual/Electronic filing
6. Register of claims.
7. Supply of documents to a party from Court records.
8. Supply of documents to a person who is not a party to proceedings from Court Records.
9. Supply of documents from Court records: General.

ORDER 4

Form and Commencement of Proceedings

1. Types of claim Form.
2. Proceedings which must be begun by Writ.
3. Proceedings begun by Writ of Summons.

4. Proceedings begun by Originating Summons.
5. Proceedings begun by Originating Motion, Petition or Judicial Review.
6. Registrar to indicate date and time

ORDER 5

Issuance of Originating Processes

1. Sealing and copies of Originating Process.
2. Action by Registrar after Sealing.
3. Copies to be served.
4. Probate Action: Affidavit with Originating Process.
5. Lifespan and renewal of Originating Process.
6. Loss of Originating Process.
7. Concurrent Originating Process

ORDER 6

Service of Documents

1. Document servers.
2. Service of Process.
3. Service of process on Legal Practitioner.
4. Mode of service not personal.
5. Substituted service.
6. Service by electronic means
7. Service on persons under legal disability.
8. Service on detainees and prisoners.
9. Service on partners.
10. Service on Nigerian corporate bodies.
11. Service on foreign corporations.
12. Service outside the State
13. Service on local agent of principal outside jurisdiction.
14. Violent resistance to service.
15. Proof of service generally.
16. Expenses of service.
17. Time of service.
18. Service register.

ORDER 7

Service out of Nigeria and Service of Foreign Court Documents

1. Service of Court documents outside Nigeria.
2. Service Abroad by Letter of Request.
3. Where leave is given or not required for service abroad.
4. Service of Foreign Court documents in Jurisdiction.
5. Saving of other modes of service.
6. Substituted service of foreign documents.

ORDER 8

Appearance

1. Mode of entry of appearance. Civil Form 11.
2. Defendant appearing in person or represented by Legal Practitioner.
3. Fictitious address.
4. Defendants appearing through the same Legal Practitioner.
5. Late appearance.
6. Intervener in Probate Matters.
7. Recovery of land.
8. Landlord appearing.
9. Person under legal disability appearing.
10. Tenant.

ORDER 9

Default of appearance

1. Default of appearance by infant or person under legal disability.
2. Default of appearance generally.
3. Liquidated demand.
4. Liquidated demand: several defendants.
5. Pecuniary damages.
6. Detention of goods, damages and liquidated demand.
7. Recovery of land.
8. *Mesne* profit.
9. Judgement for costs upon payment satisfaction, etc.
10. Actions by money lenders.
11. Default of appearance in actions not otherwise specifically provided for.

12. Compulsory service.
13. Setting aside of Judgement.

ORDER 10

Fast Tract Procedure

1. Officer in charge of Fast Track Registry.
2. Request to proceed by way of Fast Track. Civil form 12.
3. Maximum number of Fast Track cases.
4. Presentation, Approval or Disapproval of Fast Track Originating Process. Civil Forms 12, 13 and 14.
5. Duration of litigation.
6. Service of Originating Process.
7. Filing of Defence and Reply.
8. Adjournment.
9. Trial and Addresses.

ORDER 11

I. Summary Judgement and Undefended list

1. Where Claimant believes there is no defence.
2. Delivery of extra copies.
3. Service.
4. Where Defendant intends to defend.
5. Where Defendant has good defence, has no good defence or has good defence to part of the claim.
6. Where there are several Defendants.
7. Oral evidence.

II. Undefended List

8. The Undefended List. Affidavit.
9. Copy of affidavit to be served.
10. Notice of intention to defend.
11. Judgement in undefended suit.
12. Oral evidence

ORDER 12

Application for Account

1. Order for account.
2. Application: how made.
3. Account may be taken by a Judge or Referee.
4. Account made to be verified.
5. Erroneous account.
6. Allowances.
7. Delay in prosecution of account.

ORDER 13

I. Parties Generally

1. Persons claiming jointly or severally.
2. Action in the name of wrong Claimant.
3. Misjoinder and Counterclaim.
4. Any person may be joined as Defendant.
5. Action in the name of wrong Defendant.
6. Defendant need not be interested in all the reliefs sought.
7. Joinder of persons severally or jointly and severally liable.
8. Claimant in doubt as to persons from whom redress is to be sought.
9. Persons under legal disability.
10. Trustees, executors, etc. may be sued as representing the estate.
11. Numerous persons.
12. Representation of persons or classes of persons in certain proceedings.
13. Power to approve compromise.
14. Where there is no personal representative.
15. Proceedings not defeated by misjoinder or non-joinder.
16. Application to add or strike out.
17. Where new party is added.
18. Third parties may be joined by any of the parties.
19. Appearance by Third Party.
20. Default by Third Party.
21. Subsequent Third Party.
22. Claim against co-defendant.

II. Actions Against Firms and Persons Carrying on Business in Names Other than their Own

23. Actions by and against firms.
24. Disclosure of partners' names.
25. Appearance of partners.
26. Application of Rules to actions between co-partners.
27. Persons trading as firms.

III. Change of Parties by death or otherwise, etc

28. Action not abated where cause of action survives.
29. Order to carry on proceedings.
30. In case of assignment, creation or devolution of estate or title.
31. Application to discharge Order by persons under disability having a Guardian.
32. Persons under disability having no Guardian.

ORDER 14

Joinder of causes of action

1. All causes of action may be joined.
2. Recovery of land.
3. Claims by Executor and Administrator.
4. Claims by joint Claimants.

ORDER 15

Pleadings Generally

1. Filing of pleadings.
2. Pleadings to state material facts and not evidence.
3. Particulars to be given where necessary.
4. Further and better statements or particulars.
5. Denial.
6. Evasive denial.
7. Denials specifically.
8. Conditions precedent.
9. Certain facts to be specifically pleaded.

10. Pleadings to be consistent.
11. Joinder of issues.
12. Effect of documents to be stated.
13. Notice.
14. Implied contract or relation.
15. Presumptions of law
16. Stated or settled account.
17. Technical objection.
18. Striking out of pleadings.
19. Defamation.
20. Where pleading discloses no reasonable cause of action.
21. Close of pleadings

ORDER 16

Statement of Claim

1. Statement of Claim.
2. Claim beyond indorsement.

ORDER 17

Statement of Defence, Reply and Counterclaim

1. Statement of Defence.
2. Denials generally.
3. Pleadings as to damages.
4. Set-off and Counterclaim.
5. Title of Counterclaim.
6. Claim against persons not parties. Civil Form 15.
7. Appearance by added parties.
8. Reply to Counterclaim.
9. Discontinuance of Claimant's claim.
10. Judgement for balance.
11. Grounds of defence after action brought.
12. Further defence or reply.
13. Concession to defence. Civil Form 16.
14. Filing of Reply.
15. Defendant's Reply to Originating Summons, Motion or Petition.
16. Claimant's Reply in Originating Summons, Motion or Petition.

ORDER 18

Admissions

1. Admission of facts.
2. Notice to admit documents.
3. Notice to admit facts.
4. Judgement or Order upon admission of facts.
5. Costs of notice where documents unnecessary.

ORDER 19

Default of Pleadings

1. Claim for debt or liquidated demand.
2. Several Defendants: default by one.
3. Damages and detention of goods.
4. Default of one or more Defendants.
5. Debt or damages and detention of goods or damages.
6. Claim for recovery of land.
7. Claim for *mesne* profit, arrears or damages.
8. Where a defence is filed to part of claim only.
9. Defendant in default.
10. One of several Defendants in default.
11. Default of Third Party.
12. Setting aside Judgement by default.

ORDER 20

Payment into and out of Court

1. Payment into and out of Court. Civil Form 17.
2. Claimant may receive money. Civil Form 18.
3. Money remaining in Court
4. Several Defendants. Civil Form 19.
5. Payment on Counterclaim.
6. Persons under legal disability.
7. Payment into and withdrawal of money from Court.

ORDER 21

Proceedings in lieu of demurrer

Points of law may be raised by pleading.

ORDER 22

Withdrawal or Discontinuance

1. Withdrawal of appearance.
2. Discontinuance of action without leave.
3. Discontinuance of action with leave.
4. Effect of discontinuance.
5. Stay of subsequent action until costs paid.
6. Withdrawal of Summons or Motion.

ORDER 23

Amendment

1. Amendment of originating processes, pleadings and other processes.
2. Application.
3. Failure to amend after Order.
4. Filing and service of amended process.
5. Date of Order and amendment to be displayed.
6. Clerical mistakes and accidental omissions.
7. General power to amend.

ORDER 24

Discovery and Inspection

1. Discovery by interrogatories.
2. Form of interrogatories. Civil Form 20.
3. Corporations or companies.
4. Objection to interrogatories by answer.
5. Filing of affidavit in answer.
6. Form of affidavit in answer. Civil Form 21.
7. Order to answer or answer further.
8. Application for discovery of documents. Civil Form 22.
9. Verification of business books.
10. Committal of party after service on Legal Practitioner.
11. Committal of Legal Practitioner.

12. Using answers to interrogatories at trial.
13. Discovery against Sheriff.
14. Order to apply to person under legal disability.
15. Application for inspection or copies of items in opponent's control or custody.

ORDER 25

Issues of fact, Inquires, Accounts and References to Referees

1. Issues of facts.
2. Reference to Referee.
3. Instruction to Referee.
4. General powers of Referee.
5. Evidence.
6. Reports made in pursuance of reference under Order.
7. Special directions as to mode of taking account.
8. Accounts to be verified by affidavit numbered and left in the Registry
9. Mode of vouching account.
10. Surcharge.
11. Accounts and inquiries to be numbered. Civil Form 23.
12. Just allowances.
13. Expediting proceedings in case of undue delay.
14. Interpretation of reference to Referee.

ORDER 26

Special Case

1. Special Case by consent.
2. Special Case Order before trial.
3. Special Case to be signed.
4. Application to set down where a person under legal disability is a party.
5. Agreement as to payment of money and costs.
6. Application of Order.

ORDER 27

Cause Lists

1. List of causes for hearing.
2. Weekly Cause List.

3. Public Holidays.
4. Judge unable to sit.
5. Notice Boards.

ORDER 28

Trial Proceedings

1. Non-appearance of both parties.
2. Default of appearance by Defendant at trial.
3. Default of appearance by Claimant.
4. Judgement by default may be set aside on terms.
5. Adjournment of trial.
6. Times of commencement and termination of trial.
7. Order of proceedings.
8. Burden of proof by party to begin.
9. Documentary evidence.
10. Additional witness.
11. Close of case of parties.
12. Exhibits during trial.
13. Custody of exhibits after trial.
14. Office copy of list of exhibits.
15. Indolent prosecution.

ORDER 29

Filing of Written Addresses

1. Application.
2. Written Address of party beginning where the other party does not lead evidence.
3. Written Address of the other party.
4. Written Address of party beginning where the other party leads evidence.
5. Right of Reply.
6. Contents of Written Address.
7. Summation of Address.
8. Oral argument.
9. Copies of Written Address

ORDER 30
Evidence Generally

1. Facts: how proved.
2. Particular facts.
3. Testimony of a witness otherwise than in the courtroom.
4. Limitation of medical and expert evidence.
5. Limitation on use of documentary evidence.
6. Revocation and variation.
7. Office copies admissible in evidence.
8. Examination of witnesses abroad. Civil Forms 24 and 25.
9. Form of Order for examination of witnesses abroad. Civil Form 26.
10. Order for attendance of person to produce document.
11. Expenses of persons ordered to attend.
12. Contempt of Court.
13. Examination of witnesses.
14. Depositions not to be given in evidence without consent or leave of a Judge.
15. Oaths.
16. Attendance of witness under subpoena for examination or to produce documents.
17. Practice as to taking of evidence at any stage of cause or matter.
18. Special directions as to taking of evidence.
19. Evidence in proceedings subsequent to trial.
20. Form of *praecipe* of a *subpoena*. Civil Form 27.
21. Form of *subpoena*. Civil Forms 28, 29 or 30.
22. Correction of errors in *subpoena*.
23. Personal service of *subpoena*.
24. Duration of *subpoena*.
25. Action to perpetuate testimony.
26. Examination of witnesses to perpetuate testimony.
27. Action not to be set down for trial.

ORDER 31

Affidavits

1. Evidence on Motions, etc.
2. Title of affidavit.
3. Use of defective affidavit.
4. Special time for filing affidavits.
5. Affidavits in support of *ex parte* applications.
6. Alterations in accounts to be initialled.
7. Exhibits.
8. Certificate of exhibit.
9. Affidavit taken in any foreign country admissible without proof of seal, etc.
10. Application of Evidence Act.

ORDER 32

Judgement: Entry of Judgement

1. Delivery of Judgement at or after trial.
2. Date of Judgement pronounced in Court.
3. Date of Judgement directed to be entered.
4. Judge may direct time for payment or performance and interest.
5. Judgement by consent where Defendant appears by a Legal Practitioner.
6. Judgement by consent where Defendant has no Legal Practitioner.

ORDER 33

Drawing up of Orders

1. Date of Order when drawn.
2. What Orders need not be drawn up.
3. Form of Order.

ORDER 34

Transfers and Consolidation

I. Transfers

1. Order transferring proceedings to High Court by Chief Judge.
2. Payment of filing fees.
3. Duties of Registrar.
4. Directions.

5. Party failing to attend.
6. Construction.

II. Consolidation

7. Consolidation of actions.

ORDER 35

Interlocutory Order, etc.

1. Preservation or interim custody of subject-matter of disputed contract.
2. Early trial of cause.
3. Order for sale of perishable goods, etc.
4. Detention, preservation or inspection of property, the subject-matter of an action.
5. Sale of property in possession of Court.
6. Order for recovery of specific property other than land subject to lien, etc.
7. Allowance of income of property *pendente lite*.
8. Injunction against repetition of wrongful act or for breach of contract.
9. Appointment of a Receiver by way of equitable execution.
10. Receivers: security and remuneration. Civil Forms 31 and 32.
11. Where Receiver appointed in Court: adjournment to give security.
12. Fixing days for Receivers to leave and pass their accounts and pay in balances and neglect of Receiver.
13. Form of Receiver's accounts. Civil Form 33.
14. Leaving account at the Registry. Civil Form 34.
15. Consequences of default by Receiver.
16. Passing of Guardians' accounts.

ORDER 36

Motions and other applications

1. Application by Motion.
2. Restriction on rule *nisi* and order to show cause.
3. When notice of Motion should be given.
4. Motion on Arbitral Award.
5. Length of time between service and hearing of Motion.
6. Motions may be struck out or adjourned where necessary notice is not given.

7. Adjournment of hearing.
8. Service of Motion with Originating Process.

ORDER 37

Application for Judicial Review

1. Cases appropriate for application for Judicial Review.
2. Time within which to bring application.
3. Application for Judicial Review.
4. Mode of applying for Judicial Review.
5. Statement and Affidavits.
6. Hearing of application for Judicial Review.
7. Reliefs in Judicial Review.
8. Claims for damages.
9. Interlocutory application.
10. Hearing of application for judicial review.
11. Person acting in obedience to an Order of *mandamus*.
12. Consolidation of applications.

ORDER 38

Appeals from Customary Court, Magistrates Court, etc.

1. Notice of Appeal.
2. Contents of Notice of Appeal. Civil Form 35.
3. Copies of record of proceedings.
4. Filing of Briefs of Argument.
5. Procedure at hearing.
6. Where time expires.
7. Time and place for hearing.
8. Appeal limited to grounds given in notice.
9. Request to affirm Judgement on other grounds.
10. Cross-Appeal.
11. Objection to form of grounds of appeal.
12. Defects in proceedings under appeal.
13. Defects in Notice of Appeal or recognisance.
14. Fees. First Schedule.

15. Allowances to witnesses. Second Schedule.
16. Costs.
17. Security for costs.
18. Order of High Court to be certified to Customary Court, Magistrates' Court, etc.
19. Enforcement of Judgement.
20. Enforcement of Orders.
21. Interpretation.

ORDER 39

Stay of Executive or Proceedings pending appeal

1. Stay of execution pending appeal.
2. Application for stay of execution.
3. Court may grant or refuse Order for stay.
4. Formal Order to be drawn up.

ORDER 40

Habeas Corpus, Committal for Contempt

I. Habeas Corpus

1. Application: How made.
2. Affidavit to accompany *ex-parte* application.
3. Power to issue Order of release immediately.
4. Service of Notice.
5. Copies of Motions, affidavits, etc.
6. Service of Order to release.
7. Statement and verifying affidavit.
8. Procedure at hearing.

II. Committal for Contempt

9. Procedure for Committal.
10. Application to Court
11. Response.
12. Saving power to commit without application for the purpose.
13. Provisions as to hearing.
14. Contempt *in facie curiae*: Saving
15. Power to suspend execution of Committal Order.

16. Discharge of person committed.
17. Saving for other powers.
18. Return.

ORDER 41

Interpleader

1. When relief by interpleader is granted.
2. Matters to be proved by Applicant.
3. Adverse titles of Claimants.
4. When application to be made by a Defendant.
5. Summons by Applicant.
6. Stay of action.
7. Order upon Summons.
8. Questions of law.
9. Failure of Claimant to appear or neglect to obey Summons.
10. Costs.

ORDER 42

Computation of time

1. Rules for computation of time.
2. Time of service.
3. Court may extend time of service.

ORDER 43

Arrest of Absconding Defendant

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

ORDER 44

Proceedings in Forma Pauperis

1. Application.
2. Who may sue or defend *in forma pauperis*.

3. Conditions to be fulfilled.
4. Fees and costs.
5. Procedure to be followed.
6. Revocation of Order, discontinuance.
7. Payment to Legal Practitioner.
8. Duty of Legal Practitioner.
9. Appeals.

ORDER 45

Legal Practitioners

1. Legal Practitioner to conduct cause or matter to final Judgement.
2. Legal Practitioner responsible for improperly incurred costs.
3. Acts that may be done by Legal Practitioner or agent.
4. Application for change or withdrawal of Legal Practitioner.
5. Service of application for change or withdrawal.
6. Re-appearance of Legal Practitioner.
7. Account by Legal Practitioner.

ORDER 46

Costs

1. Fixing costs.
2. Security for costs.
3. Security for costs by Claimant temporarily within jurisdiction.
4. Action founded on Judgement or bill of exchange.
5. Bond as security for costs.
6. Costs at discretion of Court.
7. Costs out of fund or property.
8. Stay of proceedings until costs are paid.
9. Stage of proceedings at which costs to be dealt with.
10. When costs to follow the event.
11. Costs arising from misconduct or neglect.
12. Taxation of costs.
13. Notice to other party.
14. Power of Taxing Officer.
15. Extension of time.

16. Power of Taxing Officer where party entitled to be paid or liable to pay costs.
17. Proceedings for taxation.
18. Provisions as to Bills of Costs.
19. Certificate of Taxing Officer.
20. Fees on taxation.
21. Application for review.
22. Application for Summons.

ORDER 47

I. Proceedings in Chambers

1. Matters to be disposed of in Chambers.
2. Representation in Chambers.
3. Notes of proceedings in Chambers.
4. Drawing up and entry of Orders made in Chambers.
5. Costs.
6. Decisions given in Chambers: How set aside or varied
7. Subpoena for attendance of witnesses in Chambers.

ORDER 48

Jurisdiction of Chief Registrar

1. Chief Registrar.
2. Business to be transacted by Chief Registrar.
3. Chief Registrar may refer matter to the Chief Judge.
4. Appeal from Order of Chief Registrar.
5. Chief Registrar's Cause List.
6. Legal Practitioners may represent party.
7. Chief Registrar's Certificate.
8. Form of Certificate. Civil Form 36.
9. When Certificate becomes binding.
10. Bill of Costs.
11. Discharge or variation of Certificate after lapse of any time.

ORDER 49

Foreclosure and Redemption

1. Originating Summons for foreclosure and redemption.
2. Forms for foreclosure and redemption. Civil Forms 37, 38, and 39.
3. Service and execution of Judgement.

ORDER 50

Summons to proceed with account and inquires after Judgement

1. Bringing in Judgement, etc. directing account and inquiries.
2. Summons to proceed with accounts and inquiries: Directions.
3. Settling deed where parties differ.
4. Where service of notice of Judgement or Order is dispensed with.
5. Non-service of notice of Judgement or Order: Stoppage of proceedings.
6. Documents: copies for use of Judge.
7. Entry in Summons Book.

ORDER 51

Summary Proceedings for Possession of Landed Property occupied by squatters or without the owner's consent

1. Application of this Order.
2. Proceedings to be brought by Originating Summons. Civil Form 40.
3. Affidavit in support.
4. Service of Originating Summons.
5. Application by occupier to be made a party.
6. Order for possession. Civil Form 41.
7. Writ of possession.
8. Setting aside of Order.
9. Definition of "land" in the Order.

ORDER 52

I. Miscellaneous Provisions

1. Power of the Chief Judge to Assign Cases
2. Court Sittings and Vacation
3. Days of sittings.
4. Public or private sittings of the Court.
5. Office hours.

6. Days of sittings and Legal Vacation
7. Sittings during vacation.
8. Vacation not reckoned in time for filing of processes.

II. General

9. Recovery of penalties and costs.
10. Notice.
11. Warrants and Orders: How addressed.
12. No fees where proceedings are by Government Department.
13. Regulations.
14. Savings.
15. What Orders to be made.

ORDER 53

Supplementary Powers of the Chief Judge

1. Practice Directions.
2. Electronic filing.

ORDER 54

Effect of Non-compliance

1. Non-compliance with Rules.
2. Setting aside for irregularity.

ORDER 55

Probate and Administration in General

1. Application to the Probate Registrar.
2. Preservation of Will and property.
3. Personal application.
4. Application for grants through Legal Practitioners.
5. Further enquiries by Judge.
6. Oath in support of grant.
7. Grant in additional name.
8. Additional evidence for grant.
9. Notice to other person.
10. Grant where deceased is domiciled outside the State.
11. Grant to Attorney.

12. Grant on behalf of minors.
13. Grant where minor is Co-Executor.
14. Grant in cases of persons under legal disabilities.
15. Notice of application to State.
16. Accounts to be filed.
17. Penalty for intermeddling.
18. Evidence of foreign law.
19. Amendment or revocation of grant.

ORDER 56

Grant of Probate or Letters of Administration with Will

1. Deposit of Will.
2. Will to be given out with Order of Judge.
3. Examination of Will as to due execution.
4. Evidence as to due execution of Will.
5. Proof of due execution where attesting witnesses are dead.
6. Evidence as to terms, condition and date of execution of Will.
7. Interlineations, erasures and obliterations.
8. Attempted revocation of Will.
9. Affidavit as to due execution of a Will.
10. Will of blind or illiterate Testator.
11. Documents referred to, annexed or attached to a Will.
12. Executor dying or not appearing to prove Will.
13. Production of testamentary papers.
14. Judge may order production.
15. Examination in respect of purported testamentary papers.
16. Notice to executor to come in and prove or renounce probate.
17. Liability for intermeddling before grant.
18. Engrossment of Will.
19. Grants to attesting witnesses.
20. Right of assignee to grant.
21. Order of priority for grant where deceased left a Will.
22. Grants to successor of beneficiary.
23. Renunciation of probate.
24. Resealing.

25. Citations.
26. Citation to accept or refuse a grant.
27. Citation to propound a Will.

ORDER 57

Grant of Letters of Administration without Will

1. Letters of Administration.
2. Declaration of value of personal property.
3. Administration bond.
4. Guarantee.
5. Assignment of bond.
6. Inquiries before grant.
7. Administration Summons
8. Grant of Administration in special circumstances.
9. Court may appoint Administrator.
10. Remuneration of Administrator.
11. Securing and administering estate of foreign national.
12. Additional personal representative.
13. Grant where two or more persons are entitled in the same degree.
14. Joinder of Administrator.
15. Grant under other enactment.
16. Grant of special administration.
17. Election to redeem life interest.
18. Notice to prohibit grant: Caveats.
19. Grant to be signed by the Chief Judge.

ORDER 58

Proceedings in Probate and Administration Actions

1. Forms of suits.
2. Capacity of claim.
3. Service outside Nigeria.
4. Defences to be pleaded with particulars.
5. Dispute of Defendant's interest.
6. Notice of opposition to Will.

7. Inquiry as to outstanding personal estate.
8. Discretion to order cost.
9. Originating Summons for relief.
10. Order for administration of Estate and Trustee.
11. Persons to be served.
12. Interference with Trustee's discretion.
13. Judge not bound to order administration.
14. Order to be made where no account or insufficient account has been rendered.
15. Application for Order to produce Will.
16. Limited grant.
17. Grant in respect of perishable goods.
18. Application to swear to the death of a person.
19. Application by Originating Summons.
20. Service of Originating Summons.
21. Mode of service.
22. Application.
23. Interpretation.

ORDER 59

Legitimacy Proceedings

1. Definition.
2. Practice and Rules of the Court.
3. Matters to be stated.
4. Petitioner resident outside the State.
5. Security for costs by Petitioner resident outside the State.
6. Persons to be Respondents.
7. Affidavit of verification by Petitioner.
8. Copies of petition to be filed.
9. Copies of paper to be sent to Attorney-General.
10. Personal service on the Respondents.
11. Filing of Answers.
12. Evidence.
13. Costs.
14. Copy of Order to be supplied.

ORDER 60

Fees and Allowances

1. Fees: First, Second, Third, Fourth and Fifth Schedules.
2. Regulations: Sixth Schedule.
3. Specific services: Seventh Schedule.

ORDER 61

Application and repeal

1. Application.
2. Repeal.

www.sabilaw.org

ORDER 1
CITATION AND INTERPRETATION

1. Citation.

These Rules may be cited as the Akwa Ibom State High Court (Civil Procedure) Rules, 2023 and shall come into force on the 1st day of December, 2023.

2. Interpretation.

- (1) These Rules shall be interpreted in accordance with the Interpretation Laws for the time being in force in Akwa Ibom State.
- (2) In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the following meanings:

"**ADR**" means Alternative Dispute Resolution;

"**Claimant**" means a person who makes a claim in a Court and shall include a person who Counterclaims;

"**Court**" means the High Court of Akwa Ibom State;

"**Court Process**" or "**Processes**" include Writ of Summons, Originating Summons, Originating Processes, Notices, Petitions, Pleadings, Orders, Motions, Summonses, Warrants and all documents or written communication of which service is required;

"**Decision**" means any decision of a Court and includes judgement, ruling, decree, order, conviction, sentence or recommendation;

"**Defendant**" means a person against whom a claim is brought in Court and shall include a Defendant to a Counterclaim;

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

"**Law**" means the High Court Law of Akwa Ibom State or any re-enactment thereof;

"**Legal Practitioner**" means a Legal Practitioner or Counsel within the meaning of the Legal Practitioners Act;

"**Minor**" means a person who has not attained the age of eighteen years;

"**Originating Process**" means any Court Process by which a suit is initiated;

"**Otherwise than in Court**" means the physical location of the Judge at the material time and includes but is not limited to the Chambers.

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

"**Plaintiff**" means a person who brings an action in Court and includes a Claimant;

"**Probate Action**" means an action for the grant of Probate of the Will, Letters of Administration of the estate of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged Will, and all other incidental matters;

"**Public Holiday**" means a day which is a Saturday, Sunday or a day declared as a public holiday;

"**Referee**" means any person who has been appointed by the Court to determine any matter or question or issue of fact in a suit;

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

"**Registry**" means the Registry of the High Court of the State in the appropriate Judicial Division;

"**Statement of Case**" means the summary of the case of the parties contained in the pleadings; and

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

ORDER 2

PLACE OF INSTITUTING AND TRIAL OF SUITS

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

- 1. Suits relating to land and property distrained or seized.**

All suits relating to land or any mortgage or charge on or any other interest or damage to land and also all actions relating to personal property distrained or seized for any cause, shall be commenced and determined in the Judicial Division in which the land is situated or the distraint or seizure took place.
- 2. Suits for recovery of penalties, forfeitures and against public officers.**

All actions for recovery of penalties, forfeitures and all actions against public officers shall be commenced and tried in the Judicial Division in which the cause of action arose.
- 3. Suits upon contract.**

All suits for specific performance or upon the breach of any contract, shall be commenced and determined in the Judicial Division in which such contract was made or ought to have been performed or in which the Defendant resides or carries on business.
- 4. Other suits.**
 - (1) All other suits may be commenced and determined in the Judicial Division in which the Defendant resides or carries on business or in which the cause of action arose.
 - (2) Where there are several Defendants who reside or carry on business in different Judicial Divisions, the suit may be commenced in any one of those Judicial Divisions subject to any Order or direction a Judge may make or give as to the most convenient arrangement for trial of the suit.
- 5. Suits commenced in the wrong Judicial Division.**
 - (1) If any suit is commenced in the wrong Judicial Division, it may be tried in that Division unless the Judge otherwise directs.
 - (2) Where the Court is satisfied that the cause or matter before it is within the jurisdiction of any other court, the Court shall refer the matter to the Chief Judge who shall transfer or reassign the matter to the appropriate court.

ORDER 3
COURT DOCUMENTS

1 Scope of this Order.

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

2. Preparation of documents.

- (1) Where under the document is to be prepared by the Court, the document may be prepared by the Party concerned, unless a Court Officer otherwise directs.
- (2) Nothing in this Rule requires a Court Officer to accept a document which is illegible, has not been duly authorised, or is unsatisfactory for such other reason as the Court may determine.

3. Filing of documents.

- (1) A document shall not be filed unless it has endorsed on it:
 - (a) the title of the proceedings;
 - (b) the name and number of the cause, the date and time of filing;
 - (c) whether filed by Claimant or Defendant; and
 - (d) the telephone number and email address of the person filing it.
- (2) Upon being filed, such document shall be initialled by the Registrar and recorded in the Cause Book.
- (3) A document may be filed by:
 - (a) delivering it to the Registrar at the Court office; or
 - (b) by posting it to the Registry of the Court; or
 - (c) transmitting it by any electronic means of communication as may be authorised by the Chief Judge in a Practice Direction, to the Court office where the claim is proceeding or intended to proceed.
- (4) A document is filed on the day it is received at the Court office or, if it is at a time when the Court office is closed, on the next day on which the Court office is open.

- (5) Where a fee is to be paid, a document is not to be treated as filed until the appropriate fee is paid.

4. Signature on documents by mechanical means.

Where these Rules or a Practice Direction requires a document to be signed, that requirement is satisfied if computers or other mechanical means print or stamp the signature on the document.

5. Manual/Electronic filing

- (1) (a). All Court Processes shall be filed Manually and /or Electronically
(b). where filed Electronically, The Akwa Ibom State Judiciary Portal, or any other portal approved by the Chief Judge shall be used.
- (2) Without prejudice to Rule 3 of this Order, there shall be established in the Court:
- (a) an electronic filing system for the filing of Court processes and documents by parties;
- (b) an Electronic Filing Unit in the Registry with responsibility of administering the electronic filing system of the Court and the management of processes and documents electronically filed through the Court's electronic filing system.
- (3) The Chief Judge may prescribe:
- (a) the format of any document filed or to be used in the Court to facilitate electronic recording or filing of the document; and
- (b) the conditions under which documents may be served or filed electronically.
- (4) Where a process or document is electronically filed in accordance with this Rule after the hour of 3pm on any working day, it shall be deemed to have been filed on the next working day.
- (5) The electronic filing system shall assess and generate the fees payable for every process and document sought to be filed and upon payment thereof, the system shall generate a receipt in proof of both the payment and filing.
- (6) An electronic signature shall constitute the signatures of both the Registrar and the parties or their Legal Practitioners on every electronically filed process and document.

6. Register of Claims.

- (1) A Court or Court Office may keep a publicly accessible Register of Claims which shall be a record of all claims, which have been issued out of that Court or Court Office.
- (2) A person who pays the prescribed fee may, during working hours, search an available Register of Claims kept under this Rule.

7. Supply of documents to a party from Court records.

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

8. Supply of documents to a person who is not a party to proceedings from Court Records.

- (1) A person who is not a party to the proceedings may obtain from the Court records a copy of:
 - (a) a Statement of Claim, Counterclaim, Defence or Reply, but not any documents filed with or attached to the Statement of Claim, Counterclaim, Defence or Reply or intended to be served with the Statement of Claim, Counterclaim, Defence or Reply;
 - (b) a Judgement or Order given or made in public, whether made at a hearing or without a hearing.
- (2) Subject to sub-rule (1) of this Rule, a person who is not a party to the proceedings may, if the Court gives leave, obtain from the records of the Court a copy of any other document filed by a party, or of any communication between the Court and a party or another person.
- (3) A person who is not a party to the proceedings may obtain a copy of a Statement of Claim, Counterclaim, Defence or Reply or Judgement or Order under sub-rule (1) of this Rule only if:
 - (a) where there is one Defendant, the Defendant has filed a Memorandum of Appearance or a Defence;
 - (b) where there is more than one Defendant, either:
 - (i) all the Defendants have filed Memorandum of Appearance or Defence; or

- (ii) at least one Defendant has filed a Memorandum of Appearance or a Defence and the Court gives leave;
 - (iii) the claim has been listed for hearing; or
 - (iv) Judgement has been entered in the claim.
- (4) The Court may, on the application of a party or of any person identified in a Statement of Claim, Counterclaim, Defence or Reply:
- (a) order that a person who is not a party to proceedings may not obtain a copy of a Statement of Claim, Counterclaim, Defence or Reply under sub-rule (1) of this Rule;
 - (b) restrict the person or classes of persons who may only obtain a copy of a Statement of Claim, Counterclaim, Defence or Reply if it is edited in accordance with the directions of the Court; or
 - (c) make such other Order as it may deem fit.
- (5) A person who applies for an Order under sub-rule (4) of this Rule shall file and serve a Motion on Notice on the other parties.
- (6) Where the Court makes an Order under sub-rule (4) of this Rule, a person who is not a party to the proceedings who wishes to obtain:
- (a) a copy of the Statement of Claim, Counterclaim, Defence or Reply; or
 - (b) an unedited copy of the Statement of Claim, Counterclaim, Defence or Reply,

may apply on notice to the party or person identified in the Statement of Claim, Counterclaim, Defence or Reply who requested the Order for leave.

9. Supply of documents from Court records: General.

A person who obtains a copy of a document under Rule 5 or 6 of this Order shall pay the prescribed fee and if:

- (a) the Court's leave is required, file and serve an application on notice; or
- (b) leave is not required, file and serve a written request for the document.

ORDER 4

FORM AND COMMENCEMENT OF PROCEEDINGS

1. Types of claim Form

- (1) Civil proceedings may be commenced by:
 - (a) Writ of Summons;
 - (b) Originating Summons;
 - (c) Originating Motion;
 - (d) Petition; or.
 - (e) Judicial Review.
- (2) A Court document used in commencing proceedings, including Writ of Summons, Originating Summons, Originating Motions, Petitions and Judicial Review, is known as Claim Form.
- (3) Proceedings shall commence when the Court issues a Claim Form at the request of the Claimant.
- (4) A Claim Form is issued on the date and time entered on the Form by the Court.
- (5) Every Court Process shall bear on it a date and time of issue.

2. Proceedings which must be begun by Writ.

Subject to the provisions of these Rules or any applicable law requiring any proceedings to be commenced by Originating Summons, Originating Motion, Petition or Judicial Review, a Writ of Summons shall be the form of commencing all proceedings:

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

3. Proceedings begun by Writ of Summons.

- (1) Proceedings commenced by Writ of Summons shall be accompanied by:
 - (a) Statement of Claim;
 - (b) List of witnesses to be called at the trial;
 - (c) Written Statements on Oath of the witnesses; and
 - (d) Copies of every document to be relied upon at the trial.
- (2) Where a Claimant fails to comply with Rule 3 (1) of this Rule, his Originating Process shall not be accepted for filing by the Registrar.
- (3) **Form of Writ. Civil Form 1.**
A Writ of Summons shall be as in Form 1 with such modifications or variations as circumstances may require.
- (4) **Form of Writ for service out of Nigeria. Civil Form 2.**
A Writ of Summons to be served out of Nigeria shall be as in Form 2 with such modifications or variations as circumstances may require.

4. Proceedings begun by Originating Summons.

- (1) Any person claiming to be interested under a Deed, Will, Enactment or other written instrument, may apply by Originating Summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.
- (2) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by Originating Summons for the determination of such question of construction and for a declaration as to the right claimed:

Provided that a Judge shall not be bound to determine any such question of construction if in his opinion, it ought not to be determined on Originating Summons but may make any such Orders as he deems fit.

- (3) **Forms of Originating Summons. Civil Forms 3, 4, 5.**
 - (I) An Originating Summons shall be as in Forms 3, 4 or 5 of these Rules, with such variations as circumstances may require. It shall be prepared by the Applicant or his Legal Practitioner and shall be signed, stamped and filed in the Registry and when so signed, stamped and filed, shall be deemed to be issued.

-
- (ii) An Originating Summons shall be accompanied by:
 - (a) an affidavit setting out the facts relied upon;
 - (b) all the documentary exhibits to be relied upon; and
 - (c) a Written Address in support of the application.
 - (4) The person filing the Originating Summons shall leave at the Registry sufficient number of copies thereof together with the documents in sub-rules 1 and 2 of this Rule for service on the Defendant or Defendants.
 - (5) A Defendant to an Originating Summons shall file a Counter Affidavit together with all the exhibits he intends to rely upon and a Written Address within twenty-one days after service of the Originating Summons.
- 5. Proceedings begun by Originating Motion, Petition or Judicial Review**
Proceedings shall only be commenced by Originating Motion, Petition or Judicial Review where these Rules or any other applicable law requires or authorises that they shall be commenced by Originating Motion, Petition or Judicial Review.
- 6. Registrar to indicate date and time.**
- (1) The Registrar shall indicate the date and time of presentation for filing of every Process presented to him and shall arrange for service thereof to be effected.
 - (2) A Process shall not be altered after it is signed and stamped except upon leave granted by a Judge.

ORDER 5

ISSUANCE OF ORIGINATING PROCESSES

1. Sealing and copies of Originating Process.

- (1) The Registrar shall seal every Originating Process with the seal of the Court.
- (2) A Claimant shall, on presenting any Originating Process for sealing, leave with the Registrar as many copies of the Originating Process as there are Defendants to be served and one copy for endorsement of service.
- (3) The Claimant shall sign every copy which will then be certified, after verification, by the Registrar as a true copy of the original Originating Process filed.

2. Action by Registrar after Sealing.

The Registrar shall, after sealing an Originating Process:

- (a) file it and note on it the date and time of filing and the number of copies supplied by the Claimant for service on the Defendant; and
- (b) make an entry of the filing in the Cause book and identify the claim with a claim number comprising abbreviations of the judicial division, a chronological number and the year of filing.

3. Copies to be served.

The Registrar shall promptly arrange for personal service on each Defendant of a copy of the Originating Process and accompanying documents duly certified.

4. Probate Action: Affidavit with Originating Process.

The Originating Process in Probate Actions shall be accompanied by an affidavit sworn to by a Plaintiff or Claimant or one of several Plaintiffs or Claimants verifying the contents of the process.

5. Lifespan and renewal of Originating Process.

- (1) The life span of every Originating Process shall be six months in the first instance.
- (2) Where a Judge is satisfied that it has proved impossible to serve an Originating Process on any Defendant within its life span of six

months, and the Claimant applies before its expiration for a renewal of the process, the Judge may order the renewal of the original form or concurrent process form referred to in this Rule, for three months from the date of such renewal.

- (3) A renewed Claim Form shall be as in Form 6.
- (4) The Judge may order a maximum of two renewals, in each case strictly for good cause and on prompt application, but an Originating Process that has not been served shall not be in force for longer than a total of twelve months.
- (5) The Registrar shall state the fact, date and duration of renewal on every renewed Originating Process.

6. Loss of Originating Process.

Where an Originating Process is lost after its issue, the Judge may upon being satisfied of the loss and of the correctness of the copy of it, order such copy of it to be filed and sealed in place of the lost Originating Process.

7. Concurrent Originating Process.

- (1) A Claimant may, at the issuance of an Originating Process or at any time during its life span, issue one or several concurrent Originating Processes, each marked 'CONCURRENT', bearing the same date and time as the original one, but also indicating the date of its own issue.
- (2) An Originating Process for service in the jurisdiction may be concurrent with one for service outside the jurisdiction, and vice versa.
- (3) A concurrent Originating Process is a true copy of the Originating Process which such differences, if any, as are necessary having regard to the purpose for which the Originating Process is issued.

ORDER 6

SERVICE OF DOCUMENTS

1. Document servers.

- (1) Any of the following persons may serve court processes:
 - (a) the Sheriff;
 - (b) the Deputy Sheriff;
 - (c) the party whose court process is to be served;
 - (d) the Legal Practitioner for the party whose court process is to be served.
 - (e) any other person authorised by the Chief Registrar either generally or in respect of any specific proceedings.
- (2) A person described in sub-rule (1) of this Rule may be described as a document server when engaged accordingly, and is so described in these Rules.

2. Service of Process.

The document server serves a Process by delivering a copy of it to the party to be served.

3. Service of process on Legal Practitioner.

Where a Legal Practitioner files a representation notice on behalf of a party, the Process need not be served personally on such a party but may be served on such Legal Practitioner on his behalf.

4. Mode of service not personal.

A Court document in respect of which personal service is not expressly required by these Rules or any applicable law is sufficiently served if left with an adult person resident or employed at the address for service supplied, or sent to that address by Courier.

5. Substituted service.

- (1) Where these Rules or other applicable law requires personal service and the Judge is satisfied that timely personal service cannot be effected, the Judge may allow substituted service upon application by the party whose process is to be served.
- (2) An application for substituted service shall be supported by an affidavit setting out the facts forming the basis of the application.

- (3) Legal argument may not be necessary in applications for substituted service.
- (4) The Judge may treat an application for substituted service in Chambers without being moved.

6. Service by electronic means

- (1) Service by electronic means is proved by an affidavit of service by the document server responsible for transmitting the document to the person to be served.
- (2) The affidavit of service shall exhibit a copy of:
 - (a) the document served
 - (b) any cover sheet or email to that document;
 - (c) the transmission record;
 - (d) proof of electronic service of the document, and must state the
 - (i) electronic means by which the document was served;
 - (ii) e-mail address or electronic means by which the document was transmitted; and
 - (iii) date and time of the transmission.
- (3) Electronic confirmation of delivery shall be treated as proof of service of the document that is served electronically and may include written e-mail response, a read receipt, a successful electronic transmission confirmation or an automated response that the document was posted in an online shared drive.

7. Service on persons under legal disability

- (1) Where a Defendant is a person under legal disability, service on his guardian is good and sufficient personal service on that Defendant.
- (2) Direct service on a person over eighteen years of age, living independently or doing business, is good and sufficient service.
- (3) The Judge may order that direct service on any person under legal disability is good and sufficient.

8. Service on detainees and prisoners.

When a detainee or prisoner is a Defendant, service on the Superintendent or other responsible officer of the facility where the Defendant is, or on a

responsible officer of the agency in charge of that facility, is good and sufficient personal service on the Defendant.

9. Service on partners.

- (1) Where persons are sued as partners in the name of a firm, the Originating Process shall be served upon any one or more of the partners or any person having control or management of the partnership business at the principal place of business within the jurisdiction.
- (2) Service effected in accordance with sub-rule (1) of this Rule shall be deemed good service upon the firm whether any of the members is out of the jurisdiction or not, and no leave to issue an Originating Process against them shall be necessary.
- (3) In the case of a partnership that has been dissolved to the knowledge of the Claimant before the commencement of the action, the Originating Process shall be served upon every person in the partnership within the jurisdiction sought to be made liable.

10. Service on Nigerian corporate bodies.

Serving of originating process or other Court document requiring personal service on a registered company, corporation or body corporate, may be done in any of the following ways:

- (a) according to relevant statute governing service on that kind of organization;
- (b) by delivery to a director, secretary, trustee or other senior, officer of the organization;
- (c) by leaving it with a responsible person at the registered, principal or advertised office or place of business of the organization in the jurisdiction; or
- (d) by sending it to that office or place by courier

11. Service on foreign corporations.

- (1) An originating process or other Court document requiring personal service may be served on a principal, senior or responsible officer or representative in the jurisdiction when the process:
 - (a) is against a foreign corporation or company within the meaning of the Companies and Allied Matters Act; and

- (b) the company or corporation has an office or does business in the jurisdiction; and
 - (c) the claim is limited to a cause of action arising in the jurisdiction.
- (2) Where a foreign company has obtained a separate entity to carry on business in Nigeria in accordance with the Companies and Allied Matters Act, personal service shall be effected on one of the persons authorised to accept service on behalf of the company.

12. Service outside the State

- (1) Subject to the provisions of the Sheriffs and Civil Process Act, a Writ of Summons or other Originating Process issued by the Court for service outside the State shall be endorsed by the Registrar of the Court with the following Notice:

“This Summons (or as the case may be) is to be served out of Akwa Ibom State of Nigeria and in State of Nigeria”

- (2). **Information on Court document for service outside Jurisdiction.**

The Registrar shall state on every process issued by the Court for service outside the jurisdiction, a note to the effect that it is to be served outside the jurisdiction, indicating precisely where it is to be served.

13. Service on local agent of principal outside jurisdiction.

An Originating Process or other Court document relating to or arising out of a contract that has been entered into in the jurisdiction:

- (a) by or through an agent living or doing business in the jurisdiction; and
- (b) by or through an agent living or doing business outside the jurisdiction, may be served on the agent, but a copy shall be sent to the principal by courier.

14. Violent resistance to service.

Where a person to be served, whether alone or in concert with others, resists service or applies or threatens violence to the document server so as to frustrate service, the document server may simply leave the court document within the reach of the person to be served, and that is good and sufficient service for all purposes.

15. Proof of service generally.

- (1) After serving an Originating Process or other processes, the document server shall promptly:
 - (a) file a certificate of or statement as to service of a true copy of the process served, indicating the fact, date, time, place and mode of service; or
 - (b) depose to and file an affidavit setting out the fact, date, time, place and mode of service, and describing the Process or other processes served.
- (2) The certificate, statement, or affidavit filed is proof of service as stated in it.
- (3) The Court may proceed without proof of service if the party to be served admits having been served with the relevant Process, even if service was not done in accordance with these Rules.

16. Expenses of service.

The party requiring service of a Court Process bears all costs and expenses of service.

17. Time of service.

Service of any kind of Court Process shall be done between 6 a.m and 6 p. m on any working day.

18. Service Register.

- (1) The Registrar shall maintain a Service Register of details of service, including:
 - (a) names of the parties;
 - (b) description of the Court Process;
 - (c) method of service;
 - (d) how the document server ascertained that the right person was served; and
 - (e) if service was unsuccessful, cause of failure to serve
- (2) An entry in the Service Register or a certified copy of it is *prima facie* evidence of the matters stated therein.

ORDER 7

SERVICE OUT OF NIGERIA AND SERVICE OF FOREIGN COURT DOCUMENTS

1. Service of Court documents outside Nigeria.

- (1) The Judge may permit service of an Originating Process or other Court Processes outside Nigeria in any of the circumstances set out in this Rule, if:
- (a) the whole subject matter is real estate in the jurisdiction;
 - (b) any act, deed, will, contract, obligation or liability affecting real estate or hereditaments situated in the jurisdiction is to be construed, rectified, set aside, or enforced;
 - (c) any relief is sought against any person domiciled or ordinarily resident outside the jurisdiction;
 - (d) the claim is for administration of the personal estate of any deceased person who at the time of death was domiciled in the jurisdiction, or for the execution (as to property in the jurisdiction) of trusts of any written instrument which ought to be executed according to the law in force in the jurisdiction;
 - (e) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or other relief in respect to a breach of a contract:
 - (i) made in the jurisdiction; or
 - (ii) made by or through an agent living or doing business in the jurisdiction on behalf of a principal living or doing business outside the jurisdiction; or
 - (iii) which by its terms or implications is to be governed by the relevant laws in the jurisdiction;
 - (f) the claim is brought in respect of a breach committed in the jurisdiction of a contract wherever made, even though the breach was preceded or accompanied by a breach outside the jurisdiction which rendered impossible the performance of the part of the contract to have been performed within the jurisdiction;
 - (g) the claim is founded on a tort committed in the jurisdiction;

- (h) an injunction is sought as to anything to be done in the jurisdiction, or any nuisance in the jurisdiction is sought to be prevented or removed, whether or not damages are equally claimed;
 - (i) any person outside the jurisdiction is a necessary or proper party to a claim properly brought against some other person duly served in the jurisdiction;
 - (j) the claim is by a mortgagee or mortgagor in relation to mortgage or property within the jurisdiction and seeks relief on the nature or kind of sale, foreclosure, delivery of possession by the mortgagor; redemption, re-conveyance, delivery of possession by the mortgagee, but does not seek, unless and except so far as permissible in sub-rule (1) (e) and (f) of this Rule, any Judgement or Order for payment of any moneys due under the mortgage;
 - (k) the proceedings relate to a person under legal disability; and
 - (l) the proceedings relate to Probate.
- (2) In a claim arising out of contract, service of Court Processes by a contractually agreed method is good and sufficient.

2. Service abroad by Letter of Request.

- (1) When leave is granted to serve an Originating Process in any foreign country with which no pertinent Convention has been made, the following procedure must be adopted:
- (a) the Court Process to be served shall be sealed with the seal of the Court for use out of Nigeria, and then transmitted to the Permanent Secretary, Ministry of Foreign Affairs by the Chief Registrar, together with:
 - (i) a copy translated into the language of the country if not English; and
 - (ii) a request in Form 7 for its further transmission to the appropriate authorities in that country.
 - (b) the party wishing to serve a Court Process under this Rule shall file a request in Form 8;
 - (c) a certificate, declaration, affidavit or other notification of due

service transmitted through diplomatic channels by a Court or other appropriate authority of the foreign country to the Court, is good and sufficient proof of service;

- (d) where a certificate, declaration, affidavit or any other notification states that efforts to serve a Court Process have failed, the Judge may, on the Claimant's application without notice, order substituted service, in which case the Court Process and a copy of the Order for substituted service, shall be sealed and transmitted to the Permanent Secretary, Ministry of Foreign Affairs as in Form 9.
- (2) Notwithstanding sub-rule (1) of this Rule, a Claimant may, with the Judge's leave, serve an Originating Process by courier.
 - (3) These Rules do not preclude a Judge, without assuming jurisdiction over any person outside the jurisdiction in the case listed in sub-rule (4) of this Rule, from notifying that person of the proceedings so that he may make a claim, or oppose, or otherwise intervene in the proceedings.
 - (4) The cases referred to in sub-rule (3) of this Rule are cases relating to land, funds, choses in action, rights or property, in the jurisdiction.

3. Where leave is given or not required for service abroad.

- (1) Where leave is given or is not required, and a Court Process has to be served in a foreign country with which a pertinent Convention has been made then, subject to any special provisions contained in the Convention, the party desiring service shall file in the Registry a request as in Form 10, with such modifications and variations as the circumstances may require:
 - (a) stating the medium through which service is desirable, either:
 - (i) directly through diplomatic channels; or
 - (ii) through the foreign judicial authority; and
 - (b) accompanied by:
 - (i) the original Court Process and a translation in the language of the foreign country, if not English, certified by or on behalf of the person making the request;

- (ii) a copy of each Court Process and translation for every person to be served;
 - (iii) any further copies required by the Convention, but where service is to be made on a Nigerian citizen directly through diplomatic channels, the translation and its copies need not accompany the request.
- (2) The processes to be served shall be sealed with the seal of the Court for use out of the jurisdiction and shall be forwarded by the Chief Registrar to the Permanent Secretary for onward transmission to the foreign country.
- (3) A certificate transmitted to the Court through diplomatic channels by the foreign judicial authority, or by a Nigerian diplomatic officer or agent, establishing the fact and date of service, is good and sufficient proof of service.
- (4) The Judge may, in an appropriate case, permit the use of courier for service outside Nigeria.

4. Service of foreign Court documents in Jurisdiction.

Where in any civil proceedings in a Court or Tribunal in foreign country with which a pertinent Convention has been made, a request for service of any Process on a person in the jurisdiction is received by the Chief Judge or Chief Registrar from the appropriate authority of that country, the following procedure shall, subject to any special provisions in the Convention, be adopted:

- (a) the document server shall deliver the original or a copy of it, together with a copy of any translation of it, to the party to be served;
- (b) after service, the document server shall submit the particulars of the cost and expenses of service to the Chief Registrar;
- (c) the Chief Registrar shall certify the amount properly payable in respect of the service and forward it to the Chief Judge; and
- (d) the Chief Judge shall transmit to the appropriate foreign authority a certificate establishing the fact and date of the service, or indicating reasons for failure to serve, and also notify that authority as to the amount certified under Rule 4[©] hereto.

5. Saving of other modes of service.

Nothing in this Order vitiates or invalidates any other mode of service in a country with which a pertinent Convention has been made, but no mode of service expressly excluded by the Convention is allowed.

6. Substituted service of foreign court documents.

In appropriate cases the Judge may order substituted service of any foreign document.

www.sabilaw.org

ORDER 8
APPEARANCE

1. Mode of entry of appearance. Civil Form 11.

- (1) A Defendant served with an Originating Process shall, within the period prescribed in the process for appearance, file in the Registry the original copy of a duly completed and signed Memorandum of Appearance as in Form 11 with such modifications or variations as circumstances may require.
- (2) On receipt of the Memorandum of Appearance, the Registrar shall make entry thereof, sign and stamp the copy indicating the date and time of the entry of appearance, and return the signed and stamped copy to the person entering the appearance.
- (3) A Defendant entering appearance shall, not later than five days thereafter, serve a signed and stamped copy of the Memorandum of Appearance on the Claimant's Legal Practitioner or on the Claimant, if he sues in person.

2. Defendant appearing in person or represented by Legal Practitioner.

- (1) A Defendant appearing in person shall state in the Memorandum of Appearance, an address for service which shall be within the State.
- (2) Where a Defendant appears by a Legal Practitioner, the Legal Practitioner shall state in the Memorandum of Appearance his place of business and an address for service which shall be within the State and where any such Legal Practitioner is only the agent of another Legal Practitioner, he shall also insert the name and place of business of the principal Legal Practitioner.

3. Fictitious address.

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

4. Defendants appearing through the same Legal Practitioner.

If two or more Defendants in the same action appear through the same Legal Practitioner, the Memorandum of Appearance shall include the names of all Defendants.

5. Late appearance.

If a Defendant files a Memorandum of Appearance after the time prescribed in these Rules, he shall pay to the Court an approved additional fee as in the Schedule of Fees for each day of default. If the Defendant appears late but within the time prescribed for filing his defence, he shall file his defence within that time.

6. Intervener in Probate Matters.

In probate matters, any person not named in the Originating Process may intervene and appear in the matter upon filing an affidavit showing his interest in the estate of the deceased.

7. Recovery of land.

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

8. Landlord appearing.

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

9. Person under legal disability appearing.

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

10. Tenant.

In this Order the word "Tenant" includes a sub-tenant or any person occupying any premises whether on payment of rent or otherwise.

ORDER 9

DEFAULT OF APPEARANCE

1. Default of appearance by infant or person under legal disability.

Where no appearance has been entered to an Originating Process for a Defendant who is an infant or a person under legal disability, the Claimant shall, before further proceeding with the action, apply to a Judge for an Order that some person be assigned guardian of such Defendant by whom he may appear and defend the action:

Provided that no such Order shall be made unless it appears that the application was, after the expiration of the time allowed for appearance, and at least six clear days before the day named in such notice for the hearing of the application, served upon or left at the dwelling house of the person with whom or under whose care such Defendant was at the time of serving such Original Process, and also in the case of such Defendant being an infant not residing with or under the care of his father or guardian served upon or left at the dwelling house of the father or guardian, if any, of such infant, unless a Judge, at the time of hearing such application, dispenses with such last-mentioned service.

2. Default of appearance generally.

Where any Defendant fails to appear, a Claimant may proceed upon default of appearance under the appropriate provisions of these Rules upon proof of service of the Originating Process.

3. Liquidated demand.

Where the claim in the Originating Process is for a liquidated demand and the Defendant fails, or all of several Defendants, if more than one, fail to appear thereto, final Judgment may be entered in favour of the Claimant for any sum endorsed on the Writ, together with interest at the rate specified, if any, or, if no rate is specified, at the rate of ten percent per annum to the date of Judgment and costs:

Provided that this Rule shall not apply to an action by a Money Lender or an assignee for the recovery of money lent by a Money Lender or to an action for enforcement of any agreement or security relating to any such money.

4. Liquidated demand: several defendants.

Where the claim in the Originating Process is a liquidated demand and there are several Defendants of whom one or more appear and others fail to appear, a Claimant may have final Judgement entered for him, as in the preceding Rule, against those who have not appeared and may execute the judgement without prejudice to his right to proceed with the action against those who have appeared.

5. Pecuniary damages.

(1) Where the claim in the Originating Process is for pecuniary damages or for detention of good with or without claim for pecuniary damages, and

- (a) the Defendant or all of several Defendants fail to appear, or
- (b) there are several Defendants, one or some of whom appear while another or others do not appear, a Claimant may apply for Judgement against the Defendant or Defendants failing to appear.

(2) The value of the goods and the damages or the damages only, as the case may be, shall be ascertained in such manner and subject to the filing of particulars as a Judge may direct before Judgement in respect of that part of the claim.

6. Detention of goods, damages and liquidated demand.

Where the claim in Originating Process is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any of the Defendants fail to appear, a Claimant may apply to a Judge for Judgement. The value of the goods and the damages or the damages only as the case may be, shall be ascertained in such manner and subject to the filing of such particulars as a Judge may direct before Judgement in respect of that part of the claim.

7. Recovery of land.

(1) Where the claim is for the recovery of land, with or without any other related claim, and no appearance is entered within the time limited for appearance, the Claimant may apply to the Judge for Judgement and the person whose title is asserted in the Originating Process shall be entitled to an Order for the recovery of possession of the land.

- (2) Where an appearance is entered but limited to part of the land only, the Claimant may have Judgment entered for the undefended part of his claim, and the rest of the claim may be proceeded with to trial.

8. Mesne profit.

Where in an Originating Process for recovery of land, a Claimant claims *mesne* profit, arrears of rent, damages for breach of contract or wrong or injury to the premises, he may apply for Judgment as in Rule 7 of this Order for the land and may proceed to prove the other claims.

9. Judgement for costs upon payment, satisfaction, etc.

In any case to which Rules 3-7 of this Order apply and the Defendant or all of several Defendants fail to appear, but in which by reason of payment, satisfaction, abatement of nuisance or any other reason, it is unnecessary for a Claimant to proceed, he may apply to a Judge for Judgment for costs:

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

10. Actions by money lenders

- (1) Where an action is brought by a Money Lender or an assignee for the recovery of money lent by a money lender or the enforcement of any agreement or security relating to any such money, an application for leave to enter Judgment in default of appearance shall be made on notice returnable not less than four clear days after service of the notice.
- (2) The notice shall not be issued until the time limited for entering appearance has expired, and an affidavit of service of the Originating Process has been filed.
- (3) At the hearing of the application, whether Defendant appears or not, the Judge may exercise the relevant powers of the Court under the Money Lenders Law.

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

In all claims not specifically provided for under this Order, where the party served with the Originating Process does not appear within the time prescribed

in these Rules, a Claimant may proceed as if appearance has been entered, and upon such hearing, the Judge may give any Judgment that the Claimant appears to be entitled to on the facts.

12. Compulsory service.

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

13. Setting aside of Judgement.

Where Judgement is entered pursuant to any of the preceding Rules of this Order, a Judge may set aside or vary such Judgement on just terms upon an application by the Defendant. The application shall be made within fourteen days, showing a good defence to the claim and a just cause for the default.

www.sabilaw.org

ORDER 10

FAST TRACK PROCEDURE

1. Officer in charge of Fast Track Registry

There shall be appointed an Assistant Registrar or any other Officer of the Court

who shall be in charge of the Fast Track Registry of the Court and who shall:

- (a) manage, coordinate and supervise the efficient and smooth functioning of the Fast Track processes, including processing of all Fast Track cases;
- (b) publish the Weekly Fast Track Cause List every Friday or on such earlier day where Friday is a public holiday;
- (c) perform any other function as may be assigned to him by the Chief Judge.

2. Request to proceed by way of Fast Track. Civil Form 12.

Where any of the parties specifically requests his matter to proceed by way of the Fast Track as in Form 12 the Judge assigned to have jurisdiction to hear and determine the case and such other cause or matter requiring exceptional urgency including but not limited to:

- (a) claim or counterclaim in liquidated monetary relief of a sum not less than one hundred million naira; or
- (b) action or cause is one involving a deceased whose remains is yet to be interred as a result of the litigation; or
- (c) cause or action is one that has been pending in Court for at least five years and in which hearing is yet to commence; or
- (d) cause or action is one which the Chief Judge in appropriate circumstances so designates; or
- (e) cause or action is one involving the administration of estate; or
- (f) such cause or matter that may be designated to be of exceptional urgency to be placed on the FastTrack as the Chief Judge may publish in a Practice Direction to that effect.

3. Maximum number of Fast Track cases

A Judge may not be assigned more than three Fast Track cases in one month.

4. Presentation, approval or disapproval of Fast Track Originating Process. Civil Forms 12, 13 and 14

- (1) A Claimant or Counterclaimant shall present his Originating Process to the Assistant Registrar in charge of Fast Track accompanied by:
 - (a) Statement of Claim or Counterclaim;
 - (b) List of Witnesses and their Written Statements on Oath;
 - (c) List and copies of every document to be relied upon at the trial; and
 - (d) A duly completed Application Form as in Form 12 to place the cause or matter on the Fast Track.
- (2) The Assistant Registrar shall, upon receipt of the Processes in sub-rule 1 of this Rule, issue an Acknowledgement and submit the cause or matter to the Chief Judge for approval or otherwise as in Form 13 or 14 as the case may be.
- (3) Where the cause or matter is approved to be placed on the Fast Track, the Assistant Chief Registrar or any other person in that behalf shall cause the Originating Process to be marked “QUALIFIED FOR FAST TRACK” and the Applicant shall pay a Fast Track filing fee as in the approved Filing Fee Schedule without prejudice to the applicable filing fee payable on the Originating Process.
- (4) The duration of time from the date of filing the application by the Applicant to have the cause or matter placed on the Fast Track to when it is approved or otherwise shall not exceed seven working days.

5. Duration of litigation.

Time spent on litigation under the Fast Track Procedure shall not exceed ten months from the commencement of the action till final Judgement.

6. Service of Originating Process.

The Originating Process under this Order shall be served within three days of its approval to be placed on the Fast Track.

7. Filing of Defence and Reply.

- (1) Upon the service of the Originating Process, the Defendant shall file his Memorandum of Appearance, Statement of Defence and other front-loaded processes within seven days, if within jurisdiction and 30 days, if outside jurisdiction.
- (2) The Claimant shall be entitled to file a Reply within three days of service of the Statement of Defence:
Provided that sub-rules 1 and 2 shall not apply to cases where pleadings had already been settled before the commencement of these Rules.

8. Adjournment.

- (1) Except the Judge otherwise directs, the trial shall be conducted from day-to-day and in accordance with any Order previously made.
- (2) A Judge may not grant an application for adjournment except for exceptional, cogent and compelling reasons shown, and for a period not exceeding three days from the date of the Order and at the cost of ten thousand Naira per every day of the adjournment payable to the opposing party.
- (3)
 - (a) Where a party or his Counsel may be absent from Court, such party or his Counsel shall promptly, before the date of fixture, inform the Court and the other party or his Counsel in writing.
 - (b) Where trial has commenced, the Court may proceed notwithstanding the absence of any of the parties or his Counsel.

9. Trial and Addresses.

- (1) The trial period including the Final Address by Counsel shall not be later than one hundred days from the date on which the trial directions are made.
- (2)
 - (a) Where the party beginning has concluded his case, the Judge shall ask the other party if he intends to call evidence;

- (b) Where the other party does not intend to call evidence, the party beginning shall within seven days after close of evidence file a Written Address;
 - (c) Upon being served with the Written Address, the other party shall within seven days file his own Address;
 - (d) Where the other party calls evidence, he shall within seven days after the close of evidence file a Written Address;
 - (e) Upon being served with the other party's Written Address, the party beginning shall within seven days file his own Written Address;
 - (f) The party who files the first Address shall have the right of Reply on point of law which shall be filed within two days after service of the other party's Address; and
 - (g) Where the time for filing of Written Address has elapsed and neither party filed any Address, the Judge shall proceed to Judgment on the pleadings and evidence before him.
- (3) The Judge shall deliver Judgement on all Fast Track cases within thirty days of adoption of Final Addresses.

ORDER 11

I. SUMMARY JUDGEMENT AND UNDEFENDED LIST

1. Where Claimant believes there is no defence.

Where a Claimant believes that there is no defence to his claim, he shall file with his Originating Process, the Statement of Claim, copies of documents to be relied upon, the Written Statement on Oath of his Witnesses, and an application for Summary Judgement which application shall be supported by an affidavit stating the grounds for his belief and a Written Address in respect thereof.

2. Delivery of extra copies.

A Claimant shall deliver to the Registrar as many copies of all the processes and documents referred to in Rule 1 of this Order as there are Defendants.

3. Service.

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

4. Where Defendant intends to defend.

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

- (a) His Statement of Defence;
- (b) Written Statement on Oath of his Witnesses;
- (c) Documents to be relied upon
- (d) Counter Affidavit; and
- (e) A Written Address in reply to the application for Summary Judgement.

5. Where Defendant has good defence, has no good defence or has good defence to part of the claim.

- (1) Where it appears to a Judge that a Defendant has a good defence and ought to be permitted to defend the claim, he may be granted leave to defend.
- (2) Where it appears to a Judge that the Defendant has no good defence, the Judge may thereupon enter Judgement for the Claimant without calling on the Claimant to prove his case formally.

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

6. Where there are several Defendants.

Where there are several Defendants and it appears to a Judge that any of the Defendants has a good defence and ought to be permitted to defend the claim while other Defendants do not have a good defence and ought not to be permitted to defend, the former may be permitted to defend and the Judge shall enter Judgement against the latter.

7. Oral Evidence.

Nothing in this Order shall preclude the Court from hearing or requiring oral evidence should it be deemed fit at any stage of the proceedings under the Summary Judgement.

II. – UNDEFENDED LIST

8. The Undefended List. Affidavit.

- (1) Where a Claimant in respect of a claim to recover a debt or liquidated money demand believes that there is no defence to his claim, he shall make an application to a Court for the issue of a Writ of Summons in respect of the claim to recover such debt or liquidated money demand, and shall support the application by an affidavit setting forth the grounds upon which the claim is based and stating that in the deponent's belief, there is no defence thereto.
- (2) The Court shall, if satisfied that there are good grounds for believing that there is no defence thereto, enter the suit for hearing in what shall be called the "Undefended List" and mark the Writ of Summons accordingly and enter thereon a date for hearing.

9. Copy of affidavit to be served.

Where the suit is entered in the Undefended List and the Writ of Summons issued and marked as aforesaid, the Claimant shall file as many copies of the above mentioned Affidavit as there are parties against whom relief is sought

and the Registrar shall annex one such copy to each copy of the Writ of Summons for service.

10. Notice of intention to defend.

- (1) Where the party served with the Writ of Summons and affidavit files within seven days a Notice in writing of his intention to defend the suit, together with an Affidavit disclosing a defence on the merit, the Court may give him leave to defend upon such terms as the Court may deem just.
- (2) Where leave to defend is given under this Rule, the action shall be removed from the Undefended List and placed on the Ordinary Cause List and the parties shall, within such time as the Court may direct, file their pleadings, list of their witnesses, their Written Statements on Oath and every document they intend to rely upon at the trial in accordance with these Rules.

11. Judgement in undefended suit.

Where any Defendant neglects to deliver the Notice of intention to defend and affidavit prescribed by Rule 10 sub-(1) of this Order or is not given leave to defend by the Court, the suit shall be heard as an undefended suit, and Judgement given thereon, without calling upon the Claimant to prove his case formally.

12. Oral evidence.

Nothing herein shall preclude the Court from hearing or requiring oral evidence should it deem fit, at any stage of the proceedings under the Undefended List.

ORDER 12

APPLICATION FOR ACCOUNT

1. Order for account.

Where in any claim involving the taking of an account, if the Defendant either fails to appear or after appearance fails to satisfy a Judge that there is a preliminary question to be tried, the Judge shall, on application, make an Order for the accounts, with all necessary inquiries and direction.

2. Application: how made.

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

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

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

4. Account made to be verified

- (1) Where an account has been ordered to be taken, the accounting party shall make out his account and, unless the Judge otherwise directs, verify it by an affidavit to which the account shall be exhibited.
- (2) The items on each side of the account shall be numbered consecutively.
- (3) Unless the Order for the taking of the account otherwise directs, the accounting party shall file the account in the Registry and shall at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

5. Erroneous Account

Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any item in his account is erroneous in respect of amount or any other respect, shall give him notice thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or to back, as the case may, the grounds for alleging that the item is erroneous.

6. Allowances

In taking any account directed by any Judgment or Order, all just allowance shall be made without any direction to that effect.

7. Delay in prosecution of account

- (1) If it appears to the Judge that there is undue delay in the prosecution of any account or inquiry, or in any other proceedings under any Judgment or Order, the Court may require the party having the conduct of the proceedings or any other party to explain the delay and may make such Order for staying the proceedings or expediting them or for the conduct thereof and for costs as the circumstances may require.
- (2) The Judge may direct any person or Legal Practitioner to take over the conduct of proceedings in question and to carry out any direction made by an Order under this Rule and may make such Orders as he thinks fit as to the payment of the Legal Practitioner's costs.
- (3) Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Judge may order or allow immediate payment of their shares to the persons ascertained without reserving any part of the shares to meet the subsequent costs of ascertaining those other persons.

ORDER 13

I. PARTIES GENERALLY

1. Persons claiming jointly or severally.

All persons may be joined in one action as Claimants in whom any right to relief is alleged to exist whether jointly or severally and Judgement may be given for such one or more of the Claimants as may be found to be entitled to relief and for such relief as he or they may be entitled to, without any amendment.

2. Action in the name of wrong Claimant.

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

3. Misjoinder and Counterclaim.

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

4. Any person may be joined as Defendant.

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

5. Action in name of wrong Defendant.

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

6. Defendant need not be interested in all the reliefs sought.

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

7. Joinder of persons severally or jointly and severally liable.

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

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

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

9. Persons under legal disability.

- (1) Persons under legal disability may sue or defend by their guardians appointed for that purpose.
- (2) At any time during the proceedings pursuant to any Judgement or Order, the Judge may, if he deems fit, require a guardian to be appointed for any person under legal disability not adjudged a lunatic, who has been served with notice of such Judgement or Order.
- (3) Where any person's name is to be used in any action as guardian of a person under legal disability or other party or as relative, a written authority for that purpose signed by that person shall be filed in the Registry.

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

- (1) Trustees, Executors and Administrators may sue and be sued on behalf of or as representing the property or estate of which they are Trustees, Executors and Administrators, without joining any of the persons beneficially interested in the trust or estate and shall be considered as

representing such person, but a Judge may at any stage of the proceedings, order any of such persons to be made parties in addition to or *in lieu* of the previously existing parties.

- (2) The Rule shall also apply to Trustees, Executors and Administrators in proceedings to enforce a security by foreclosure or otherwise.

11. Numerous persons.

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

12. Representation of persons or classes of persons in certain proceedings.

- (1) Where in any proceedings concerning:
 - (a) the administration of an estate; or
 - (a) property subject to a trust; or
 - (c) land held under Customary Law as family or community property; or
 - (d) the construction of any written instrument, including a statute, a Judge is satisfied that:
 - (i) the person, the class or some members of the class interested cannot be ascertained or cannot readily be ascertained;
 - (ii) the person, the class or some members of the class interested, if ascertained, cannot be found; and
 - (iii) though the person or the class and the members thereof can be ascertained and found, it is expedient for the purpose of efficient procedure that one or more persons be appointed to represent that person, class or member of the class, the Judge may make the appointment. The decision of the Judge in the proceedings shall be binding on the person or class of persons so represented.
- (2) Notice of appointment made by a Judge under this Rule and all processes filed in Court shall be served on a person so appointed.

- (3) Where, in any proceedings mentioned in sub-rule (1) of this Rule, several persons having the same interest in relation to the matter to be determined attend the hearing by separate Legal Practitioners, then, unless the Judge considers that the circumstances justify separate representation, not more than one set of costs of the hearing shall be allowed to these persons and the Judgement or Order shall be framed accordingly.
- (4) In this Rule, the word "class" includes the persons recognised by customary law as members of a family or as members of a land-owning community.

13. Power to approve compromise.

Where in any proceedings mentioned in sub-rule (1) of Rule 12 of this Order, a compromise is proposed and some of the absent persons who are interested in or may be affected by the compromise are not parties to the proceedings (including unborn or unascertained persons) but where:

- (a) there are some other persons having the same interest before the Court who assent to the compromise or on whose behalf the Court sanctions the compromise; or
- (b) the absent persons are represented by a person under Rule 12 of this Order who so assents,

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

14. Where there is no personal representative.

- (1) Where in any proceedings it appears to a Judge that any deceased person who was interested in the proceedings has no legal personal representative, the Judge may proceed in the absence of any person representing the estate of the deceased person or may appoint some person to represent his estate for the purpose of the proceedings, on such notice to such persons, if any, as the Judge shall deem fit, either specifically or generally by public advertisement and the Order so made and any Order consequent thereon shall bind the estate of the deceased person in the same manner in every respect as if a duly

constituted legal personal representative of the deceased had been a party to the proceedings.

- (2) Where a sole or sole surviving Claimant or Defendant in a proceeding dies and the cause of action survives, but the person entitled to proceed fails to proceed, a Judge may on the application of either the deceased's Legal Practitioner or the opposing party, order any person to take the place of the said deceased and proceed with the suit.
- (3) In default of such application or where the person substituted fails to proceed, Judgement may be entered for the Defendant or, as the case may be, for the person against whom the proceedings might have been continued.

15. Proceedings not defeated by misjoinder or non-joinder.

- (1) No proceedings shall be defeated by reason of misjoinder or non-joinder of parties, and a Judge may deal with the matter in controversy so far as regards the rights and interests of the parties actually before him.
- (2) A Judge may at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the Judge to be just, order that the names of any parties improperly joined be struck out.
- (3) A Judge may order that the names of any party who ought to have been joined or whose presence before the Court is necessary to effectively and completely adjudicate upon and settle the questions involved in the proceedings, be added.
- (4) No person under legal disability shall be added as a Claimant suing without a guardian, and no person shall be added as the guardian of a Claimant under legal disability without his own consent in writing.
- (5) Every party whose name is added as Defendant shall be served with the Originating Processes or Notice in the manner prescribed in these Rules or in such manner as may be prescribed by a Judge and the proceedings against such person shall be deemed to have commenced on the service of such Originating Processes or Notice.

16. Application to add or strike out.

- (1) Any application to add, strike out, substitute or vary the name of a Claimant or Defendant may be made to a Judge by Motion.

- (2) The application shall be accompanied by the Statement of Claim or Defence as the case may be, copies of the documents intended to be used and the Witness Statements on Oath of all the witnesses:

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

17. Where new party is added.

- (1) Where a Claimant or Defendant is added or substituted, the Processes shall be amended accordingly and the party that made the application for the addition or substitution shall, unless otherwise ordered by a Judge, file amended Processes and cause the new parties to be served in the same manner as the original Claimant or Defendant.
- (2) All parties in the action shall also amend all pending processes and serve the same on the new Claimant or Defendant.

18. Third parties may be joined by any of the parties.

- (1) Where it appears to a Judge that any person not a party in the proceedings may bear eventual liability either in whole or in part, the Judge may upon an *ex-parte* application, allow that person to be joined as a third party by any of the Defendants. The application shall state the grounds for the Applicant's belief that such Third Party may bear eventual liability.
- (2) The Order and existing processes shall be served on the Third Party within the time prescribed for delivering the defence.

19. Appearance by Third Party.

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

20. Default by Third Party.

If a Third Party duly served with the Order and all existing processes does not enter an appearance or defaults in filing any pleading, he shall be deemed to admit the validity of the Claim and shall be bound by any Judgement given in an action, whether by consent or otherwise.

21. Subsequent Third Party.

A party joined as a Third Party in any proceedings may join any other party in

the same manner as he was joined and the expression "Third Party" shall apply to and include every person so joined.

22. Claim against co-defendant.

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

II. Actions against Firms and Persons carrying on Business in Names other than their own.

23. Actions by and against firms.

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

24. Disclosure of partners' names.

- (1) When an Originating Process is issued by partners in the name of their firm, the Claimants or their Legal Practitioner shall, on demand in writing by or on behalf of any Defendant, declare in writing the names and residential addresses of all the persons constituting the firm on whose behalf the action is brought.
- (2) Where the Claimants or their Legal Practitioner fail to comply with such demand, the action may, upon an application for that purpose, be struck out or dismissed as the Judge may consider appropriate.
- (3) Where the names of the partners are so declared, the suit shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as Claimants on the Originating Process provided that the proceedings may continue in the name of the firm.

25. Appearance of partners.

- (1) Where persons are sued as partners in the name of their firm, they may enter appearance individually in their own names; but all subsequent proceedings shall continue in the name of the firm.
- (2) Where an Originating Process is served upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a member of the firm sued.

26. Application of Rules to actions between co-partners.

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

27. Persons trading as firms.

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

III. Change of Parties by Death or otherwise, etc.**28. Action not abated where cause of action survives.**

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

29. Order to carry on proceedings.

- (1) Where by reason of death or bankruptcy or any other event occurring after the commencement of a proceedings and causing a change or transmission of interest or liability or by reason of any person interested coming into existence after the commencement of the proceedings, it becomes necessary or desirable that any person not already a party should be made a party or that any person already a party should be made a party in another capacity, an Order that the proceedings shall be carried on between the continuing parties and such new party or parties may be obtained *ex-parte* upon an allegation of such change, transmission of interest or liability or of any such person interested having come into existence.
- (2) An Order obtained under this Rule shall be served upon the continuing party or parties or their Legal Practitioner and also upon such new party unless the person making the application is the new party.
- (3) Every person served who is not already a party to the proceedings shall where applicable, enter an appearance thereto, within the same time and in the same manner as if he had been served with the Originating

Process. He shall thereupon be served with the originating and all existing processes.

- (4) Any party served under this Rule who was not already a party to the proceedings, shall file his pleading and other documents as if he had been an original party in the proceedings.

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

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

31. Application to discharge Order by persons under disability having a Guardian.

Where any person who is under no legal disability or being under any legal disability but having a guardian in the proceedings is served with an Order under Rule 29 of this Order, such person may apply to a Judge to discharge or vary such Order at any time within fourteen days from the service of the Order.

32. Persons under disability having no Guardian.

Where any person under any legal disability and not having a guardian in the proceedings is served with an Order under Rule 29 of this Order, such a person may apply to a Judge to discharge or vary such Order at any time within fourteen days from the appointment of a guardian for such party and until such period of fourteen days has expired, such Order shall have no force or effect as against the person under legal disability.

ORDER 14

JOINDER OF CAUSES OF ACTION

1. All causes of action may be joined.

Subject to the following Rules of this Order, a Claimant may join in the same action several causes of action but if it appears that they cannot be conveniently tried or disposed of together, a Judge may order separate trials of any such causes of action or may make such Order as may be necessary or expedient for the separate disposal thereof.

2. Recovery of land.

- (1) An action for recovery of land may be joined with an action for declaration of title, *mesne profit* or arrears of rent, damages for breach of any contract under which the land or any part thereof is held or for any wrong or injury to the premises.
- (2) An action for foreclosure or redemption may be joined with a claim for delivery of possession of the mortgaged property and a claim for payment of principal money or interest secured by or any other relief in respect of the mortgage of or charge on such land.

3. Claims by Executor and Administrator.

Claims by or against an Executor or Administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the Claimant or Defendant sues or is sued as Executor or Administrator.

4. Claims by joint Claimants.

Claims by Claimants jointly may be joined with claim by any of them separately against the same Defendant.

ORDER 15
PLEADINGS GENERALLY

1. Filing of pleadings.

- (1) A Claimant shall, at the institution of action by Writ of Summons, file a Statement of Claim which shall include the relief or remedy to which he claims to be entitled.
- (2) A Defendant shall file his Statement of Defence, or Counterclaim, if any, not later than twenty-one days after service on him of the Claimant's Originating Process and accompanying documents. A Counterclaim shall have the same effect as a cross-action, so as to enable the Court pronounce a final Judgement in the same proceedings.
- (3) A Claimant shall within ten days of service on him of the Statement of Defence and Counterclaim, if any, file his Reply to such defence or defence to the Counterclaim, if any:

Provided that where a Defendant sets up a Counterclaim, if a Claimant or any other person named as party to such Counterclaim contends that the claim thereby raised, ought not to be disposed of by way of Counterclaim but in an independent proceeding, a Judge may at any time order that such Counterclaim be excluded.

2. Pleadings to state material facts and not evidence.

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

3. Particulars to be given where necessary.

- (1) In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence and in all other

cases in which particulars may be necessary, particulars (with dates, times and items, if necessary) shall be stated in the pleadings.

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

4. Further and better statements or particulars.

An application for a further and better statement of the nature of the claim or defence or further and better particulars of any matter stated in any pleading requiring particulars, shall be made to a Judge. The Judge may grant such application upon such terms as may be just.

5. Denial.

- (1) Every allegation of fact in any pleadings if not specifically denied in the pleadings of the opposing party, shall be taken as admitted except as against a person under legal disability.
- (2) A general denial in any pleadings shall not operate as denial of any specific fact in the pleadings of the opposing party.

6. Evasive denial.

When a party in any pleading denies an allegation of fact in the previous pleading of the opposing party, he shall not do so evasively, but answer the point of substance. If an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances, but a full and substantial answer shall be given.

7. Denials specifically.

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

8. Conditions precedent.

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

9. Certain facts to be specifically pleaded.

- (1) All grounds of Defence or Reply which make an action or Counterclaim not maintainable or if not raised will take the opposing

party by surprise or will raise issues of facts not arising out of the preceding pleadings, shall be specifically pleaded.

(2) Where a party raises any ground which makes a transaction void or voidable or such matters as fraud, Limitation Law, release, p a y m e n t , performance, facts showing insufficiency in contract or illegality either by any enactment or by common law, he shall specifically plead same.

(3) A set-off must be specifically pleaded.

10. Pleadings to be consistent.

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

11. Joinder of issues.

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

12. Effect of documents to be stated.

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

13. Notice.

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

14. Implied contract or relation.

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

15. Presumptions of law.

A party may not allege in any pleadings any matter or fact which the law presumes in his favour or as to which the burden of proof lies upon the other party, unless the same had first been specifically denied.

16. Stated or settled account.

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

17. Technical objection.

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

18. Striking out of pleadings.

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

19. Defamation.

- (1) Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.
- (2) Where in an action for libel or slander the Defendant pleads that any of the words or matters complained of are fair comment on a matter of public interest or were published upon a privileged occasion, the Claimant shall, if he intends to allege that the Defendant was actuated by express malice, deliver a Reply giving particulars of the facts and matters which such malice is to be inferred.
- (3) Where in an action for libel or slander the Defendant alleges that in so far as the words complained of consist of statement of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he shall give particulars stating which of the

facts and matters he relies on in support of the allegation that the words are true or fair comment.

20. Where pleading discloses no reasonable cause of action.

- (1) The Judge may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any Writ in the action or anything in any pleading or in the indorsement, on the ground that:
 - (a) it discloses no reasonable cause of action or defence as the case may be; or
 - (b) it is scandalous, frivolous or vexatious; or
 - (c) it may prejudice, embarrass or delay the fair trial of the action; or
 - (d) it is otherwise an abuse of the process of the Court, and may order the action to be stayed or dismissed or Judgement to be entered accordingly, as the case may be.
- (2) No evidence shall be admissible on application under sub-rule (1) (a) of this Rule.
- (3) This Rule shall so far as applicable, apply to an Originating Summons, Originating Motion, a Petition and Judicial Review as if the Originating Summons, Originating Motion, Petition or Judicial Review, as the case may be, were a pleading or endorsement of a Writ.
- (4) No proceedings shall be open to objection on the ground that only declaratory Judgement or Order is sought thereby and a Judge may make a binding declaration of right whether any consequential relief is or could be claimed or not.

21. Close of pleadings.

- (1) Where a Defendant fails to file his Statement Defence within the time prescribed by these Rules, pleadings shall be deemed closed;
- (2) Where a pleading subsequent to Reply is not ordered, then at the expiration of seven days from the service of the Defence or Reply, if a Reply has been filed, pleadings shall be deemed closed;
- (3) Where a pleading subsequent to Reply is ordered, and the party who has been ordered or given leave to file the same fails to do so within the

period limited for the purpose, then at the expiration of the period limited, pleadings shall be deemed closed:

Provided that this Rule shall not apply to a Defence to Counterclaim and unless the Claimant files a Defence to Counterclaim, the statements of fact contained in such Counterclaim shall at the expiration of ten days from the service thereof or of such time, if any, as may by Order be allowed for filing of a Defence thereto, be deemed to be admitted, but the Judge may at any subsequent time, give leave to the Claimant to file a Defence to the Counterclaim.

www.sabilaw.org

ORDER 16
STATEMENT OF CLAIM

1. Statement of Claim.

- (1) Every Statement of Claim or Counterclaim shall specifically state the relief claimed either in the main or in the alternative, and it shall not be necessary to ask for general or other relief which may be granted as the Judge may think just.
- (2) Where the Claimant seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated as far as may be, separately and distinctly.

2. Claim beyond indorsement.

Where a Statement of Claim is filed, the Claimant may alter, modify or extend his claim without any amendment of the indorsement of the Writ:
Provided that the Claimant may not completely change his cause of action indorsed on the Writ without amending the Writ.

www.sabilawo.org

ORDER 17

STATEMENT OF DEFENCE, REPLY AND COUNTERCLAIM

1. **Statement of Defence.**

- (1) The Statement of Defence shall be a statement in summary form and shall be supported by copies of documents to be relied upon, list of witnesses and their Written Statements on Oath.
- (2) Where the Defendant relies on separate and distinct grounds of Defence, Set-off or Counterclaim founded upon separate and distinct fact, they shall be stated, as far as may be, separately and distinctly.

2. **Denials generally.**

- (1) In an action for debt or liquidated money demand, a mere denial of the debt shall not be sufficient defence.
- (2) In an action for money had and received, a defence in denial must deny the receipt of the money or the existence of those facts which are alleged to make such receipt by the Defendant a receipt to the use of the Claimant.
- (3) In an action for goods sold and delivered, the defence must deny the order or contract, the delivery or the amount claimed.
- (4) In an action upon a bill of exchange, promissory note or cheque, a defence in denial must deny the matter of fact, e.g. the drawing, making, indorsing, accepting, presenting or notice of dishonour of the bill or note.

3. **Pleadings as to damages.**

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

4. **Set-off and Counterclaim.**

Where any Defendant seeks to rely upon any ground as supporting a right of Set-off or Counterclaim, he shall in his defence state specifically that he does so by way of supporting a right of Set-off or Counterclaim.

5. **Title of Counterclaim.**

- (1) Where a Defendant by his defence sets up any Counterclaim which raises questions between himself and the Claimant along with any other persons, he shall add to the title of his Defence a further title similar to

the title in a Statement of Claim setting forth the names of all persons who, if such Counterclaim were to be enforced by cross-action would be Defendants to such cross-action.

- (2) The Defendant shall deliver his Defence to such persons who are existing parties to the action within the period required for delivery of same to the Claimant.

6. Claim against persons not parties. Civil Form 15.

Where any such person as in Rule 5 of this Order is not a party to the action, he shall be summoned to appear by being served with a copy of the Defence and Counterclaim and such service shall be regulated by the same Rules as those governing the service of the Originating Process and every Defence and Counterclaim so served shall be indorsed as in Form 15 with such modifications or variations as circumstances may require.

7. Appearance by added parties.

Any person not already a party to the action who is served with a Defence and Counterclaim as aforesaid, must appear thereto as if he had been served with an Originating Process to appear in an action.

8. Reply to Counterclaim.

- (1) Where a Counterclaim is pleaded, a Reply thereto is called a Defence to Counterclaim and shall be subject to the Rules applicable to Defences.
- (2) Any person not already a party to the action who is named in a Defence as a party to a Counterclaim thereby made shall deliver a Defence in a mode and manner prescribed under this Order and the provisions of the Order shall apply to such a person.

9. Discontinuance of Claimant's claim.

Where, in any case in which the Defendant sets up a Counterclaim and the action of the Claimant is stayed, discontinued or dismissed, the Counterclaim may nevertheless be proceeded with.

10. Judgement for balance.

Where in an action, a Set-off or Counterclaim is established as a defence against the Claimant's claim, the Judge may, if the balance is in favour of the Defendant, give Judgement for the Defendant for such balance or may otherwise adjudge to the Defendant such relief as he may be entitled to upon the merits of the case.

11. Grounds of defence after action brought.

- (1) Any ground of defence which arises after the action has been filed, but before the Defendant has delivered his Defence, and before the time limited for doing so has expired, may be raised by the Defendant in his Defence, either alone or together with other grounds of defence.
- (2) Where a Defence has been delivered along with a Set-off or Counterclaim, any basis for answer or ground of defence arises to any such Set-off or Counterclaim respectively, it may be raised by the Claimant in his Reply (in the case of a Set-off) or Defence to Counterclaim, either alone or together with any other ground, Reply or Defence to Counterclaim.

12. Further defence or reply.

Where any ground of defence arises:

- (a) after the Defendant has delivered a Defence, or after the time limited for his doing so has expired; or
- (b) in respect of a Set-off or Counterclaim, after the Claimant has filed the Reply or after the time limited for delivery of Reply has expired, the Defendant or Claimant may within five days after such ground of defence has arisen or at any subsequent time by leave of a Judge deliver a further Defence or further Reply (as the case may be), setting forth the same.

13. Concession to Defence. Civil Form 16.

Whenever any Defendant in his Defence or in any further Defence pursuant to Rule 12 of this Order alleges any ground of defence which has arisen after the commencement of the action, the Claimant may concede to such defence (which concession may be as in Form 16 with such modification as circumstances may require) and may thereupon obtain Judgement up to the time of the pleading of such defence, unless the Judge either before or after the delivery of such concession otherwise orders.

14. Filing of Reply.

Where the Claimant desires to make a Reply, he shall file it within ten days from the service of the Defence with copies of documents to be relied upon and Written Statements on Oath of his witnesses.

15. Defendant's Reply to Originating Summons, Motion or Petition

A Defendant to an Originating Summons, Originating Motion or Petition, if within jurisdiction, shall file and serve a Counter-Affidavit together with all the exhibits he intends to rely upon and a Written Address within fourteen days after service of the Originating Summons, Originating Motion or Petition or within such abridged or extended time by the Judge and, if outside jurisdiction, shall file and serve a Counter-Affidavit and accompanying processes aforesaid, within 30 days.

16. Claimant's Reply in Originating Summons, Motion or Petition

A Claimant in an Originating Summons, Originating Motion or Petition may file a Reply to the Defendant's Counter-Affidavit together with exhibits, if any, within seven days after service of the Defendant's Counter-Affidavit or within such time as may be abridged or extended by the Judge.

www.sabilaw.org

ORDER 18
ADMISSIONS

1. Admission of facts.

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

2. Notice to admit documents.

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

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

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

3. Notice to admit facts.

(1) Either party may not later than seven days before the trial by notice in writing filed and served, require any other party to admit any specific fact or facts mentioned in the notice and the party so served shall not later than four days after service, give notice of admission or non-admission of the fact or facts failing which he shall be deemed to have admitted it unless a Judge otherwise orders.

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

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

4. Judgement or Order upon admission of facts.

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

5. Costs of notice where documents unnecessary.

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

www.sabilar.org

ORDER 19
DEFAULT OF PLEADINGS

1. Claim for debt or liquidated demand.

Where the claim is only for a debt or liquidated demand and the Defendant does not within the time allowed for the purpose file a defence, the Claimant may, at the expiration of such time, apply for final Judgement for the amount claimed with costs.

2. Several Defendants: default by one.

Where in any action there are several Defendants, and one of them is in default as mentioned in Rule 1 of this Order, the Claimant may apply for final Judgement against the Defendant in default and issue execution upon such Judgement without prejudice to his right to proceed with his action against the other Defendants.

3. Damages and detention of goods.

(1) Where the claim is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages, and the Defendant or all the Defendants, if more than one, defaults as mentioned in Rule 1 of this Order, the Claimant may apply to a Judge for Interlocutory Judgement against the Defendant or Defendants and the value of the goods and the damages, or the damages only, as the case may be, shall be ascertained in any way which the Judge may order.

(2) Where the value of the goods and damages are to be ascertained and, in all cases where declaratory reliefs are sought, the Judge shall set down the matter for trial unless he otherwise orders.

4. Default of one or more Defendants.

Where in any such action as in Rule 3 of this Order, there are several Defendants, if one or more of them make default as mentioned in Rule 1 of this Order, the Claimant may apply to a Judge for Interlocutory Judgement against the Defendant or Defendants so making default and proceed with his action against the others. In such case, the value and amount of damages against the Defendant making default shall be assessed at the trial of the action or issues therein against the other Defendants, unless the Judge shall otherwise order.

5. Debt or damages and detention of goods or damages.

Where the claim is for debt or liquidated demand and also for pecuniary

damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any Defendant makes default as mentioned in Rule 1 of this Order, the Claimant may apply to a Judge for final Judgement for the debt or liquidated demand and may also apply for Interlocutory Judgement for the value of the goods and damages or the damages only, as the case may be, and proceed as mentioned in Rules 3 and 4 of this Order.

6 Claim for recovery of land.

Where the action is for the recovery of land, and the Defendant makes default as mentioned in Rule 1 of this Order, the Claimant may apply for Judgement that the person whose title is asserted in the Writ of Summons shall recover possession of the land with cost

7. Claim for *mesne* profit, arrears or damages.

Where the Claimant has indorsed a claim for *mesne* profit or arrears of rent in respect of the premises claimed or any part thereof or damages for breach of contract or wrong or injury to the premises claimed upon a Writ for the recovery of land, and the Defendant makes default as mentioned in Rule 1 of this Order, or if there be more than one Defendant, some or one of the Defendants make such default, the Claimant may apply for final Judgement against the defaulting Defendant or Defendants and proceed as mentioned in Rules 3 and 4 of this Order.

8. Where a defence is filed to part of claim only.

Where the Claimant's claim is for a debt or liquidated demand or for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, or for any such matters or for the recovery of land and the Defendant files a defence which purports to offer an answer to part only of the Claimant's alleged cause of action, the Claimant may apply for Judgement, final or interlocutory, as the case may be, for the part unanswered:

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

Provided also that where there is a Counterclaim, execution on any such Judgement as above mentioned in respect of the Claimant's claim shall not issue without leave of the Judge.

9. Defendant in default.

In all actions other than those in the preceding Rules of this Order, if the Defendant makes default in filing a defence, the Claimant may apply to a Judge for Judgement and such Judgement shall be given upon the Statement of Claim as the Judge shall consider the Claimant to be entitled to.

10. One of several Defendants in default.

Where in any such action as mentioned in Rule 8 of this Order, there are several Defendants, and one of such Defendants makes such default as aforesaid, the Claimant may apply for Judgement against the Defendant so making default and proceed against the other Defendants.

11. Default of Third Party.

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

12. Setting aside Judgement by default.

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

ORDER 20
PAYMENT INTO AND OUT OF COURT

1. Payment into and out of Court. Civil Form 17.

- (1) Where after service in any proceeding for debt or damages, a Defendant intends to pay money into Court in respect of the proceedings, he shall notify the Chief Registrar who will thereupon direct him to pay the money into an interest yielding account in the name of the Chief Registrar in a commercial bank and he shall file the teller or other form of acknowledgement for such payment with the Chief Registrar.
- (2) Where a teller or other form of acknowledgement for payment is filed with the Chief Registrar, he shall forthwith give notice of the payment to the Claimant who may apply to a Judge for an Order to withdraw the amount so paid.
- (3) Where a defence of tender before action is set up, the sum of money alleged to have been tendered shall be brought into Court.
- (4) The Defendant may without leave, give a written notice to the Registrar of an intention to increase the amount of any sum paid into Court.
- (5) Where the money is paid into Court in satisfaction of one or more of several causes of action, the notice shall specify the cause or causes of action in respect of which payment is made and the sum paid in respect of each such cause of action unless a Judge otherwise directs.
- (6) The notice shall be as in Form 17 with such modifications or variations as circumstances may require. The receipt of the notice shall be acknowledged in writing by the Claimant within three days. The notice may be modified or withdrawn or delivered in an amended form by leave of a Judge upon such terms as may be just.
- (7) Where money is paid into Court with denial of liability, the Claimant may proceed with the action in respect of the claim and if he succeeds, the amount paid shall be applied so far as is necessary in satisfaction of the claim and the balance, if any, shall on the Order of a Judge be repaid to the Defendant.

- (8) Where the Defendant succeeds in respect of such claim, the whole amount paid into Court shall be repaid to him on the Order of a Judge.

2. Claimant may receive money. Civil Form 18.

- (1) Where money is paid into Court under Rule 1 of this Order, the Claimant may within fourteen days of the receipt of the notice of payment into Court, or where more than one payment into Court has been made, within fourteen days of the receipt of the notice of the last payment into Court, accept the whole sum or any one or more of the specific sum in satisfaction of the cause or causes of action to which the specified sum or sums relate by giving notice to the Defendant as in Form 18 with such modifications or variations as circumstances may require and thereupon shall be entitled to receive payment of the accepted sum or sums in satisfaction as aforesaid.
- (2) Payment shall be made to the Claimant or, on his written authority, to his Legal Practitioner, and thereupon proceedings in the action or in respect of the specified cause or causes of action, as the case may be, shall abate.
- (3) If the Claimant accepts money paid into Court in satisfaction of his claim or if he accepts a sum or sums paid in respect of one or more specified causes of action, and gives notice that he abandons the other causes of action, he may after four days from payment out and unless a Judge otherwise orders, tax his costs incurred to the time of payment into Court, and forty-eight hours after taxation may sign Judgement for his taxed costs.
- (4) Where in an action for libel or slander, the Claimant accepts money paid into Court, either party may apply by Motion to a Judge for leave for the parties, or either of them, to make a statement in open Court in terms approved by the Judge.

3. Money remaining in Court

If the whole of the money in Court is not taken out under Rule 2 of this Order, the money remaining in Court shall not be paid out except in satisfaction of the claim or specified cause or causes of action in respect of which it was paid in pursuance of an Order of a Judge which may be made at any time before, at or after trial.

4. Several Defendants. Civil Form 19.

- (1) Money may be paid into Court under Rule 1 of this Order by one or more of several Defendants sued jointly or in the alternative upon notice to the other Defendant or Defendants.
- (2) If the Claimant elects within fourteen days after receipt of notice of payment into Court to accept the sum or sums paid into Court, he shall give notice as in Form 19 with such modifications or variations as circumstances may require to each Defendant and thereupon all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, shall abate.
- (3) The money shall not be paid out except in pursuance of an Order of a Judge dealing with the whole cause or causes of action.
- (4) In an action for libel or slander against several Defendants sued jointly, if any Defendant pays money into Court, the Claimant may within fourteen days elect to accept the sum paid into Court in satisfaction of his claim against the Defendant making the payment and shall give notice to all the Defendants as in Form 19 with such modifications or variations as circumstances may require.
- (5) The Claimant may tax his costs against the Defendant who has made such payment in accordance with sub-rule 3 in Rule 2 of this Order and the action shall abate against that Defendant.
- (6) The Claimant may continue with the action against any other Defendant but the sum paid into Court shall be set off against any damage awarded to the Claimant against the Defendant or Defendants against whom the action is continued.

5. Payment on Counterclaim.

A person made a Defendant to a Counterclaim may pay money into Court in accordance with the foregoing Rules, with necessary modifications.

6. Persons under legal disability.

- (1) In any proceeding in which money or damages is or are claimed by or on behalf of a person under legal disability suing either alone or in conjunction with other parties, no settlement, compromise, payment or acceptance of money paid into Court, whether before, at or after the

trial, shall as regards the claims of any such person be valid without the approval of a Judge.

- (2) No money (which expression for the purpose of this Rule includes damages) in any way recovered, adjudged, ordered, awarded or agreed to be paid in any such proceedings in respect of the claims of any such person under legal disability whether by Judgement, settlement, compromise, payment into Court or otherwise, before, at or after the trial, shall be paid to the Claimant or to the guardian of the Claimant or to the Claimant's Legal Practitioner unless the Judge shall so direct.
- (3) (a) All monies so recovered, adjudged, ordered, awarded or agreed to be paid shall be dealt with as the Judge shall direct.
- (b) The directions thus given may include any general or special directions that the Judge may deem fit to give, including:
- (i) directions on how the money is to be applied or dealt with;
 - (ii) any payment to be made either directly or out of money paid into Court to the Claimant, or to the guardian in respect of monies paid or expenses incurred;
 - (iii) maintenance or otherwise for or on behalf of or for the benefit of the person under legal disability or otherwise; and
 - (iii) payment to the Claimant's Legal Practitioner in respect of costs or of the difference between the party and Legal Practitioner and client costs.

7. Payment into and withdrawal of money from Court.

Every application or notice for payment into or transfer out of Court, shall be made on notice to the other side.

ORDER 21
PROCEEDINGS IN LIEU OF DEMURRER

Points of law may be raised by pleading.

- (1) An objection on any issue of law shall only be raised in the pleading.
- (2) Any party may by his pleading raise any point of law and the Judge may, by consent of the parties, or by the application of either party, the same may be set down for hearing and disposal before, during or at the end of the trial.
- (3) If in the opinion of the Judge, the decision on such point of law substantially disposes of the whole proceedings or of any distinct part thereof, the Judge may make such decision as may be just.

www.sabilaw.org

ORDER 22
WITHDRAWAL OR DISCONTINUANCE

1. Withdrawal of appearance

A party who has entered an appearance in an action may withdraw the appearance at any time with the leave of the Judge.

2. Discontinuance of action without leave

- (1) A Claimant may, without the leave of a Judge, discontinue the action, or withdraw any particular claim made by him as against any or all of the Defendants at any time not later than fourteen days after service of the Defence on him or, if there are two or more Defendants, of the defence last served on him, by serving a notice to that effect on the Defendant concerned.
- (2) A Defendant may, without leave of a Judge:
 - (a) withdraw his defence or any part of it at any time;
 - (b) discontinue a Counterclaim, or any particular claim made by him therein as against any or all of the parties against whom it was made, at any time not later than fourteen days after service on him of the defence to the Counterclaim or, if the Counterclaim is made against two or more parties, of the defence to the Counterclaim last served, by serving a notice to that effect on the Claimant or other party concerned.
- (3) Where there are two or more Defendants to an action not all of whom serve a defence on the Claimant and the period fixed by or under this Rule for service by any of those Defendants of his defence expires after the latest date on which any other Defendant serves his defence, sub-rule 1 of this Rule shall have effect as if the reference to the service of the defence last served were a reference to the expiration of that period.
- (4) Sub-rule 3 of this Rule shall apply in relation to Counterclaim as it applies in relation to an action, with the substitution for references to a defence, to the Claimant and to sub-rule 1 of this Rule, of references to a defence to Counterclaim, to the Defendant and to sub-rule 2 of this Rule respectively.
- (5) Where all the parties to an action consent, the action may be withdrawn without leave of the Judge at any time before trial by producing to the

Registrar a written consent to the action being withdrawn signed by all the parties, and the action shall thereafter be struck out.

3. Discontinuance of action with leave

- (1) Except as provided by Rule 2 in this Order, a party may not discontinue an action or Counterclaim, or withdraw any particular claim made by him therein without leave of a Judge.
- (2) The Judge, upon hearing an application for the grant of leave in sub-rule 1 of this Rule, may order the action or Counterclaim to be discontinued or any particular claim made therein to be struck out, as against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as he thinks just.
- (3) An application for the grant of leave under this rule may be made by Summons or Motion on Notice.

4. Effect of discontinuance.

Subject to any terms imposed by the Judge in granting leave under Rule 3 of this Order, the fact that a party has discontinued an action or Counterclaim, or withdrawn a particular claim made by him therein, shall not be a defence to a subsequent action for the same, or substantially the same, cause of action.

5. Stay of subsequent action until costs paid

Where a party has discontinued an action or a Counterclaim or withdrawn any particular claim made by him therein, and he is liable to pay costs occasioned to any other party of the action or Counterclaim or the costs occasioned to any other party by the claim withdrawn, then where, before payment of those costs, he subsequently brings an action, for the same or substantially the same cause of action, the Judge may order the proceedings in that subsequent action to be stayed until those costs are paid.

6. Withdrawal of Summons or Motion

A party who has taken out a Summons or filed a Motion in a pending cause or matter may not withdraw it without leave of the Judge.

**ORDER 23
AMENDMENT**

- 1. Amendment of originating processes, pleadings and other processes.**

A party may amend his Originating Process, pleadings and other processes at any time before Judgement and not more than twice during trial but before closing his case.
- 2. Application.**
 - (1) Application to amend may be made to a Judge.
 - (2) The application, which shall be supported by an exhibit of the proposed amendment, list of any additional witness to be called together with his Written Statement of on Oath and a copy of any document to be relied upon consequent on such amendment, may be allowed upon such terms as to costs or otherwise as may be just.
- 3. Failure to amend after Order.**

Where a party who has obtained an Order to amend does not amend accordingly within the time limited for that purpose by the Order, or if no time is thereby limited, then within five days from the date of the Order, such party shall pay an approved additional fee fixed in the Schedule of Fees payable in Court for each day of default.
- 4. Filing and service of amended process.**

Where any Originating Process, pleading or other processes is amended, a copy of the document as amended shall be filed in the Registry and additional copies served on all the parties to the action.
- 5. Date of Order and amendment to be displayed.**

Where any Originating Process, pleading or other processes is amended, it shall be marked in the following manner:
"Amended this..... day of..... pursuant to the Order of (name of Judge) dated the.....day of....."
- 6. Clerical mistakes and accidental omissions.**

A Judge may at any time correct clerical mistakes in Judgements or Orders, or errors arising therein from any accidental slip or omission upon application without an appeal being filed.

7. General power to amend.

- (1) Subject to the provisions of Rule 1 of this Order, a Judge may at any time and on such terms as to costs or otherwise as may be just, amend any defect or error in any proceedings.
- (2) Typographical or minor errors in Originating Processes, pleadings and other processes, or non-contentious amendments, may be granted upon an oral application of any party.

www.sabilaw.org

ORDER 24

DISCOVERY AND INSPECTION

1. Discovery by interrogatories.

In any cause or matter, the Claimant or Defendant may deliver interrogatories in writing for the examination of the opposing party or any one or more of such parties and such interrogatories when delivered, shall have a note at the end of it stating which of the interrogatories each person is required to answer. Interrogatories shall be delivered within seven days of close of pleadings.

2. Form of interrogatories. Civil Form 20.

Interrogatories shall be as in Form 20 with such modifications or variations as circumstances may require.

3. Corporations or companies.

Where any party to a cause or matter is a limited or unlimited company, body corporate, firm, enterprise, friendly society, association or any other body or group of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposing party may deliver interrogatories to any member or officer of such party.

4. Objection to interrogatories by answer.

Any objection to answering any one or more of several interrogatories on the ground that it is or they are scandalous or irrelevant, may be taken in the affidavit in answer at any time before commencement of trial.

5. Filing of affidavit in answer

Interrogatories shall be answered by affidavit to be filed within seven days, or within such other time as the Judge may allow. As many copies of the affidavit in answer shall be supplied to the Registrar as there are parties to be served.

6. Form of affidavit in answer. Civil Form 21.

An affidavit in answer to interrogatories shall be as in Form 21 with such modifications or variations as circumstances may require.

7. Order to answer or answer further.

Where any person interrogated omits to answer or answers insufficiently, the trial Judge shall, on application, issue an Order requiring him to answer, or answer further as the case may be.

8. Application for discovery of documents. Civil Form 22.

- (1) Any party may in writing request any other party to any cause or matter to make discovery on oath of the documents that are or have been in his possession, custody, power or control, relating to any matter in question in the case.
- (2) Request for discovery shall be served within seven days of close of pleadings, and the party on whom such a request is served shall answer on oath completely and truthfully within seven days of the request or within such other time as the Judge may allow.
- (3) Every affidavit in answer to a request for discovery of documents shall:
 - (a) be accompanied by office copies of documents referred to therein;
 - (b) specify which, if any, of the listed documents he objects to producing, stating the grounds of his objection and it shall be as in Form 22 with such modifications or variations as circumstances may require.

9. Verification of business books.

- (1) Where a document required to be attached to any process or produced under this or any other Rule is a business book, a Judge may upon application order a copy of any entry therein to be furnished and verified in an affidavit. Such affidavit shall be made by a person who keeps the book or under whose supervision the book is kept.
- (2) Notwithstanding that a copy has been furnished and verified, a Judge may order inspection of the book from which the copy was made.
- (3) Where on an application for furnishing and verification, a privilege is claimed for any document, the Judge may inspect the documents for the purpose of deciding the validity of the claim of privilege.
- (4) The Judge may *suo motu* or on application, and whether or not an affidavit of documents has already been ordered or made, make an Order requiring any party to state by affidavit whether any particular document is or are or has or have at any time been in the possession, custody, power or control of that party, when that party parted with the same and what has become of same.
- (5) The Judge may *suo motu* or otherwise, order or direct or require a party (including a Defendant who is not disputing the claim or otherwise defending), a counsel, a witness or a prospective witness or a

non-party, to answer such interrogatories and furnish such discovery and inspection as the Judge may direct, in the interest of justice.

10. Committal of party after service on Legal Practitioner.

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

11. Committal of Legal Practitioner.

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

12. Using answers to interrogatories at trial.

Any party may at the trial of a cause, matter or issue, use in evidence any one or more of the answers or any part of an answer of the opposing party to interrogatories without putting in the others or the whole of such answer: Provided that the Judge may look at the whole of the answers and order that any of them may be put in.

13. Discovery against Sheriff.

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

14. Order to apply to persons under legal disability.

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

15. Application for inspection or copies of items in opponent's control or custody.

- (1) A party applying to inspect or copy documents or items in the custody or control of the opposing party, shall serve on such opposing party a request:
 - (a) to produce and permit the requesting party or its representative to inspect, copy, test or sample the following items in the opposing party's possession, custody or control:

-
- (i) any designated document or electronically stored information including writings, drawings, graphs, charts, photographs, sound recordings, images and other data compilations stored in any medium from which any information can be obtained either directly or, if necessary, after translation by the opposing party into a reasonably useable form; or
 - (ii) any designated tangible thing;
 - (b) to permit entry into any designated land or other property possessed or controlled by the opposing party so that the requesting party may inspect, measure, survey, photograph, test or sample the property or any designated object or operation on it.
- (2) The request referred to in Rule 1 of this Order shall:
- (a) describe with reasonable particularity each item or category of items to be inspected, copied, tested or sampled;
 - (b) specify a reasonable time, place and manner for the inspection and for performing the related acts; and
 - (c) specify the form or forms in which electronically stored information is to be produced.
- (3) The party to whom the request is directed must respond in writing within seven days after being served.
- (4) For each item or category, the opposing party must either state that the inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request with reasons. The opposing party may state that it will produce copies of documents or electronically stored information instead of permitting inspection and related acts. The production must be completed not later than the time for the inspection specified in the request or such time as the Court may order.
- (5) An objection must state whether any material is being withheld and the basis of that objection, and an objection to part of an application must specify the part and permit inspection of the rest.

-
- (6) While responding to an application for the production of electronically stored information, the opposing party may state an objection to the application for producing such information and if there is any such object or if no form was specified in the application, the opposing party must state the form or forms he intends to use.
 - (7) Unless otherwise stipulated or ordered by the Court, the following procedures shall apply to producing documents or electronically stored information namely:
 - (a) the opposing party must produce documents as they are kept in the usual course of business or must organise and label them to correspond to the categories in the request;
 - (b) where a request does not specify the form for producing electronically stored information, opposing party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably useable form or forms; and
 - (c) the opposing party need not produce the same electronically stored information in more than one form.
 - (8) A non-party may be compelled to produce document or tangible things or permit an inspection, copying, testing or sampling.
 - (9) The disclosure of a document or its production for inspection, copying, testing or sampling does not constitute an admission of its authenticity or admissibility in the action.
16. Upon the application of any party, the Court may grant an Order permitting any party to the proceeding entry into any land, the subject matter of any proceedings, for the purpose of producing therefrom a litigation drawing or plan or map for use at the trial.

ORDER 25

ISSUES OF FACT, INQUIRIES, ACCOUNTS AND REFERENCES TO REFEREES

1. **Issues of fact.**

- (1) In all proceedings, issues of fact in dispute shall be defined by each party and filed within seven days after close of pleadings.
- (2) If the parties differ on the issues, the Judge may settle the issues.

2. **Reference to Referee.**

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

3. **Instruction to Referee.**

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

4. **General powers of Referee.**

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

5. **Evidence.**

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

- (2) The Referee shall have the same authority in the conduct of any inquiry as a Judge when presiding at any trial.
- (3) Nothing in these Rules shall authorise any Referee to commit any person to a Correctional Centre or to issue or enforce any Order of committal or otherwise; but the Judge may, in respect of matters before a Referee, make such Order of committal or otherwise, as he may consider necessary.

6. Reports made in pursuance of reference under Order.

- (1) The Report made by a Referee in pursuance of a reference under this Order shall be made to the Judge and notice thereof served on the parties to the reference.
- (2) A Referee may by his Report submit any question arising therein for the decision of the Judge or make a special statement of fact from which the Judge may draw such inferences as he deems fit.
- (3) On the receipt of a Referee's Report, the Judge may:
 - (a) adopt the Report in whole or in part;
 - (b) vary the Report;
 - (c) require an explanation from him;
 - (d) remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other referee; or
 - (e) decide the question or issue originally referred to him on the evidence taken before him, either with or without additional evidence.
- (4) When the Report of the Referee has been made, an application to vary the Report or remit the whole or part of the question or issue originally referred, may be made at the hearing by the Judge for the further consideration of the cause or matter, after giving not less than four days' notice thereof to the opposing party, and any other application with respect to the Report may be made on that hearing without notice.
- (5) Where on a reference under this Order a Judge orders that the further consideration of the cause or matter in question shall not stand adjourned until the receipt of the Referee's Report, the Order may contain directions with respect to the proceedings on the receipt of the Report and the foregoing provisions of this Rule shall have effect subject to any such directions.

7. Special directions as to mode of taking account.

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

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

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

9. Mode of vouching account.

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

10. Surcharge.

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

11. Accounts and inquiries to be numbered. Civil Form 23.

Where by any Judgement or Order any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that as far as may be, each distinct account and inquiry may be designated by a number and such Judgement or Order shall be as in Form 23 with such modifications or variations as the circumstances of the case may require.

12. Just allowances.

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

13. Expediting proceedings in case of undue delay.

Where it appears to the Judge that there is any undue delay in the prosecution of any proceedings under this Order, the Judge may require the party having the conduct of the proceedings or any other party to explain the delay and may

thereupon make such Order with regard to expediting the proceedings or the conduct thereof, or the stay thereof and as to the costs of the proceedings as the circumstances of the case may require; and for the purposes aforesaid, the Judge may summon any person whose attendance is required to conduct any proceeding and carry out any directions which may be given.

14. Interpretation of reference to Referee.

Reference to a Referee under this Order includes a reference to Akwa Ibom State Multi-Door Courthouse or any other Alternative Dispute Resolution body ordered by the Court.

www.sabilaw.org

ORDER 26
SPECIAL CASE

1. Special Case by consent.

- (1) In course of the proceeding, parties may agree in stating the questions of law arising in their case in the form of a Special Case for the opinion of the Judge.
- (2) Every such Special Case shall be divided into paragraphs numbered consecutively and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions.
- (3) Upon the argument of such case, the Judge and the parties may refer to all the contents of such documents and the Judge may draw from the facts and documents stated in any such Special Case any inference, whether of fact or law, which might have been drawn from them if proved at a trial.

2. Special Case Order before trial.

Where it appears to the Judge that there is in any cause or matter a question of law, which could be conveniently decided before any evidence is given or any question or issue of fact is tried, the Judge may make an Order accordingly and may raise such questions of law or direct them to be raised at the trial either by Special Case or in such other manner as the Judge may deem expedient and all such further proceedings as the decision on such question of law may render unnecessary may thereupon be stayed.

3. Special Case to be signed.

Every Special Case agreed pursuant to this Order shall be signed by the several parties or their Legal Practitioners and shall be filed by the Claimant or the person having conduct of the proceedings.

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

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

5. Agreement as to payment of money and costs.

- (1) The parties to a Special Case may, if they think fit, enter into an agreement in writing which shall not be subject to any stamp duty, that on the Judgement of the Court being given in the affirmative or

negative on the questions of law raised by the Special Case, a sum of money fixed by the parties or to be ascertained by the Court or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, either with or without costs as the case may be.

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

6. Application of Order.

This Order shall apply to every Special Case stated in a cause or matter and in any proceedings incidental thereto.

www.sabilaw.org

ORDER 27
CAUSE LISTS

1. List of causes for hearing.

The Registrar shall keep a Weekly Cause List of all actions which are ready for trial or hearing.

2. Weekly Cause list.

- (1) The Registrar shall post up on every Friday a Weekly Cause List which shall set out the arrangement of causes before each of the Judges sitting in the Court during the following week.
- (2) Nothing in this Rule shall preclude the Chief Judge from giving special directives whenever necessary or convenient for the disposal of causes and matters included in the list.

3. Public Holidays.

Where any Friday is a public holiday, the Weekly Cause List shall be posted up on the day last preceding which is not a public holiday.

4. Judge unable to sit.

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

5. Notice Boards.

The Weekly Cause Lists and other such lists shall be posted up on one or more Notice Boards set up in such place or places within or near the Court premises as the Chief Judge may designate.

ORDER 28
TRIAL PROCEEDINGS

1. Non-appearance of both parties.

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

2. Default of appearance by Defendant at trial.

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

3. Default of appearance by Claimant.

When a cause is called for hearing, if the Defendant appears and the Claimant does not appear, the Defendant, if he has no Counterclaim, shall be entitled to Judgement striking out the action, but if he has a Counterclaim, then he may prove such Counterclaim so far as the burden of proof lies upon him.

4. Judgement by default may be set aside on terms.

- (1) Where a cause is struck out under Rule 1 of this Order, either party may apply that the cause be restored on the Cause List on such terms as the Judge may deem fit.
- (2) Any Judgement obtained where any party does not appear at the trial, may be set aside by the Judge upon application of the party and on such terms as the Judge may deem fit.
- (3) An application to re-list a cause struck out or to set aside a Judgement shall be made within six days after the Order or Judgement or such longer period as the Judge may allow.

5. Adjournment of trial.

The Judge may, if he thinks it expedient in the interest of justice, postpone or adjourn a trial for such time and upon such terms, if any, as he shall deem fit.

6. Times of commencement and termination of trial.

The Registrar or other proper officer present at any trial or hearing, shall make a note of the times at which the trial or hearing commences and terminates respectively and the time it actually occupies on each day it goes on for communication to the Taxing Officer, if required.

7. Order of proceedings.

Subject to the provisions of the Evidence Act, the order of proceedings at the trial of a cause shall be as prescribed in the following Rules of this Order.

8. Burden of proof by party to begin.

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

9. Documentary evidence.

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

10. Additional witness.

(1) A party who desires to call any witness not being a witness whose Witness Statement on Oath accompanied his pleading, shall apply to the Judge for leave to call such witness.

(2) An application for leave in sub-rule (1) of this Rule shall be accompanied by the Witness Statement on Oath of such witness and copies of documents he intends to rely upon at the trial, if any.

11. Close of case of parties.

(1) A party shall close his case when he has concluded his evidence. Either the Claimant or Defendant may make oral application to have the case closed at any time whether or not he has concluded his evidence.

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

12. Exhibits during trial.

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

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

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

- (4) For the purpose of this Rule, a bundle of documents may be treated and counted as one exhibit.
- (5) In this Rule, a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

13. Custody of exhibits after trial.

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

14. Office copy of list of exhibits.

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

15. Indolent prosecution.

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

ORDER 29
FILING OF WRITTEN ADDRESSES

1. Application.

This Order shall apply in all causes and matters where Written Addresses are required.

2. Written Address of party beginning where the other party does not lead evidence.

Where the party beginning has concluded his evidence, the Judge shall ask the other party if he intends to call evidence. If the other party does not intend to call evidence, the party beginning shall within fourteen days after close of evidence, file a written address. Upon being served with the Written Address, the other party shall within fourteen days file his own Written Address.

3. Written Address of the other party.

Where the other party calls evidence, he shall within fourteen days after the close of evidence, file his Written Address.

4. Written Address of party beginning where the other party leads evidence.

Where the other party leads evidence, the party beginning shall within fourteen days file his own Written Address upon being served with the other party's Written Address.

5. Right of Reply.

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

6. Contents of Written Address.

A Written Address shall be printed on good quality white opaque A4-size paper and set out in paragraphs numbered serially and shall contain:

- (a) the claim or application on which the Address is based;
- (b) a brief statement of the facts with reference to the exhibit attached to the application or tendered at the trial;
- (c) the issues arising for determination; and
- (d) a succinct statement of argument on each issue incorporating the purport of the authorities referred to, together with full citation of each such authority.

7. Summation of Address.

- (1) All Written Addresses shall be concluded with a numbered summary of the points raised and the party's prayer.
- (2) A list of all authorities referred to shall be submitted with the Address.
- (3) Where any unreported Judgement is relied upon, the Certified True Copy shall be submitted along with the Written Address.

8. Oral argument.

- (1) Each party shall be at liberty to advance oral argument of not more than fifteen minutes to expatiate his Written Address.
- (2) Where any party fails to appear to adopt his Written Address on the day fixed for hearing, such Address shall be deemed to have been adopted by him and the Court may proceed to Ruling or Judgement.

9. Copies of Written Address.

Each party shall file copies of his Written Address in Court and shall serve a copy thereof on every other party.

www.sabilaw.org

ORDER 30

EVIDENCE GENERALLY

1. Facts: how proved.

- (1) This Order shall be subject to the provisions of the Evidence Act or any other enactment relating to evidence.
- (2) Any fact required to be proved at the trial of any action, shall be proved by Written Statement on Oath and oral examination of witnesses in open Court.
- (3) All documents or other exhibits admitted in the pleadings shall be tendered from the Bar or by the party where he is not represented by a Legal Practitioner.
- (4) The oral examination of a witness during his evidence-in-chief, shall be limited to confirming his Written Statement on Oath and tendering in evidence all disputed documents or other exhibits referred to in the Written Statement on Oath.
- (5) Where in these Rules, Written Statements on Oath and affidavits are required to be made, if the deponent does not understand English Language such Written Statement on Oath or affidavit shall be made in a language he understands and shall be accompanied by interpretation thereof in English Language.
- (6) Real evidence shall be tendered during the trial.

2. Particular facts.

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

3. Testimony of a witness otherwise than in the courtroom

The Court may

- (a) for good cause in compelling circumstances, permit the testimony of a witness without being physically present in the courtroom by contemporaneous transmission from a different location through a video link or by any other such recording processes and technology as the Court may from time to time approve; and
- (b) the transcript of such evidence when checked and approved by the Judge shall constitute the official record of the evidence.

4. Limitation of medical and expert evidence.

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

5. Limitation on use of documentary evidence.

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

6. Revocation and variation.

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

7. Office copies admissible in evidence.

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

8. Examination of witnesses abroad. Civil Forms 24 and 25.

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

- (a) the party obtaining such Order shall file in the Registry an undertaking as in Form 24 which may be varied as may be necessary to meet the circumstances of the particular case in which it is used; or

(b) such undertaking shall be accompanied by:

- (i) a request as in Form 25, with such modifications or variations as may be directed in the Order for its issue, together with a translation in the language of the country in which it is to be executed, if not English;
- (ii) a copy of the interrogatories, if any, to accompany the request with a translation, if necessary; and
- (iii) a copy of the cross-interrogatories, if any, with a translation, if necessary.

9. Form of Order for examination of witnesses abroad. Civil Form 26.

Where an Order is made for the examination of a witness or witnesses before the Nigerian Diplomatic Agent in any foreign country with which a Convention in that behalf has been made, the Order shall be as in Form 26. The form may be modified or varied as may be necessary to meet the circumstances of the particular case in which it is used.

10. Order for attendance of person to produce document.

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

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

11. Expenses of persons ordered to attend.

Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to payment for expenses and loss of time occasioned by his attendance from the party requiring him to attend, provided that a witness who testifies at the instance of the Court acting *suo motu* shall be paid out of public revenue.

12. Contempt of Court.

- (1) Where any person duly summoned by *subpoena* to attend for examination shall refuse to attend or if having attended, he shall refuse to be sworn or to answer any lawful question, he shall be in contempt of Court and may be dealt with accordingly by the Judge.

- (2) Any person wilfully disobeying any Order requiring his attendance for the purpose of being examined or producing any document shall be in contempt of Court and may be dealt with accordingly.

13. Examination of witnesses.

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

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

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

15. Oaths.

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

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

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

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

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

18. Special directions as to taking of evidence.

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

19. Evidence in proceedings subsequent to trial.

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

20. Form of praecipe of a subpoena. Civil Form 27.

- (1) Where it is intended to issue out a *subpoena*, a *praecipe* for that purpose as in Form 27 containing the name or firm and the place of business or residence of the Legal Practitioner intending to issue out the same, and where such Legal Practitioner is an agent only, then also the name or firm and place of business or residence of the principal Legal Practitioner, shall in all cases be delivered and filed at the Registry.
- (2) No *subpoena* shall be issued unless all Court fees have been paid (including fee for service) and unless sufficient conduct money on the prescribed scale is deposited to cover the first day's attendance.

21. Form of subpoena. Civil Forms 28, 29 or 30.

A *subpoena* shall be in one of Forms 28, 29, or 30 with such variations as the circumstances may require.

22. Correction of errors in subpoena.

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

23. Personal service of *subpoena*.

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

24. Duration of *subpoena*.

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

25. Action to perpetuate testimony.

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

26. Examination of witnesses to perpetuate testimony.

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

27. Action not to be set down for trial

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

ORDER 31
AFFIDAVITS

1. Evidence on Motions, etc.

Upon any Motion, Petition, Summons or other application, evidence may be given by affidavit, but the Judge may, *suo motu* or on application, order the attendance for cross-examination of the deponent and where, after such an Order has been made, the person in question does not attend, his affidavit shall not be used as evidence save by special leave.

2. Title of affidavit.

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

3. Use of defective affidavit.

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

4. Special time for filing affidavits.

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

5. Affidavits in support of *ex-parte* applications.

Except with the leave of the Judge, no Order made *ex parte* in Court founded on any affidavit shall have any force unless the affidavit on which the application was based was made before the Order was applied for, and produced or filed at the time of making the application.

6. Alterations in accounts to be initialled.

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

7. Exhibits.

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

8. Certificate of exhibit.

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

9. Affidavit taken in any foreign country admissible without proof of seal, etc.

A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a Court, Judge, Notary Public or person having authority to administer oath in any foreign country in testimony of an affidavit being taken before it or him in that country, shall be admitted in evidence without proof of the seal or signature of that Court, Judge, Notary Public or person.

10. Application of Evidence Act.

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

ORDER 32

JUDGEMENT: ENTRY OF JUDGEMENT

1. Delivery of Judgement at or after trial.

The Judge shall, at the trial or after trial, deliver Judgement in open court and shall direct Judgement to be entered.

2. Date of Judgement pronounced in Court.

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

3. Date of Judgement directed to be entered.

When any Judgement is directed to be entered by an Order made on application for Judgement, the Judgement shall, unless the Judge otherwise orders, be dated as of the day on which the Order is made and take effect from that date:

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

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

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

(2) The Judge may give any special directions concerning the execution of the Judgement or the service thereof upon persons not parties to the cause or matter as he deems fit.

5. Judgement by consent where Defendant appears by a Legal Practitioner.

In any cause or matter where the Defendant has appeared by a Legal Practitioner, no Order for entering Judgement shall be made by consent unless the consent of the Defendant is given by his Legal Practitioner or agent.

6. Judgement by consent where Defendant has no Legal Practitioner.

Where the Defendant has no Legal Practitioner, such Order for entering Judgment shall not be made unless the Defendant gives his consent in person in open court.

ORDER 33

DRAWING UP OF ORDERS

1. Date of Order when drawn.

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

2. What Orders need not be drawn up.

- (1) Where an Order has been made not embodying any special terms nor including any special directions, but simply enlarging time for taking any proceedings or doing any act or giving leave for:
- (a) the issue of any writ other than a writ of attachment;
 - (b) the amendment of any writ, pleading or process;
 - (c) the filing of any process or document; or
 - (d) any act to be done by any officer of the Court other than a Legal Practitioner,

it shall not be necessary to draw up such Order unless the Judge otherwise directs but the production of a note or memorandum of such Order signed by a Judge shall be sufficient authority for such enlargement of time, issue, amendment, filing or other act.

- (2) A direction that the costs of such Order shall be costs in any cause or matter shall not be deemed to be a special direction within the meaning of this Rule.

3. Form of Order.

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

ORDER 34

TRANSFERS AND CONSOLIDATION

I. Transfers

1. Order transferring proceedings to High Court by Chief Judge.

Where the Chief Judge has, in exercise of any powers conferred on him by any relevant law, ordered the transfer of any action or matter from a lower Court to the High Court, a copy of the Order duly certified by the Registrar shall forthwith be sent to the Registrar of the lower Court and the latter shall forthwith transmit to the High Court the processes and proceedings in every such action or matter and other necessary documents and processes.

2. Payment of filing fees.

- (1) On receipt by the Court of the relevant proceedings, documents and processes, the Registrar shall notify the party who applied for the transfer, or where the transfer was not made on the application of any party, the Claimant, to attend at the Registry and pay the fees for filing the processes and documents. Such payment shall be without prejudice to the question of how the costs shall ultimately be borne.
- (2) The notification shall be effected by serving a notice personally on the party concerned or where an address for service has been given by such party, at that address.

3. Duties of Registrar.

- (1) The Registrar shall within seven days of payment of the prescribed fee:
 - (a) file the processes and documents received from the lower Court;
 - (b) make an entry of the filing in the Cause Book; and
 - (c) transmit the processes and documents to the Chief Judge or such other Judge appointed by the Chief Judge.
- (2) The Registrar shall then give notice to the parties to attend in person or by counsel before a named Judge on the day and at the time specified in the notice. The fees for the service of this notice shall be borne in the first instance by the party who has paid the fees for filing as provided by Rule 2 of this Order.

4. Directions.

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

- (a) hear the parties or their Legal Practitioners;
 - (b) take cognisance of the processes and documents; and
 - (c) give directions for the trial or hearing of the action or matter.
- (2) Directions given under this Rule may include directions for the filing and service of pleadings.

5. Party failing to attend.

- (1) If the Claimant fails to attend in compliance with a notice given under sub-rule (2) of Rule 3 of this Order, the Judge shall record his default and may, *suo motu*, strike out the action or matter upon such terms as may be just or make such other order on such terms as he deems just.
- (2) If the Defendant fails or all of several Defendants fail to attend in compliance with a notice given under sub-rule (2) of Rule 3, the Court may enter Judgement with costs and grant the Order prayed for in the transferred proceedings.
- (3) Where both parties fail to attend in compliance with a notice given under sub-rule (2) of Rule 3, the Judge may record the default and strike out the suit accordingly.

6. Construction.

In the preceding Rules of this Order, references to the Claimant and Defendant shall, in relation to proceedings commenced otherwise than by Writ, be construed as references to the Applicant and the Respondent.

II. Consolidation

7. Consolidation of actions.

- (1) The Judge may on application consolidate several actions pending before him where it appears that the issues are the same in all the actions and can therefore be properly tried and determined at the same time.
- (2) Where actions are pending before different Judges, a party desiring consolidation shall first apply to the Chief Judge for transfer of the matter to a Judge before whom one or more of the matters is pending.
- (3) An order to consolidate may be made where two or more actions are pending between the same Claimant and the same Defendant or between the same Claimant and different Defendants or between

different Claimants and the same Defendant or between different Claimants and different Defendants:

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

- (4) Where an Order for consolidation has been made, the Judge shall give such directions as may be necessary for the trial or hearing of the action or matter.
- (5) An Order for consolidation shall be drawn up at the expense of the party or parties who made the application and shall be recorded in the Cause Book.

www.sabilaw.org

ORDER 35

INTERLOCUTORY ORDERS, ETC.

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

- (1) Where by any contract a *prima facie* case of liability is established and there is alleged as a matter of defence a right to be relieved wholly or partially from such liability, a Judge may make an Order for the preservation or interim custody of the subject-matter of the litigation or may order that the amount in dispute be brought into Court or otherwise secured.
- (2) An application for an order under sub-rule (1) of Rule 1 of this Order may be made by the Claimant at any time after his right thereto appears from the pleadings.
- (3) An application for an Order under sub-rule 1 of this Rule may be made by the Claimant immediately after closure of pleadings and before the commencement of trial.

2. **Early trial of cause.**

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

3. **Order for sale of perishable goods, etc.**

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

4. **Detention, preservation or inspection of property, the subject-matter of an action.**

- (1) A Judge may upon the application of any party to an action or matter and upon such terms as may be just, make any Order for the detention, preservation or inspection of any property or thing, being the subject-matter of such action or matter or as to which any question may arise

therein, and for all or any of the purposes aforesaid, authorise any persons to enter upon or into any land or building in the possession of any party to such action or matter and for all or any of the purposes aforesaid, authorise any samples to be taken or any observation to be made or experiment to be conducted, which may be necessary or expedient for the purpose of obtaining full information or evidence.

- (2) Where an Order for the inspection of any property or thing is made on an application under this Rule (including an application made before any pleadings have been exchanged in the action or matter), and an inspection was applied for and was not granted, then unless the Judge is satisfied that the Respondent did not unreasonably fail or refuse to permit the inspection, the Judge shall Order the costs to be paid by the Respondent in any event and except where the Respondent is a person admitted to sue or defend in *pauperis pauper*, shall order the costs to be paid forthwith.
- (3) The Judge by whom any action or matter may be heard or tried may inspect any property or thing concerning which any question may arise therein.

5. Sale of property in possession of Court.

Subject to the Court of Appeal Rules or any other law relating thereto:

- (1) Where any property is in possession of the Court either before or after Judgement and it has remained so for a period of twelve months, a Judge may upon application make an Order for sale of that property and the proceeds thereof to be paid into an account in a commercial bank directed by the Judge for the benefit of the person that succeeds at the trial or on appeal.
- (2) The money paid after disposal of any such property shall be withdrawn from the bank by the successful party who shall present to the Chief Registrar, a Certified True Copy of the enrolled Judgement.

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

Where a claim or counterclaim is filed to recover specific property and the party from whom such recovery is sought does not dispute title but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Judge may, upon closure of pleadings, order that the party

claiming to recover the property be at liberty to pay into Court, to await the outcome of the action, the amount of money in respect of which the lien or security is claimed and such further sum, if any, for the interest and costs as the Judge may direct and that upon such payment into Court being made, the property claimed be given up to the party claiming it.

7. Allowance of income of property *pendente lite*.

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

8. Injunction against repetition of wrongful act or breach of contract.

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

9. Appointment of a Receiver by way of equitable execution.

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

10. Receivers: security and remuneration. Civil Forms 31 and 32.

Where an Order is made directing a Receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security to be approved by the Judge, duly to account for what he shall receive as such Receiver and to pay the same as the Judge shall direct and the person so to be appointed shall,

unless otherwise ordered, be allowed a proper salary or allowance. The security to be given shall be by Guarantee or by an Undertaking as in Forms 31 or 32 with such variations as circumstances may require. The Guarantee or Undertaking shall be filed in the Registry and shall form part of the record of proceedings until it has been duly vacated.

11. Where Receiver appointed in Court: adjournment to give security.

Where any Judgement or Order is pronounced or made in Court appointing a person therein named to be Receiver, the Court may adjourn so that the Receiver may give security as in the last preceding Rule mentioned and may thereupon direct such Judgement or Order to be drawn up.

12. Fixing days for Receivers to leave and pass their accounts and pay in balances and neglect of Receiver.

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

13. Form of Receivers' accounts. Civil Form 33.

Receivers' accounts shall be as in Form 33 and with such variations as circumstances may require.

14. Leaving account at the Registry. Civil Form 34.

Every Receiver shall deliver to the Registrar his account together with an affidavit verifying the same as in Form 34 with such variations as circumstances may require. An appointment shall thereupon be obtained by the Claimant or person having the conduct of the action for the purpose of passing such account.

15. Consequences of default by Receiver.

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

16. Passing of Guardians' accounts.

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

www.sabilaw.org

ORDER 36

MOTIONS AND OTHER APPLICATIONS

1. Application by Motion.

- (1) Where by these Rules any application is authorised to be made, such application shall be made by Motion which may be supported by affidavit and shall state under what Rule of Court or Law the application is brought.
- (2) Every such application shall be accompanied by a Written Address in support of the relief sought.
- (3) Every Motion shall be served within five days of its being filed failing which the Judge may strike it out.
- (4) Where the other party intends to oppose the application, he shall within seven days of the service on him of such application, file his Written Address and may accompany it with a counter affidavit.
- (5) The Applicant may, on being served with the Written Address of the opposing party, file and serve an Address in Reply on point of law within seven days of being served. Where a counter affidavit is served on the applicant, he may file further affidavit with his Reply.

2. Restriction on rule *nisi* and order to show cause.

Except as expressly provided by Law or in these Rules, no Motion or application for a rule *nisi* or order to show cause shall be made in any action.

3. When Notice of Motion should be given.

- (1) Except where an application *ex-parte* is required or permitted under any Law or Rules, every Motion shall be on notice to the other party.
- (2) No application for an injunction shall be made *ex-parte* unless the Applicant files with it a Motion on Notice in respect of the application.
- (3) An Order of injunction granted upon an application *ex-parte* shall abate after seven days.
- (4) A Judge may upon application extend the effective period of an Order made *ex-parte* if he is satisfied that the Motion on Notice has been served and that such extension is necessary in the interest of justice or to prevent an irreparable or serious mischief. The application for such an extension shall be made before abatement of the Order and extension shall not be for a period exceeding seven days from the day the extension is granted.

4. Motion on Arbitral Award.

- (1) Every Motion on Notice to set aside, remit or enforce an Arbitral Award shall state in general terms the grounds of the application and where any such Motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the Motion on Notice.
- (2) The party relying on and applying for the enforcement of an award shall supply:
 - (a) the duly authenticated original award or a duly certified copy thereof; or
 - (b) the original arbitration agreement or a duly certified copy thereof.
- (3) An award made by an Arbitrator or a decision reached at the Multi-Door Courthouse may, by leave of a Judge, be enforced in the same manner as a Judgement or Order of Court.
- (4) Subject to the Arbitration and Mediation Act, an application may be made to set aside or remit any award after such award has been made and published to the parties.

5. Length of time between service and hearing of Motion.

Except the Judge directs otherwise, there shall be at least two clear days between the service of all processes in respect of a Motion and the day named in the notice for hearing the Motion.

6. Motions may be struck out or adjourned where necessary notice is not given.

Where at the hearing of a Motion or other application, the Judge is of the opinion that any person to whom notice has not been given ought to have had such notice, the Judge may either strike out the Motion or application or adjourn the hearing thereof in order that such notice may be given upon such terms, if any, as the Judge may deem fit.

7. Adjournment of hearing.

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

Provided that an application for adjournment of the Motion or application by the Applicant shall not be more than twice.

8. Service of Motion with Originating Process.

A Claimant may file any application along with an Originating Process and may serve both on any Defendant simultaneously.

www.sabilaw.org

ORDER 37

APPLICATION FOR JUDICIAL REVIEW

1. Cases appropriate for application for Judicial Review.

- (1) An application for an Order of *mandamus*, prohibition, *certiorari* or *quo warranto* shall be made by way of an application for Judicial Review in accordance with the provisions of this Order.
- (2) An application for a declaration or an injunction made pursuant to Rule 1 of this Order may be granted by the Judge if he deems it just and convenient to grant it by way of Judicial Review, having regard to:
 - (a) the nature of the matters in respect of which relief may be granted by way of an Order of *mandamus*, prohibition, *certiorari* or *quo warranto*;
 - (b) the nature of the persons and bodies against whom relief may be granted by way of such an Order; and
 - (c) all the circumstances of the case.

2. Time within which to bring application.

An application for Judicial Review shall be brought within three months of the date of occurrence of the subject-matter of the application.

3. Application for Judicial Review.

- (1) An application for Judicial Review shall be made by Motion on Notice or Originating Summons to the Judge and shall be supported by:
 - (a) a Statement setting out the name and description of the Applicant, the reliefs sought and the grounds on which they are sought;
 - (b) an affidavit verifying the facts relied on; and
 - (c) a Written Address in support of the application.
- (2) The Judge hearing the application may allow the Applicant's Statement to be amended, whether by specifying different or additional grounds or relief or otherwise on such terms, if any, as he deems fit.
- (3) The Judge shall not grant the application unless he considers that the Applicant has sufficient interest in the matter to which the application relates.
- (4) Where the application is for an Order of *certiorari* to remove for the purpose of its being quashed any Judgement, Order, conviction or other proceedings which is subject to appeal and a time is limited for

the bringing of the appeal, the Judge may adjourn the application until the appeal is determined or the time for appealing has expired.

- (5) Where the application for Judicial Review is granted, then:
- (a) if the relief sought is an Order of prohibition or *certiorari* and the Judge so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Judge otherwise orders;
 - (b) if any other relief is sought, the Judge may at any time grant in the proceedings such interim relief as could be granted in an action commenced by Writ; and
 - (c) the Judge may impose such terms as to costs and as to giving security as he deems fit.

4. Mode of applying for Judicial Review.

- (1) The Motion on Notice or Originating Summons shall be served on all persons directly affected and where it relates to any proceedings before a Judge and the object of the application is either to compel the Judge or an officer of the Court to do any act in relation to the proceedings, or to quash them or any Order made therein, the Motion or Summons shall also be served on the Clerk or Registrar of the Court and where any objection to the conduct of the Judge is to be made, on the Judge.
- (2) Unless the Judge has otherwise directed, there shall be at least seven days between the service of the Notice or Summons and the day named therein for the hearing.
- (3) An affidavit giving the names and addresses of and the places and dates of service on all persons who have been served with the Motion or Summons shall be filed before the Motion or Summons is entered for hearing, and if any person who ought to be served under this Rule has not been served, the affidavit shall state that fact and the reason for it and the affidavit shall be before the Judge on the hearing of the Motion or Summons.
- (4) Where the Judge, on the hearing of the Motion or Summons, is of the opinion that any person who ought, whether under this Rule or otherwise, to have been served has not been served, the Judge may adjourn the hearing on such terms, if any, as he may direct in order that the Motion or Summons may be served on that person.

5. Statement and Affidavits.

- (1) The Judge may on the hearing of the Motion or Summons allow the Applicant to amend his Statement whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as he deems fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.
- (2) Where the Applicant intends to amend his Statement or to use further affidavits, he shall give notice thereof and of any proposed amendment to every other party.
- (3) Each party to the application shall serve on every other party a copy of every affidavit which he proposes to use at the hearing.

6. Hearing of application for Judicial Review.

- (1) On the hearing of any Motion or Summons for Judicial Review, any person who desires to be heard on the Motion or Summons and appears to the Judge to be a proper person to be heard, shall be heard notwithstanding that he has not been served with the Motion or the Summons.
- (2) Where the relief sought is or includes an Order of *certiorari* to remove any proceedings for the purpose of quashing them, the Applicant may not question the validity of any Order, Warrant, committal, conviction, inquisition or record unless before the hearing of the Motion or Summons, he has filed a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Judge hearing the Motion or Summons.
- (3) Where an order of *certiorari* is made in any such case as is referred to in sub-rule (2) of Rule 1, the Order shall subject to sub-rule (5) hereof, direct that the proceedings shall be quashed forthwith on their removal into Court.
- (4) Where the relief sought is an Order of *certiorari* and the Judge is satisfied that there are grounds for quashing the decision to which the application relates, the Judge may in addition to quashing it, remit the matter to the Court, Tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Judge.

- (5) Where the relief sought is a declaration, an injunction or damages and the Judge considers that it should not be granted on an application for Judicial Review but might have been granted if it had been sought by the Applicant in an action commenced by Writ at the time of making his application, the Judge may instead of refusing the application, order the proceedings to continue as if they had been begun by Writ, subject to the provisions of these Rules relating to commencement of actions by Writ of Summons.

7. Reliefs in Judicial Review.

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

8. Claim for damages.

On an application for Judicial Review, the Judge may subject to Rule 1 of this Order, award damages to the Applicant if:

- (a) he has included in the Statement in support of his application, a claim for damages arising from any matter to which the application relates; and
- (b) the Judge is satisfied that if the claim had been made in an action commenced by the Applicant by Writ at the time of making his application, he could have been awarded damages.

9. Interlocutory application.

Any interlocutory application in proceedings on an application for Judicial Review may be made to the Judge.

10. Person acting in obedience to an order of *mandamus*.

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

11. Consolidation of applications.

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

ORDER 38

APPEALS FROM CUSTOMARY COURT, MAGISTRATES' COURT, ETC.

1. Notice of Appeal.

Every appeal shall be brought by Notice of Appeal which shall be lodged in the lower Court within thirty days of the decision appealed from and served on all other parties affected by the appeal within that period.

2. Contents of Notice of Appeal. Civil Form 35

- (1) The Notice of Appeal shall set out the reference number of the proceedings in which the decision complained of was given, the names of the parties, the date of the decision and the grounds for appeal in full.
- (2) Where the Appellant complains only of a part of the decision, the Notice of Appeal shall specify the part complained of; otherwise the appeal shall be taken to be against the decision as a whole.
- (3) The Notice of Appeal shall give addresses to which notices may be served on the parties.
- (4) The Notice of Appeal shall be as in Form 35 and may be varied to suit the circumstances of the case but so that no variation of substance shall be made.

3. Copies of record of proceedings.

- (1) The Registrar of the lower Court shall within sixty days of the decision appealed from, prepare as many certified true copies of the record of proceedings, including the Notice of Appeal required for the consideration of the appeal as there are parties on record upon the payment of fees for the preparation of the record of proceedings or such deposit thereof as may be determined by the Registrar:
Provided that where the Registrar of the lower court fails, neglects or refuses to do so, the Appellant or his Legal Practitioner may prepare the Record of Appeal and serve same on all parties within fifteen days of the expiration of the time for the Registrar to have done so.
- (2) The Registrar shall within seven days of preparing the certified true copies of the record of proceedings and Notice of Appeal referred to in sub-rule (1) of this Rule, serve the parties their own copies and shall transmit copies thereof to the Registrar of the Court in the Judicial Division in which the appeal lies and the appeal shall thereby be entered.

4. Filing of Briefs of Argument.

- (1) The Appellant shall within thirty days of the receipt of the Record of Proceedings from the lower Court file in the Court the Appellant's Brief of Argument which shall contain a succinct statement of his argument in the appeal.
- (2) The Respondent shall within thirty days of the service of the Appellant's Brief of Argument on him, file the Respondent's Brief of Argument which shall answer all material points of substance contained in the Appellant's Brief of Argument and contain all the points raised therein which the Respondent wishes to concede as well as reasons why the appeal ought to be dismissed.
- (3) The Appellant may, if necessary, within fourteen days of the service on him of the Respondent's Brief of Argument file and serve the Appellant's Reply Brief of Argument which shall deal with all new points arising from the Respondent's Brief of Argument.
- (4) All parties whose interests are identical or joint shall file joint Brief of Argument and separate Briefs of Argument may be filed only by those parties whose interests are separate or in conflict.
- (3) Every Brief of Argument shall clearly identify the issues distilled from the Grounds of Appeal on the basis of which parties desire the Court to determine the appeal.
- (6) Any issue which is not covered by any Ground of Appeal shall not be considered by the Court in its Judgment.

5. Procedure at hearing.

- (1) At the hearing of the appeal, both parties shall adopt their Briefs of Argument and may be allowed a maximum period of fifteen minutes for oral argument in amplification of their Briefs.
- (2) Where any party shall fail to appear to adopt his Brief on the day fixed for hearing, such Brief shall be deemed to have been adopted by him and the Court may proceed to Ruling or Judgement.

6. Where time expires.

- (1) The times prescribed in this Order may be enlarged or abridged at any time by the Court upon application by any party and on such terms, if any, as may seem fit.
- (2) Where the time available to the Appellant for the taking of any step has expired before such step has been taken or completed, the Respondent may on notice to the Appellant, apply to strike out the appeal and the Court may strike out or enlarge the time for sufficient reason shown.

7. Time and place of hearing.

The appeal shall come on for hearing at such time and at such places as the Registrar of the Court shall notify to the parties.

8. Appeal limited to grounds given in notice.

At the hearing, it shall not be competent for the Appellant to go into any other reasons for appeal than those set forth in his Notice and Grounds of Appeal: Provided that the Grounds of Appeal may, on the application of the Appellant, be amended upon such terms and conditions as to service upon the Respondent and as the Court may think fit.

9. Request to affirm Judgement on other grounds.

- (1) A Respondent may give notice that he intends at the hearing to ask the Court to affirm the Judgement of the lower Court on grounds other than those stated by that Court.
- (2) The notice shall be accompanied by a clear statement of the grounds on which the Respondent intends to ask the Court to affirm the Judgement of the lower Court.
- (3) Such notice and grounds shall be filed in the Court within fourteen days of service on the Respondent of the Notice and Grounds of Appeal and shall be served on the Appellant or his Legal Practitioner.
- (4) The provisions for the filing of Briefs of Argument in this Order shall apply to the Request in this Rule *mutatis mutandi*.

10. Cross-Appeal.

- (1) The Respondent may file Grounds of Appeal against any part of the Judgement of the lower Court.

- (1) The Grounds shall be filed by the Respondent within thirty days of service on him of the Appellant's Notice and Grounds of Appeal and shall be served on the Appellant or his Legal Practitioner before the hearing.
- (2) The provisions for the filing of Briefs of Argument in this Order shall apply to the Cross-Appeal in this Rule *mutatis mutandi*.

11. Objection to form of grounds of appeal.

- (1) No objection on account of any defect in the form of setting forth any Ground of Appeal shall be allowed, unless the Court is of opinion that the Ground of Appeal is so imperfectly or incorrectly stated as to be insufficient to enable the Respondent to enquire into the subject matter thereof or to prepare for the hearing.
- (2) Where the Court is of opinion that any objection to any Ground of Appeal ought to prevail, the Court may allow the Ground of Appeal forthwith to be amended upon such terms and conditions as the Court may think just.

12. Defects in proceedings under appeal.

- (1) On an appeal from a decision of a lower Court, no objection shall be taken or allowed to any proceedings in such Court for any defect or error which might have been amended by that Court, or to any complaint, summons, warrant, or other process to or of such Court for any alleged defect in substance or in form, or for any variance between any complaint or summons and the evidence adduced in support thereof in such Court;
- (2) Where an error, defect or variance mentioned in this Rule appears at the hearing of the appeal to be such that the Appellant has been thereby deceived or misled, it shall be lawful for the Court either to refer the case back to the lower court with directions to re-hear and determine it, or to reverse the decision appealed from, or to make such other Order for disposing of the appeal as justice may require.

13. Defects in Notice of Appeal or recognisance.

- (1) No objection shall be taken or allowed on an appeal to a Notice of Appeal or to any recognisance entered into under this Order for the due prosecution of the appeal for any alleged error or defect therein.

- (2) Where the error or defect appears to the Court to be such that the Respondent to the appeal has been thereby deceived or misled, it shall be lawful for the Court to allow an adjournment of the further hearing of the appeal and an amendment by the Appellant on such terms as the Court may think just.

14. Fees. First Schedule.

The fees in the First Schedule shall be chargeable in civil appeals save where they would have to be paid by a Government Officer acting in his official capacity or where the lower Court or the Court waives or remits the fees on the ground of the poverty of the person chargeable therewith where it appears that there are substantial grounds of appeal.

15. Allowances to witnesses. Second Schedule.

Allowances may be made to witnesses in accordance with the provisions of the Second Schedule.

16. Costs.

The Court may make such Order as to the payment of costs by or to the Appellant as it may consider to be just and the Order may be made also in any case where an appeal has not been heard or prosecuted.

17. Security for costs.

- (1) The Court may, in special circumstances, upon application on notice supported by affidavit, order the Appellant to deposit such sum or give such security as may seem fit for the Respondent's costs of appeal including the costs incidental to the application.
- (2) The Order shall limit the time (not exceeding thirty days) within which the deposit or security shall be made or given and may direct that in default of its being made or given within the time so limited, the appeal shall without further Order be dismissed.
- (3) Where an appeal is dismissed, the Respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such costs may be stated in the Order made by the Court or on application made *ex-parte* or on notice, as the Court may deem fit.
- (4) Where an appeal is struck out, the Appellant shall take no further step or proceeding therein except by leave of the Court for reinstatement of the appeal, which may be granted on such terms as may seem fit upon application by Motion on Notice given within a month of such striking out.

- (5) Subject to the discretion of the Court to grant costs where it seems proper on an application made under sub-rule (1) of this Rule, costs may not be granted to the Applicant except where the net proceeds of execution levied on the Appellant's goods are sufficient to satisfy the amount payable under the Judgement or decision appealed from.

18. Orders of High Court to be certified to Customary Court, Magistrates' Court, etc.

- (1) Where a case is decided on appeal, the Court shall certify its Judgement or Order to the lower court in which the decision appealed against was pronounced.
- (2) The lower Court to which the Court certifies its Judgement or Order shall thereupon make such Orders as are conformable to the Judgement or Order of the Court and if necessary, the records shall be amended accordingly.

19. Enforcement of Judgement.

After the pronouncement of the Judgement of the Court, the lower court from which the appeal came shall have the same jurisdiction and power to enforce and shall enforce any decision which may have been affirmed, modified, amended or substituted by the Court or any Judgement which may have been pronounced by the Court, in the same manner in all respects as if such decision or Judgement had been pronounced by itself.

20. Enforcement of Orders.

Any Order given or made by the Court may be enforced by the Court or by the lower Court as may be most expedient.

21. Interpretation.

In this Order, the “**lower court**” means the Court whose judgement is appealed against.

ORDER 39
STAY OF EXECUTION OR OF PROCEEDINGS PENDING APPEAL

1. Stay of execution pending appeal.

- (1) Where an application is made to a Judge for a stay of execution or of proceedings in respect of Judgment or decision appealed from, such application shall be made by Motion on Notice with a Written Address as provided for in these Rules, and shall be supported by an affidavit stating the grounds upon which the stay of execution or of proceedings is sought.
- (2) The Applicant for stay of execution or of proceedings shall cause to be compiled and transmitted, the Record of Appeal within the time and in the manner prescribed in these Rules for the compilation and transmission of Records to the Court.
- (3) Where the Record of Appeal is not so compiled and transmitted, the Respondent may apply to strike out the application or discharge the Order, if already granted.
- (4) Application for stay of execution and stay of proceedings shall be regarded as an urgent matter and shall be heard within thirty days from the date of filing, failing which it shall be struck out.
- (5) Where an application for stay of execution or proceedings is either dismissed, struck out or discharged, no further or other such application shall be made in the same matter.

2. Application for stay of execution

- (1) On an application being made for stay of execution under any enactment establishing the lower Court, the lower Court or the Court may impose one or more of the following conditions, that is, that the Appellant:
 - (a) shall deposit a sum fixed by the Court not exceeding the amount of the money or the value of the property affected by the decision or Judgement appealed from or give security to the satisfaction of the Court for the said sum;
 - (b) shall deposit a sum equal to the amount of the costs allowed against him or give security to the satisfaction of the Court for the said sum;

-
- (c) shall, where the decision or Judgement appealed from relates to possession of lands or houses, give security to the satisfaction of the Court for the performance of the decision or Judgement in the event of the appeal being dismissed;
- (d) shall have his property seized and attached pending the making of a deposit or the giving of security, including a deposit or a security for the expenses incidental to the seizure and attachment; and
- (e) shall have his property seized, attached and sold and the net proceeds deposited in Court pending determination of the appeal.
- (2) An Order made on an application shall limit the time (not being more than thirty days) for the performance of the conditions imposed and direct that in default of the performance within the time so limited, execution may issue or proceed.
- (3) An application for stay of execution under the enactment establishing the lower Court may be made at any time after lodgement of the Notice of Appeal and shall in the first instance be made to the lower Court; but where execution has been ordered by the lower Court, the application shall be made to the Court.
- (4) The application may be brought *ex-parte* but the Court may direct notice thereof to be given to the other party to the appeal and where an Order is made *ex-parte*, the Registrar of the Court shall notify the other party of the Order made.
- (5) Where the Appellant proposes to give security instead of making a deposit, the application shall state the nature of the security and the name of the surety proposed, if any.
- (6) A party dissatisfied with an Order made by the lower Court may apply to the Court by Motion on Notice to the other party for a review of the Order, and the Court may thereupon make such Order as may seem just.
- (7) An appeal shall not operate as a stay of execution of the decision or Judgement appealed from except so far as the lower court or the Court may order and no intermediate act or proceeding shall be invalidated except so far as either Court may direct.

3. Court may grant or refuse Order for stay.

The Court may make or refuse an Order for a stay of execution or of proceedings, subject to such conditions as shall appear just, including the deposit in Court of any money adjudged due to any party in the Judgement appealed from.

4. Formal Order to be drawn up.

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

www.sabilaw.org

ORDER 40

HABEAS CORPUS, COMMITTAL FOR CONTEMPT

I. Habeas Corpus

1. Application: How made.

An application for an Order of *Habeas Corpus Ad Subjiciendum* shall be made to the Court, except that the application may be made to a Judge sitting otherwise than in Court in the following circumstances:

- (a) during Legal Vacation or at any time when no Judge is sitting in Court or when the Court is not sitting; and
- (b) where the application is made on behalf of a child.

2. Affidavit to accompany *ex-parte* application.

- (1) The application may be made by Motion *ex-parte* and shall be accompanied by:
 - (a) an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.
 - (b) a Written Address
- (2) Where the person restrained is unable owing to the restraint to make the affidavit, the application shall be accompanied by an affidavit to the like effect made by some other person which shall state that the person restrained is unable to make the affidavit himself.

3. Power to issue order of release immediately.

- (1) A Judge to whom the application is made may make the Order forthwith for the production of the Applicant.
- (2) Where the application is made to a Judge sitting otherwise than in Court, he may direct the Order to issue or that an application thereof be made by Motion on Notice to the Judge or to a Judge.
- (3) A Judge to whom the application is made may adjourn it so that notice thereof may be given to the person or authority in whose custody the Applicant is.
- (4) Where the person detained is produced before a Judge, he may discharge him immediately with or without conditions.

4. Service of Notice.

- (1) The Motion on Notice aforesaid shall be served on the person against whom the Order is sought and on such other persons as the Judge may direct.
- (2) Unless the Judge otherwise directs, there shall be at least two clear days between the service of the Notice and the date named for the hearing of the application.

5. Copies of Motion, affidavits, etc.

Every party to the application shall serve on the other party or parties copies of the Motion, Affidavits and Written Addresses which he proposes to use at the hearing of the application.

6. Service of Order to release.

- (1) The Order or Motion may be served personally or by courier on the person or authority in whose custody the Applicant is confined or restrained or on any other public official, and copies of the Order or Motion may be served in like manner on each person connected with or having authority over the place of confinement or restraint.
- (2) The Order shall contain the date on which the person restrained is to be brought before a Judge and that in default of obedience, proceedings for committal of the party disobeying will be taken.

7. Statement and verifying affidavit.

Upon service of the Order or Motion on the person or authority in whose custody the Applicant is, he shall within two days file a statement stating the reasons for the detention, the period of the detention and any other matter that may be directed by the Judge. The statement shall be verified by an affidavit deposed to by the person or authority in whose custody the Applicant is.

8. Procedure at hearing.

- (1) Where the Applicant is brought up in accordance with the Order, his Legal Practitioner shall be heard first, then the Legal Practitioner for the person or authority in whose custody the Applicant is and then the Legal Practitioner for the Applicant in reply.
- (2) Where the Applicant is not brought in accordance with the Order, a Judge may upon the application of his Legal Practitioner, Order that he be discharged or make any other Order.

II. Committal for Contempt

9. Procedure for Committal.

- (1) The power of the Court to punish for contempt of Court may be exercised by an Order of Committal.
- (2) An Order of Committal may be made by the Court where contempt of Court:
 - (a) is committed in connection with:
 - (i) any proceedings before the Court;
 - (ii) criminal proceedings;
 - (iii) proceedings in an inferior Court.
 - (b) is committed in the face of the Court, or consists of disobedience to an Order of the Court, or a breach of an undertaking to the Court; or
 - (c) is committed otherwise than in connection with any proceedings.

10. Application to Court

- (1) An application for an Order of Committal shall be made to the Court by Motion on Notice supported by an affidavit stating the grounds for the application.
- (2) The Motion on Notice, affidavit and grounds shall be served personally on the person sought to be committed:

Provided that the Court may dispense with personal service where the justice of the case so demands.

- (3) No application for an Order of Committal under this Rule shall be made unless Notice of Consequences of Disobedience to Court Order enforceable by committal is served on the person sought to be committed. Such notice shall be endorsed on the Order sought to be enforced as follows:

Notice of Consequence of Disobedience to Court Order

To.....of

TAKE NOTICE that unless you obey the direction(s) contained in this Order, you will be guilty of contempt of Court and will be liable to be committed to a Correctional Centre.

Dated this.....day of20.....

.....
Registrar

11. Response

- (1) Upon service of the application for committal in a case to which Rule 9 of this Order applies, the Respondent shall before the return date stated in the application, file a Statement stating the reasons why an Order for committal should not be issued.
- (2) The Statement shall be verified by an affidavit deposed to by the Respondent.

12. Saving power to commit without application for the purpose

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

13. Provisions as to hearing

- (1) Subject to sub-rule 2 of this Rule, the Court hearing an application for an Order may sit otherwise than in Court in the following cases, that is to say:
 - (a) where the application arises from proceedings:
 - (i) involving a child or infant;
 - (ii) relating to a person with legal disability;
 - (iii) in which a secret process, discovery or invention is in issue;
 - (b) where it appears to the Court that in the interest of the administration of justice or for reasons of national security the application should be heard otherwise than in Court.
- (2) Except as aforesaid, the application shall be heard in open Court.

- (3) If the Court hearing the application otherwise than in Court by virtue of sub-rule (1) of this Rule decides to make an Order of committal against the person sought to be committed, it shall in open Court state:
- (a) the name of the person;
 - (b) in general terms, the nature of the contempt of Court in respect of which the Order of committal is being made; and
 - (c) if he is being committed for a fixed period, the length of that period.
- (4) Except with the leave of the Court, no grounds shall be relied upon at the hearing except the ground set out in the Statement under Rule 10 of this Order.
- (5) If on the hearing of the application, the person sought to be committed expresses to give oral evidence on his own behalf, he shall be entitled to do so.

14. Contempt *in facie curiae*: Saving

The foregoing provisions are without prejudice to the powers of the Court to commit for contempt in the face of the Court.

15. Power to suspend execution of Committal Order

The Court by whom an Order of Committal is made may, by Order, direct that the execution of the Order of Committal shall be suspended for such period or on such terms or conditions as it may specify.

16. Discharge of person committed

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

17. Savings for other powers

Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an Order requiring a person guilty of contempt of Court or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of Court to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with necessary modifications, shall apply in relation to an application for such an Order as they apply in relation to an application for an Order of Committal.

18. Return

Every Order of Committal issued in a case to which this Order applies shall be made returnable before the Court. If a return of *non est inventus* is made, one or more Writs may be issued on the return of the previous Writ.

www.sabilaw.org

ORDER 41
INTERPLEADER

1. When relief by interpleader is granted.

Relief by way of Interpleader may be granted where the person seeking relief ("the Applicant") is

- (a) under liability for any debt, money, goods or chattels, for or in respect of which he is, or expects to be sued by two or more parties ("the Claimants") making adverse claims thereto;
- (b) claims entitled to any money or chattels taken or intended to be taken by the Sheriff in execution under a process or to the proceeds or value of such chattels:

Provided that where the Applicant is a Sheriff or other officer charged with the execution of process by or under the authority of the High Court, the provisions of the Sheriffs and Civil Process Act and the Rules made thereunder shall apply.

2. Matters to be proved by Applicant.

The Applicant must satisfy the Judge by affidavit or otherwise that he:

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

3. Adverse titles of Claimants.

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

4. When application to be made by a Defendant.

Where the Applicant is a Defendant, application for relief shall be made after service of the Originating Process.

5. Summons by Applicant.

The Applicant may take out a Summons calling on the Claimants to appear and state the nature and particulars of their claims and either to maintain or relinquish them.

6. Stay of action.

Where the application is made by a Defendant in an action, the Judge may stay further proceedings in the action.

7. Order upon Summons.

Where the Claimants appear in pursuance of the Summons, the Judge may order either that any Claimant be made a Defendant in any action already commenced in respect of the subject matter in dispute *in lieu* of or in addition to the Applicant or that an issue between the Claimants be stated and tried and in the latter case, may direct which of the Claimants is to be Claimant and which is to be Defendant.

8. Questions of Law.

Where the question is a question of law and the facts are not in dispute, the Judge may either decide the questions without directing the trial of an issue or order that a special case be stated for the opinion of the Judge. Where a special case is stated, Order 26 shall apply *mutatis mutandi*.

9. Failure of Claimant to appear or neglect to obey Summons.

Where a Claimant, having been duly served with a Summons calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the Summons or having appeared, neglects or refuses to comply with any Order made after his appearance, the Judge may make an Order declaring him and all persons claiming under him, forever barred against the Applicant and persons claiming under him but the Order shall not affect the rights of the Claimants as between themselves.

10. Costs.

The Judge may, in or for the purposes of any Interpleader Proceedings, make all such Orders as to costs and all other matters as may be just.

ORDER 42

COMPUTATION OF TIME

1. Rules for computation of time.

Where by any Law or Order made by a Judge, a time is appointed or limited for the doing of any act, the period shall be reckoned:

- (a) as excluding the day on which the Order is made or on which the event occurs;
- (b) where the last day of the period is a public holiday, the time shall continue until the end of the next day following which is not a public holiday; and
- (c) where the act is required to be done within a period which does not exceed six days, holidays shall be left out of account in computing the period.

2. Time of service.

- (1) No Pleading, Summons, Motions, Orders, Originating Process, Documents and other Processes shall be served before 6:00am or after 6:00pm.
- (2) Service effected before 6.00 am shall be deemed improper service.
- (3) Service effected after 6.00pm shall be deemed to have been effected the following day:

Provided that service effected after 6.00pm on Friday shall be deemed to have been effected on the next following working day.

3. Court may extend time of service

The Judge may, as often as he deems fit, either before or after the expiration of the time appointed by these Rules or by any Judgement or Order of the Court, extend or adjourn the time for doing any act or taking any proceedings:

Provided that any party who defaults in performing an act within the time authorised by the Judge or under these Rules, shall pay to the Court an approved additional fee which is fixed in the Schedule of Fees payable in Court for each day of such default at the time of compliance.

ORDER 43

ARREST OF ABSCONDING DEFENDANT

1. Defendant leaving Nigeria.

Where in any action the Defendant is about to leave Nigeria or has disposed of, or removed from Nigeria, his property or any part thereof or is about to do so, the Claimant may either at the institution of the suit or at any time thereafter until final Judgement, apply by *ex-parte* Motion to the Judge for an Order that the Defendant should provide security for his appearance to answer and satisfy any Judgement that may be entered against him in the suit.

2. Warrant to Arrest.

- (1) Where the Judge, after hearing the application is of the opinion that there is probable cause for believing that the Defendant is about to leave Nigeria or has disposed of or removed from Nigeria his property or any part thereof, or is about to do so, and that by reason thereof, the execution of any Judgement which may be entered against him is likely to be frustrated, obstructed or delayed, the Judge shall issue a Warrant to bring the Defendant before him to show cause why he should not give good and sufficient bail for his appearance, and security to satisfy any Judgement that may be entered against him in the suit.
- (2) The Defendant shall be brought to Court within two days of the execution of the Warrant.

3. Bail for appearance or satisfaction.

Where the Defendant fails to show cause, the Judge shall order him to give bail for his appearance at any time when called upon while the suit is pending and until execution or satisfaction of any Judgement, and the surety or sureties shall undertake in default of such appearance and satisfaction to pay any sum of money that may be adjudged against the Defendant in the suit with costs.

4. Deposit *in lieu* of bail.

- (1) Where a Defendant offers to deposit a sum of money *in lieu* of bail for his appearance sufficient to answer the claim against him, with costs of the suit, the Judge may order such deposit and direct that the deposit be paid into an interest yielding account in a bank.
- (2) Where a Defendant offers security other than money *in lieu* of bail for his appearance sufficient to answer the claim against him, the Judge may make such Order as he may deem fit in the circumstance.

5. Committal in default.

- (1) If the Defendant fails to furnish security or offer sufficient deposit, the Judge may commit him into custody until the decision of the suit, or if Judgement has been given against the Defendant, until the execution of the Judgement.
- (2) Committal to custody under this Rule shall not exceed a period of six months.
- (3) The Judge may at any time upon reasonable cause being shown and upon such terms as to security or otherwise as may seem just, release the Defendant.
- (4) The application may be made to the Court in any Judicial Division in which the Defendant may be, and such Court may issue the warrant for detaining the Defendant and bringing him before the Court where the suit is pending, and may make such further Order as shall seem just.
- (5) Where the Warrant is issued by a different Court from that in which the suit is pending, such Court shall, on the application of either of the parties, transmit the application and the evidence therein to the Court in which the suit is pending and take sufficient security for the appearance of the Defendant in Court, or send him there in the custody of an officer of the Court.
- (6) Upon the transfer of the Defendant to the Court in which the suit is pending, the matter shall be proceeded with in accordance with the foregoing provisions in such manner as shall seem just.

6. Cost of subsistence of person arrested.

The expenses incurred for the subsistence in custody of the person so arrested shall be paid by the Claimant in the action in advance and the amount so disbursed may be recovered by the Claimant in the suit, unless the Judge shall otherwise order. The Judge may release the person so confined on failure by the Claimant to pay the subsistence money or in case of serious illness, order his removal to hospital.

7. Claimant in this Order shall include any person originating a suit by Originating Motion, Petition, Originating Summons or Writ of Summons.

ORDER 44

PROCEEDINGS *IN FORMA PAUPERIS*

1. Application.

This Order shall apply to proceedings in respect of which there is no statutory provisions for Legal Aid.

2. Who may sue or defend *in forma pauperis*.

A Judge may authorise a person to sue or defend *in forma pauperis* if satisfied that

- (1) his means do not permit him to employ legal representation in the conduct of his case, and
- (2) he has reasonable grounds for suing or defending as the case may be.

3. Conditions to be fulfilled.

- (1) A person seeking relief under this Order shall write an application to the Chief Judge accompanied by an affidavit, signed and sworn to by the Applicant himself, stating that by reason of poverty, the material facts of which shall be stated in the said affidavit, that he is unable to afford the services of a Legal Practitioner.
- (2) Where in the opinion of the Chief Judge the application is worthy of consideration, the Chief Judge shall appoint a Legal Practitioner to act for the Applicant.
- (3) Where a Legal Practitioner is so appointed, the Applicant shall not discharge the Legal Practitioner except with the leave of the Chief Judge.

4. Fees and costs.

Court fees payable by a person admitted to sue or defend *in forma pauperis* may be remitted either in whole or in part as a Judge may deem fit and a person so admitted to sue or defend shall not, unless the Judge otherwise orders, be liable to pay or be entitled to receive any costs.

5. Procedure to be followed.

- (1) The Legal Practitioner appointed for the Claimant shall not, except by leave of the Chief Judge, take or agree to take or seek to obtain any payment whatsoever from the Applicant or any other person connected with the Applicant or the action taken or defended thereunder.

- (2) Where the Applicant pays or agrees to pay money to any person whatsoever either in connection with his application or the action taken or defended thereunder, his application shall be refused, and if already granted, revoked.
- (3) Where the Legal Practitioner appointed for the Applicant discovers that the Applicant is possessed of means beyond those stated in the affidavit, if any, he shall at once report the matter in writing to the Registrar.

6. Revocation of Order, discontinuance, etc.

- (1) The Chief Judge may at any time revoke the Order granting the application and thereupon the Applicant shall not be entitled to the benefit of this Order in any proceedings to which the application relates unless otherwise ordered.
- (2) Neither the Applicant nor the Legal Practitioner appointed for him shall discontinue, settle or compromise the action without the leave of a Judge.

7. Payment to Legal Practitioner.

The Judge may order payment to be made to the Legal Practitioner out of any money recovered by the Applicant or may charge in favour of the Legal Practitioner upon any property recovered by the Applicant, such sum as in all the circumstances the Judge may deem fit.

8. Duty of Legal Practitioner.

Every process, document or application on behalf of the Applicant except an application for the discharge of his Legal Practitioner, shall be signed by his Legal Practitioner, who shall ensure that no process, document or application is made or filed without reasonable cause.

9. Appeals.

A person shall not appeal *in forma pauperis* except by leave of the trial or the appellate Court and only on grounds of law; and where leave is so granted, the provisions of this Order shall apply *mutatis mutandis* to all proceedings on the appeal.

ORDER 45

LEGAL PRACTITIONERS

1. Legal Practitioner to conduct cause or matter to final Judgement.

Every Legal Practitioner engaged in any cause or matter shall be bound to conduct same on behalf of the party by or for whom he shall have been so engaged until final Judgement, unless allowed by a Judge for any special reason to cease acting therein.

2. Legal Practitioner responsible for improperly incurred costs

- (1) Subject to the following provisions of this Rule, where in any proceedings costs are incurred improperly or without reasonable cause by undue delay or by other misconduct or default, the Judge may make against any Legal Practitioner whom he considers to be responsible, whether personally or through a servant or agent, an Order:
 - (a) disallowing the costs as between the Legal Practitioner and his client and directing the Legal Practitioner to pay to his client costs which the client has been ordered to pay to other parties in the proceedings; or
 - (b) directing the Legal Practitioner personally to indemnify such other parties against costs payable by them.
- (2) The provisions of this Rule shall apply where proceedings cannot conveniently proceed or fail or are adjourned without useful progress being made because of the failure of the Legal Practitioner to:
 - (a) attend in person or by a proper representative; or
 - (b) deliver any process or document for use in the Court which ought to have been delivered; or
 - (c) be prepared with any proper evidence or account; or
 - (d) otherwise to proceed with the matter.
- (3) Where the Legal Practitioner admits that the failure or neglect or unwillingness of a party to act, or where the party has acted negligently and the Legal Practitioner admits that the failure, neglect or unwillingness is the fault of the Legal Practitioner and any cost be occasioned or awarded, such cost shall be awarded against the Legal Practitioner and not the party, and the Legal Practitioner shall pay the cost before the next adjourned date, failing which the Legal Practitioner shall be denied audience.

-
- (4) No Order under this Rule shall be made against a Legal Practitioner unless he has been given a reasonable opportunity to appear before the Judge to show cause why the Order should not be made.
 - (5) The Judge may direct that notice of any proceedings or Order against a Legal Practitioner under this Rule shall be given to his client in such manner as may be specified in the direction.
 - (6) Where, on the assessment of costs to be paid out of a fund, one-sixth or more of the amount of the bill for those costs is taxed off, the Legal Practitioner whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.
3. **Acts that may be done by Legal Practitioner or agent.**

Where by these Rules any act may be done by any party in any proceedings, such act may be done either by the party in person, by his Legal Practitioner or by his agent, unless an agent is expressly barred under these Rules.
 4. **Application for change or withdrawal of Legal Practitioner.**

An application for a change or withdrawal of Legal Practitioner may be made by a party or his Legal Practitioner, as the case may be, not less than three clear days before the date fixed for hearing.
 5. **Service of application for change or withdrawal.**

An application for change of Legal Practitioner under this Order shall be served on all parties to the cause or matter and where applicable, also on the outgoing Legal Practitioner if he is not the Applicant.
 6. **Re-appearance of Legal Practitioner**

A Legal Practitioner who was changed, or who withdrew his appearance for a party, may re-appear for the same party with leave of the Judge.
 7. **Account by Legal Practitioner.**
 - (1) Where the relationship of Legal Practitioner and client exists or has existed, a Summons may be issued by the client or his representatives for the delivery of a cash account or the payment of monies or the delivery of securities.

-
- (2) A Judge may from time to time order the Respondent to deliver to the Applicant a list of the monies or securities which he has in his custody or control on behalf of the Applicant or to bring into Court the whole or any part of the same, within such time as the Judge may order.
 - (3) In the event of the Respondent alleging that he has a claim for costs, the Judge may make such provision for the taxation and the payment of security thereof or the protection of the Respondent's lien, if any, as he may deem fit.
 - (4)
 - (a) If during the taxation or any bill of costs or the taking of any account between Legal Practitioner and client, it shall appear to the Taxing Officer that there must in any event, be monies due from the Legal Practitioner to the client, the Taxing Officer may from time to time make an interim certificate as to the amount so payable by the Legal Practitioner.
 - (b) Upon the filing of such certificate, a Judge may order the monies so certified, to be forthwith paid to the client or brought into Court.

ORDER 46

COSTS

1. Fixing costs.

- (1) In fixing the amount of costs, a successful party shall be indemnified for the expenses to which he has been put in the proceedings, and compensated for his time and effort in coming to Court.
- (2) The Judge may take into account all the circumstances of the case including:
 - (a) cost of legal representation, assistance or facilities for the prosecution or defence of the case of the successful party;
 - (b) travel and other expenses of the party and witnesses; and
 - (c) such other expenses that the Judge determines are recoverable having regard to the circumstances of the case, to the extent that the Judge determines that the amount of such costs or expenses is reasonable.
- (3) The Judge in exercising his discretion as to costs, shall take into account any offer or contribution made by any of the parties and any payment into Court and the amount of such payment.
- (4) Where costs or expenses are ordered to be paid, the amount of such costs shall, if practicable, be summarily determined by the Judge at the time of delivering the Judgement or making the Order.
- (5) Where the Judge deems it impracticable to determine summarily the amount of any cost or expenses to be recovered, all questions relating thereto shall be referred by the Judge to a Taxing Officer for taxation.

2. Security for costs.

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

3. Security for costs by Claimant temporarily within jurisdiction.

A Claimant ordinarily resident out of jurisdiction may be ordered to give security for costs, though he may be temporarily resident within jurisdiction.

4. Action founded on Judgement or bill of exchange.

Where an action founded on a Judgement or Order, or on a bill of exchange, or other negotiable instrument is brought by a person resident out of the jurisdiction, the Judge may Order the Claimant to give security for cost.

5. Bond as security for costs.

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

6. Costs at discretion of Court.

Subject to the provisions of any applicable Law and these Rules, costs both actual and incidental to all proceedings in the Court, shall be at the discretion of the Judge who may determine when, by whom and to what extent the costs are to be paid.

7. Costs out of fund or property.

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

8. Stay of proceedings until costs are paid.

Subject to the provisions on enforcement or recovery of costs in any Law or under these Rules, where the Judge orders costs to be paid or security to be given for costs by any party, the Judge may order all proceedings by or on behalf of that party in the same suit or proceedings or connected with it to be stayed until the costs are paid or security given accordingly.

9. Stage of proceedings at which costs to be dealt with.

- (1) Costs may be ordered or dealt with by the Judge at any stage of the proceedings.
- (2) Costs, where ordered, are payable forthwith and shall be paid within seven days of the Order otherwise the defaulting party or his Legal Practitioner may be denied further audience in the proceedings.

10. When costs to follow the event.

In addition to any penalty payable for default under these Rules, the costs of and occasioned by any application to extend the time fixed by the Rules or any direction or Order thereunder for delivering or filing any process or document or doing any other act (including the costs of any Order made on the application) shall be borne by the party making the application unless the Judge otherwise orders.

11. Costs arising from misconduct or neglect.

- (1) Where in any cause or matter anything is omitted or is done improperly or unnecessarily by or on behalf of a party either by himself or itself, authorised officer, agent or representative, the Judge may direct that
 - (a) any costs to that party in respect of it shall not be allowed to it or him and that any cost occasioned by him or it to the other parties shall not be paid to him or it; or
 - (b) any costs occasioned by that party in respect of it shall be paid by the party or his or its authorised officer, agent or representative to the other party.
- (2) Without prejudice to the generality of sub-rule (1) of this Rule, the Judge shall, for the purpose of that sub-rule have regard in particular to the following matters, that is to say:
 - (a) the omission to do anything the doing of which would have been calculated to save time and costs or avoid delays;
 - (b) the doing of anything, in any manner or at any time, calculated to occasion waste of time, unnecessary costs or delay in the proceeding.

12. Taxation of costs.

Every bill of costs (other than a bill delivered by a Legal Practitioner to his client which fails to be taxed under the Legal Practitioners Act) shall be referred to the Registrar for taxation and may be taxed by him or such other Taxing Officer as the Chief Judge may appoint.

13. Notice to other party.

The party applying for taxation shall file and serve a Bill on any other party entitled to be heard on the taxation.

14. Power of Taxing Officer.

- (1) A Taxing Officer shall have power to:
 - (a) tax any costs, the taxation of which is required by any Law or as may be directed by Order of a Judge;
 - (b) take an account of any dealings in money made in connection with the payment of the costs being taxed, if the Judge so directs;

- (c) require any party represented jointly with any other party in any proceedings before him to be separately represented;
- (d) examine any witness in those proceedings; and
- (e) direct the production of any document which may be relevant in connection with those proceedings.

15. Extension of time.

- (1) A Taxing Officer may:
 - (a) extend the period within which a party is required by or under the Rules in this Order to begin proceedings for taxation or to do anything in or in connection with proceedings before that Officer; and
 - (b) where no period is specified by or under the Rules in this Order or by the Judge for the doing of anything in or in connection with such proceedings, specify the period within which the thing is to be done.
- (2) Where an order of the Court specifies a period within which anything is to be done by or before a Taxing Officer, then unless the Judge otherwise directs, the Taxing Officer may from time to time extend the period so specified on such terms as he deems fit.
- (3) A Taxing Officer may extend any such period as is referred to in the foregoing provisions of this Rule although the application for extension is not made until after the expiration of that period.

16. Power of Taxing Officer where party entitled to be paid or liable to pay costs.

Where a party entitled to be paid is also liable to pay costs, the Taxing Officer may:

- (a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or
- (b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he shall be liable to pay.

17. Proceedings for taxation.

- (1) A party entitled to require any costs to be taxed shall begin proceedings for the taxation of the costs by filing in the Registry a Bill of Costs and obtain a day and time for the taxation thereof.
- (2) The party shall give at least seven days' notice of the day and time appointed for taxation proceedings to every other party and serve a copy of his Bill of Costs to the other party, if he has not already done so.
- (3) A Notice under sub-rule (2) of this Rule need not be given to any party who has entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.
- (4) Where any party entitled to be heard in any taxation proceedings does not attend within a reasonable time after the time appointed for the taxation, the Taxing Officer, if satisfied by affidavit or otherwise that the party had due notice of the day and time appointed, may proceed with the taxation.
- (5) The Taxing Officer by whom any taxation proceedings are being conducted may, if he deems it necessary, adjourn those proceedings from time to time.

18. Provisions as to Bill of Costs.

- (1) In any Bill of Costs, the professional charge and the disbursements shall be entered in separate columns and every column shall be cast before the bill is left for taxation.
- (2) Before a Bill of Costs is left for taxation, it shall be indorsed with:
 - (a) the name of firm, business and email addresses, and telephone number of the Legal Practitioner whose Bill it is; and
 - (b) where the Legal Practitioner is the agent of another, with the name or firm, business and email addresses, and telephone number of the principal.

19. Certificate of Taxing Officer.

Upon the completion of the taxation of any Bill of Costs, the Taxing Officer shall certify the result of his taxation including the costs thereof.

20. Fees on taxation.

The fees payable on taxation shall be paid by the party on whose application the Bill is taxed and shall be allowed as part of the Bill.

21. Application for review.

Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by a Taxing Officer or with the amount allowed by a Taxing Officer in respect of any item, may apply to a Judge for an Order to review the taxation as to that item.

22. Application for Summons.

- (1) An application under the preceding Rules shall be made by Summons at any time within fourteen days after the Taxing Officer's certificate.
- (2) Unless the Judge otherwise directs, no further evidence shall be received on the hearing of an application under this Rule and no ground of objection shall be raised which was not raised on taxation but, save as aforesaid, on the hearing of any such application, the Judge may exercise all such powers and discretion as are vested in the Taxing Officer in relation to the subject matter of the application.
- (3) On an application under this Rule, the Judge may make such Order as the circumstances require and in particular may order the Taxing Officer's decision to be amended or except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another Taxing Officer for taxation.

ORDER 47

I. Proceedings in Chambers

1. Matters to be disposed of in Chambers.

Unless a party or his Legal Practitioner objects, the Judge may, on application, conduct any proceedings in Chambers, and may adjourn any such proceedings from Court to Chambers or vice versa, subject to any Law.

2. Representation in Chambers.

In any proceedings before a Judge in Chambers, any party may, if he so desires, be represented by a Legal Practitioner.

3. Notes of proceedings in Chambers.

Notes shall be kept of all proceedings in the Judges' Chambers with proper dates, so that all such proceedings in such cause or matter may appear consecutively and in chronological order, with a short statement of the question or points decided or ruled at every hearing.

4. Drawing up and entry of Orders made in Chambers.

Orders made in Chambers shall be entered in the same manner as Orders made in Court.

5. Costs.

Subject to the provisions of the Law and of these Rules, costs both actual and incidental to all proceedings in Chambers shall be at the discretion of the Judge.

6. Decisions given in Chambers: How set aside or varied.

- (1) Where a party to any proceedings in Chambers does not intend to be bound by the final decision of the Judge in Chambers, he shall:
 - (a) immediately request to have the matter adjourned into Court for continuation; and
 - (b) where such request is refused, the party may proceed by way of Motion on Notice in Court to discharge, set aside or vary the final decision made in Chambers.
- (2) The Motion on Notice shall be:
 - (a) filed not later than seven days after the decision made in Chambers subject to the power of the Court to grant an extension of time on good and sufficient reason being shown; and

- (b) heard and determined by the Judge who dealt with the matter in Chambers, except where this is impossible or inconvenient for any reason.

7. Subpoena for attendance of witness in Chambers.

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

www.sabilaw.org

ORDER 48

JURISDICTION OF CHIEF REGISTRAR

1. Chief Registrar.

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

2. Business to be transacted by Chief Registrar.

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

- (a) applications for the taxation and delivery of bills of costs and applications for the delivery by any Legal Practitioner of deeds, documents and papers;
- (b) the taking of an account in any case where a Judge has ordered that the account be taken by the Chief Registrar;
- (c) the taxation of bills of costs; and
- (d) applications leading to the grant of Letters of Administration With Will, Letters of Administration Without Will or common form probate business.

3. Chief Registrar may refer matter to the Chief Judge.

- (1) Where it appears to the Chief Registrar that it is proper that any matter be referred for the decision of a Judge, he may refer such matter to the Chief Judge or the Judge who referred the matter to the Chief Registrar.
- (2) The Chief Judge or the Judge may either dispose of the matter or refer the same back to the Chief Registrar with such directions as he may deem fit.

4. Appeal from Order of Chief Registrar.

- (1) Any person affected by an Order or decision of the Chief Registrar in the exercise of the jurisdiction conferred upon him by this Order may appeal therefrom to a Judge within the jurisdiction from where the matter was instituted.
- (2) Such appeal shall be by Notice in writing without a fresh Summons to appear before the Judge within five (5) days after the decision complained of or such further time as may be allowed by the Judge.

- (3) Unless otherwise ordered by the Judge:
 - (a) there shall be at least two clear days between service of the Notice of Appeal and the day of hearing; and
 - (b) an Appeal from the decision of the Chief Registrar shall not operate as a stay of proceedings.

5. Chief Registrar's Cause List.

Lists of matters to be heard by the Chief Registrar shall be made out and published by being posted on the Court's Notice Boards.

6. Legal Practitioners may represent party.

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

7. Chief Registrar's Certificate.

- (1) Except as otherwise provided for in these Rules, the directions to be given for or concerning any proceedings before the Chief Registrar shall require no particular form but the result of such proceedings shall be stated in a concise Certificate.
- (2) The Certificate of the Chief Registrar regarding accounts and inquiries shall not, unless the circumstances of the case render it necessary, set out the Judgement or Order or any documents or evidence or reasons but shall refer to the Judgement or Order, documents and evidence or particular paragraphs thereof, so that it may appear upon what the result stated in the Certificate is founded.

8. Form of Certificate. Civil Form 36.

- (1) In case of accounts and inquiries, the Certificate of the Chief Registrar shall be as in Form 36 with such variations as the circumstances may require and the certificate shall:
 - (a) state the result of the account and not set the same out by way of schedule;
 - (b) refer to the account verified by the affidavit filed;
 - © specify by the numbers attached to the items in the account which, if any, of such items have been disallowed or varied;
 - (d) state what additions, if any, have been made by way of surcharge or otherwise; and

- (e) where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account so altered, such transcript may be required to be made by the party prosecuting the Judgement or Order and shall then be referred to by the Certificate.
- (2) The accounts and transcripts, if any, referred to by the Certificates shall be filed therewith.

9. When Certificate becomes binding.

Every Certificate with the accounts, if any, to be filed therewith shall be transmitted by the Chief Registrar to the Registry for filing and shall thenceforth be binding on all the parties to the proceedings unless discharged or varied upon an application made to a Judge before the expiration of eight clear days after the filing of the Certificate.

10. Bill of Costs.

When taxing a Bill of Costs, the Chief Registrar shall:

- (a) insert in red ink against every item disallowed, reduced or altered by him, the substance of the modification made by him;
- (b) at the bottom of the Bill of Costs, certify the net result of the taxation;
- (c) transmit Bill of Costs to the Registry for filing, and the provisions of Rule 9 of this Order shall apply in respect of such Certificate.

11. Discharge or variation of Certificate after lapse of time.

The Judge may, if the special circumstances of the case require, upon an application direct a Certificate to be discharged or varied at any time after the same has become binding on the parties.

ORDER 49

FORECLOSURE AND REDEMPTION

1. **Originating Summons for foreclosure and redemption.**

Any mortgagee or mortgagor, whether legal or equitable, or any person:

- (a) entitled to or having a property subject to a legal or equitable charge, or
- (b) having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out an Originating Summons for any of the following reliefs as may be specified and as the circumstances of the case may require:
 - (a) payment of money secured by the mortgage or charge;
 - (b) sale;
 - (c) foreclosure;
 - (d) delivery of possession, whether before or after foreclosure, to the mortgagee or person entitled to the charge, by the mortgagor or person having the property subject to the charge, or by any other person in or alleged to be in possession of property;
 - (e) redemption;
 - (f) re-conveyance; or
 - (g) delivery of possession by the mortgagee.

2. **Forms for foreclosure and redemption. Civil Forms 37, 38 and 39.**

- (1) Orders for payment and for possession shall be as in Forms 37, 38 and 39 of this Rule with such variations as the circumstances of the case may require.
- (2) The Forms shall be used under corresponding circumstances in actions commenced by Writ for the same relief.

3. **Service and execution of Judgement**

The Judge may give any special directions concerning the execution of the Judgment, or the service thereof upon persons not parties to the cause or matter as he deems fit.

ORDER 50

SUMMONS TO PROCEED WITH ACCOUNT AND INQUIRIES AFTER JUDGEMENT

1. Bringing in Judgement, etc. directing account and inquiries.

Every Judgement or Order directing accounts or inquiries to be taken or made, shall be brought to a Judge by the party entitled to prosecute the same within ten days after such Judgement or Order shall have been entered or filed and in default thereof, any other party to the cause or matter shall be at liberty to bring in the same and such party shall have the prosecution of such Judgement or Order unless the Judge shall otherwise direct.

2. Summons to proceed with accounts and inquiries: Directions.

- (1) Upon a copy of the Judgement or Order being left, a Summons shall be issued to proceed with the accounts or inquiries as directed.
- (2) On the return date of the Summons, the Judge shall, if satisfied that all necessary parties have been served with notice of the Judgement or Order, give directions relating to the:
 - (a) manner in which each of the accounts and inquiries is to be prosecuted;
 - (b) evidence to be adduced in support of such account and inquiries;
 - (c) parties who are to attend on the several accounts and inquiries; and
 - (d) time within which each proceeding is to be taken and day appointed for the further attendance of the parties.
- (3) The directions may subsequently be varied by addition thereto or otherwise, as the Judge may deem necessary.

3. Settling deed where parties differ.

- (1) Where by a Judgement or Order, a deed is directed to be settled by a Judge in case the parties differ, a Summons to proceed shall be issued and upon the return of the Summons, the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the Judge may deem fit, to the party entitled to object thereto.
- (2) The party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections within eight days after the delivery of such copy, and the proceedings shall be adjourned until after the expiration of the said period of eight days.

4. Where service of notice of Judgement or Order is dispensed with.

Where, upon the hearing of the Summons to proceed, it appears to the Judge that by reason of absence or for any other sufficient cause, the service of notice of the Judgement or Order upon any party cannot be made, the Judge may, if he shall deem fit, order any substituted service or notice by advertisement or otherwise in *lieu* of such service.

5. Non-Service of Notice of Judgement or Order: Stoppage of proceedings.

- (1) Where, at the hearing of the Summons to proceed, it appears that all necessary parties are not parties to the action or have not been served with notice of the Judgement or Order, directions may be given for advertisement to creditors and for leaving the accounts in Chambers.
- (2) No proceedings or adjudication on creditors' claims and the accounts shall be taken or continued except for the purpose of ascertaining notice of the parties to be served, until all necessary parties have been served and directions given as to the parties who are to attend the proceedings.

6. Documents: copies for use of Judge.

Copies, abstracts, extracts of or from accounts, deeds or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the Judge and where so directed, copies shall be handed over to the other parties:

Provided that no copies shall be made of deeds or documents where the originals can be brought in unless the Judge shall otherwise direct.

7. Entry in Summons Book.

Where Summons to proceed is obtained, an entry shall be made in the Summons Book stating the:

- (a) date and time on which the Summons is issued;
- (b) name of the cause or matter;
- (c) party issuing the Summons and the purpose for obtaining such Summons; and
- (d) return date for such Summons.

ORDER 51

SUMMARY PROCEEDINGS FOR POSSESSION OF LANDED PROPERTY OCCUPIED BY SQUATTERS OR WITHOUT THE OWNER'S CONSENT

1. Application of this Order.

This Order shall not apply where the person in occupation of land is:

- (a) a tenant; or
- (b) a tenant holding over after termination of his tenancy; or
- (c) a licensee of the owner or person entitled to possession; or
- (d) a person who had the consent of the predecessor-in-title or the person who is entitled to possession.

2. Proceedings to be brought by Originating Summons. Civil Form 40.

Where a person claims possession of land which he alleges is occupied solely by a person not listed in Rule 1 of this Order, proceedings may be brought by Originating Summons as in Form 40 and in accordance with the provisions of this Order.

3. Affidavit in support.

The Claimant shall file in support of the Originating Summons, an affidavit stating:

- (a) his interest in the land;
- (b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and
- (c) that he does not know the name of any person occupying the land who is not named in the Summons.

4. Service of Originating Summons.

- (1) Where a person in occupation of the land is unnamed, no acknowledgement of service of the Originating Summons shall be required.
- (2) Where any person in occupation of the land is named in the Originating Summons, unless the Judge otherwise directs, the Summons together with a copy of the affidavit in support, shall be served on him
 - (a) personally, or in accordance with Order 6 Rule 5 of these Rules, or
 - (b) by leaving a copy of the Summons and of the affidavit, or with leave of the Court sending them to him, at the premises; or

- (c) affixing a copy of the Summons and a copy of the affidavit to the main door or other conspicuous part of the premises; or
 - (d) if practicable, inserting through the letter box at the premises, a copy of the Summons and a copy of the affidavit enclosed in a sealed envelope addressed to "the occupiers"; or
 - (e) in such other manner as the Judge may direct.
- (3) Every copy of the Originating Summons for service under this Rule shall be sealed with the seal of the Court issuing the Summons.

5. Application by occupier to be made a party.

Without prejudice to Rule 6 of this Order, any person not named as a Defendant who is in occupation of the land and wishes to be heard on the question whether an Order for possession should be made, may apply at any stage of the proceedings to be joined as a Defendant.

6. Order for possession. Civil Form 41.

- (1) An Order for possession in proceedings under this Order shall be as in Form 41 with such variations as circumstances may require.
- (2) The Judge may forthwith order a Writ of Possession to be issued.
- (3) Nothing in this Order shall prevent the Judge from ordering possession to be given on a specified date, in the exercise of any power which could have been exercised if possession had been claimed in an action begun by Writ.

7. Writ of possession.

- (1) No Writ of Possession to enforce an Order for possession under this Order shall be issued after the expiration of three months from the date of the Order without the leave of the Judge.
- (2) The application for leave may be made *ex-parte* unless the Judge otherwise directs.

8. Setting aside of Order.

The Judge may on such terms as he deems fit, set aside or vary any Order made in proceedings under this Order.

9. Definition of "land" in the Order.

In this Order, "land" means the ground with or without building thereon.

ORDER 52

MISCELLANEOUS PROVISIONS

1, Power of the Chief Judge to Assign Cases

1. The Chief Judge may in addition to the powers conferred on him by any Relevant Laws, assign cases among the Judges and may delegate such powers to any Judge or Judges.

2. Court Sittings and Vacation

1. Days of sittings.

Subject to the provisions of the Law, the Judge may in his discretion, appoint any day or days and any place or places from time to time for the hearing of causes as circumstances may require.

3. Public or Private sittings of the Court.

The sittings of the Judge for the hearing of causes shall be held in public but, subject to the provisions of the Constitution of the Federal Republic of Nigeria, the Judge may, for special reasons, hear any particular cause or matter in the presence only of the parties, with their Legal Practitioners, if any, and the officers of Court.

4. Office hours.

The offices of the Court shall be open at such times as the Chief Judge shall direct.

5. Days of sittings and Legal Vacation.

Subject to the directions of the Chief Judge, sittings of the Court for the hearing of civil matters shall be held on every week day except:

- (a) on public holidays;
- (b) during the week beginning with Easter Monday;
- (c) during the period beginning on Christmas eve and ending on the fifth working day of January next following; and
- (d) during the legal vacation, that is, the period beginning on a date in July and ending on a date not more than forty-two working days later as the Chief Judge may by notification in a Public Notice appoint.

6. Sittings during vacation.

Notwithstanding the provisions of Rule 4 of this Order, any cause or matter may be heard by a Judge on any day except on a Sunday or public holiday where such cause or matter is urgent or a Judge at the request of all the parties concerned, agrees to hear a cause or matter.

7. Vacation not reckoned in time for filing of processes.

The time for filing and service of processes shall not run during the legal vacation unless otherwise directed by the Judge.

II. General**8. Recovery of penalties and costs.**

All fines, forfeitures, pecuniary penalties and costs ordered to be paid may be levied by distress, seizure and sale of the movable and immovable property of the person making default in payment.

9. Notice.

When the publication of any Notice is required, the same may be made in a Public Notice, unless otherwise provided in any particular case by these Rules of Court or otherwise ordered by the Judge.

10. Warrants and Orders: How addressed.

All Warrants and Orders of whatever description shall be sufficiently addressed for execution by being directed to the Sheriff, but this provision shall not prevent any Warrant or Order from being addressed to a person by name or to a person named and to officers of Court generally.

11. No fees where proceedings are by Government Department.

No fees are to be taken in respect of any proceedings where such fees would be payable by any Government Department:

Provided that where any person may be ordered to pay the costs of the State or any Government, Ministry, Department or Agency, in any case, in accordance with Order 46 Rules 10 and 11, any fees which would have been payable but for this provision shall be paid and recoverable from such person.

13. Regulations.

The Regulations regarding fees shall govern the payment and disposal of fees and the duties of Court officers in regards thereto.

14. Savings.

Where no provision is made by these Rules, Practice Directions or in any Law, the Court shall adopt such procedure as will in its view do substantial justice to the parties.

15. What Orders to be made.

Subject to these Rules, the Court may in all causes or matters make any Order which it considers necessary for doing justice, whether the Order has been expressly asked for by the person entitled to the benefit of the Order or not.

ORDER 53
SUPPLEMENTARY POWERS OF THE CHIEF JUDGE

1. Practice Directions

- (1) The Chief Judge may, where desirable in the realisation of the speedy, just and efficient administration of justice, issue Practice Directions, protocols and directives.
- (2) The Practice Directions, protocols and directives in sub-rule 1 of this Rule shall be published in a Notice as supplemental provisions to these Rules and shall have the same effect as part of these Rules.

2. Electronic filing

The power of the Chief Judge exercisable under Rule 1 of this Order may include the designation of a date for the commencement of electronic filing of processes and documents in the Court and protocols and directives in connection therewith.

www.sabilaw.org

ORDER 54

EFFECT OF NON- COMPLIANCE

1. Non-compliance with Rules

Non-compliance with any provision of these Rules, except otherwise stated, shall not render any proceeding void unless the Court so directs. But the proceedings may be set aside wholly or in part as irregular, or amended, or otherwise dealt with in such manner and on such terms as the Court may deem fit and just.

2. Setting aside for irregularity

- (1) An application to set aside a process or proceeding on account of non-compliance for irregularity or for being a nullity, shall not be allowed unless made within a reasonable time, and when the party making the application has not taken any fresh step in the proceedings after knowledge of the defect, non-compliance or irregularity.
- (2) An application to set aside under these Rules shall be made by Motion on Notice showing clearly the grounds upon which the application is based.

www.sabilawo.com

ORDER 55

PROBATE AND ADMINISTRATION IN GENERAL

1. Application to the Probate Registrar.

- (1) Where any person subject to the jurisdiction of the Court dies, all applications for the grant of any Letters of Administration of the estate of the deceased person, with or without a Will attached, and all applications on other matters connected therewith shall be made to the Probate Registrar of the Court as in Probate Forms 1 and 2 as applicable.
- (2) Except in exceptional circumstances and with leave of the Court no grant of administration with the Will annexed shall be issued within fourteen days of the death of the deceased; and no grant of administration without the Will annexed shall be issued within twenty-one days of such death.
- (3) All applications with respect to Letters of Administration or grant of probate or letters of probate and all searches and other processes relating thereto may be made manually, or by electronic filing at such a time as the Chief Judge may designate.

2. Preservation of Will and property.

- (1) Where a person dies, and an application is made by a person interested in the estate of the deceased the Judge may, where circumstances so requires, make such Orders as may appear necessary for the interim preservation of the property of the deceased, for the discovery or preservation of the Will of the deceased or for any other purposes connected therewith.
- (2) The Judge may, on the death of the person, when the circumstances of the case so require, appoint and authorise an officer of the Court, or any person as may be deemed appropriate, to take possession of the property of the deceased within his jurisdiction, or put such property under seal until it can be dealt with according to Law.
- (3) The Judge may refuse to entertain any application under sub-rule (2) of this Rule if he considers that there has been unreasonable delay in making the application.

3. Personal application.

- (1) A personal Applicant for a grant may:
 - (a) apply in person;
 - (b) not apply through an agent whether paid or unpaid; and
 - (c) not be represented by any person acting or appearing to act as his adviser.
- (2) No personal application shall be received or proceeded with if:
 - (a) it becomes necessary to bring the matter before the Court by Motion or by Action;
 - (b) an application has already been made by Legal Practitioner on behalf of the Applicant and has not been withdrawn; or
 - (c) the Judge otherwise directs.
- (3) After a Will has been deposited in the Registry by a Personal Applicant it may not be delivered to the Applicant or any other person unless the Judge so directs.
- (4) A Personal Applicant shall:
 - (a) produce a Certificate of the Registration of Death of the deceased or such other evidence of the death as the Judge may approve; and
 - (b) supply all information necessary to facilitate preparation of appropriate documentation required for processing of the grant in the Registry or may by himself prepare such documents and lodge them unsworn.
- (5) Unless the Judge otherwise directs, every Oath, Affidavit or Guarantee required in a personal application shall be sworn or executed by all deponents or sureties before an authorised Officer.

4. Application for grants through Legal Practitioners.

Every Legal Practitioner through whom an application for a grant is made shall give his telephone number, email address and address of his place of business within the jurisdiction of the Court.

5. Further enquiries by Judge.

- (1) The Judge shall not allow any grant to issue until all enquiries which he may deem fit to make have been answered to his satisfaction.

- (2) The Judge may require proof of identity of the Applicant beyond those contained in the Oath for the grant.

6. Oath in support of grant.

- (1) Every application for a grant shall be supported by an affidavit in the form applicable to the circumstances of the case sworn by the Applicant and by such other documents as the Judge may require.
- (2) Unless otherwise directed by the Judge, the Oath shall state where the deceased was domiciled at the time of death.

7. Grant in additional name.

Where it is necessary to describe the deceased in a grant by some other name in addition to his true name, the Applicant shall state the true name of the deceased in the Oath and depose:

- (a) that some part of the estate specified in the Oath was held in the other name; or
- (b) to any other reason for the inclusion of the other name in the grant.

8. Additional evidence for grant.

- (1) The Judge may, where it appears or is desirable, require additional evidence in respect of:
 - (a) the identity of the deceased or of the Applicants;
 - (b) the relationship of the Applicants to the deceased;
 - (c) any person or persons in existence with a right equal or prior to that of the Applicant in respect of the grant of Probate or Administration sought by the Applicant; and
 - (d) any other matter which may be considered relevant by the Judge in determining whether the Applicant is the proper person to whom the Grant should be made.
- (2) The Judge may refuse the grant where the Applicant fails or neglects to produce any evidence required in these Rules.

9. Notice to other person.

Where it appears to the Judge that any other person than the Applicant may have a right with the Applicant to the grant sought, the Judge may refuse the grant until due notice of the application has been given to such other person and an opportunity given for the person to be heard in respect of the application.

10. Grant where deceased is domiciled outside the State.

- (1) Where the deceased was domiciled outside the State the Judge may order that a grant should issue:
 - (a) to the person entrusted with the Administration of the estate by the Court having jurisdiction at the place where the deceased was domiciled at the time of death; or
 - (b) to the person entitled to administer the estate by the law of the place where the deceased was domiciled at the time of death;
 - (c) where there is no such person as mentioned in sub-rule 1(a) or (b) of this Rule or in the opinion of the Judge the circumstances so require, to such person as the Judge may direct;
 - (d) where grant is required to be made to or the Judge in his discretion considers that a grant should be made to not less than two Administrators, to such person as the Judge may direct jointly with any of the persons mentioned in sub-rule 1 (a) or (b) of this Rule or with any other person.
- (2) Where no Order has been made as stated in sub-rule 1 of this Rule, Probate of any Will which is admissible to proof may be granted where the Will:
 - (i) is in English or in an indigenous language to the Executor named in the Will;
 - (ii) describes the duties of a named person in terms sufficient to constitute him Executor according to the tenor of the Will, to that person;
- (3) Probate may be granted where the whole of the estate in the State consists of immovable property in accordance with the law that would have been applicable if the deceased had died domiciled in the State but the grant shall be limited to such Estate.

11. Grant to Attorney.

- (1) Where a person entitled to grant resides outside the State, a grant may be made to his lawful attorney until such person obtains a grant or in such other way as the Judge may direct:
Provided that where the person so entitled is an Executor, administration shall not be granted to his Attorney without notice to the other Executors, if any.

- (2) Where the Judge is satisfied by affidavit that it is desirable for a grant to be made to the lawful Attorney of a person entitled to a grant and resident in the State, he may direct the grant to be made to the Attorney for the use and benefit of such person until he obtains a grant or in such other ways as the Judge may direct.

12. Grant on behalf of minors.

- (1) Where the person entitled to a grant is a minor, a grant for his use and benefit until he attains the age of eighteen shall, subject to sub-rules 3 and 5 of this Rule be granted:
 - (a) to both parents of the minor jointly or to any guardian appointed by a Judge; or
 - (b) where there is no such guardian able and willing to act and the minor has attained the age of sixteen years, to kin nominated by the minor.
- (2) A person nominated under sub-rule 1 of this Rule may represent any other minor below the age of sixteen years who is related to him and entitled in the same degree as the minor who made the nomination.
- (3) Notwithstanding anything in this Rule, administration may be granted for the use and benefit of the minor until he attains the age of eighteen years to any person assigned under sub-rule 1 of this Rule upon application by the intended guardian who shall file an affidavit in support of the application and, if required by the Court, an affidavit of fitness sworn by a responsible person.
- (4) Where grant is required to be made to not less than two persons but there is only one person competent and willing to take a grant under the above provisions of this Rule, a grant may be made to such person jointly with any other person nominated by him as a fit and proper person to take the grant unless the Judge otherwise directs.
- (5) Where a minor who is a sole Executor has no interest in the residuary estate of the deceased, Administration with the Will attached for the use and benefit of the minor until he attains the age of eighteen years shall, unless the Judge otherwise directs, be granted to the person entitled in the residuary estate.
- (6) Subject to the direction or Order of the Judge, the right of a minor to a grant of administration may be renounced solely by a person assigned as a guardian under sub-rule 3 of this Rule.

13. Grant where minor is Co-Executor.

- (1) Where one of several Executors is a minor, Probate may be granted to an adult Executor with power reserved for making the grant to the minor on attaining the age of eighteen years and administration for the use and benefit of the minor until he attained the age of eighteen years may be granted under Rule 12 of this Order, if the adult Executors renounce or, on being cited to accept or refuse a grant, fails to accept the grant.
- (2) The right of a minor to Probate on attaining the age of eighteen years shall not be renounced by any person on his behalf.

14. Grant in cases of persons under legal disabilities.

- (1) Where the Judge is satisfied that a person entitled to a grant is by reason of mental or physical infirmity incapable of managing his affairs, a grant for his use and benefits, during his incapacity may be made:
 - (a) in the case of mental incapacity to the person authorised by the Judge to apply for the grant;
 - (b) where there is no person so authorised or in the case of physical incapacity:
 - (i) if the person incapable is entitled as Executor and has no interest in the residuary estate of the deceased, to the person entitled in such residuary Estate;
 - (ii) where the person incapable is entitled otherwise than as Executor or is an Executor having an interest in the residuary estate of the deceased, to the person who would be entitled to a grant in respect of this estate if he had died intestate or to such other person as the Judge may by Order otherwise direct.
- (2) Unless the Judge otherwise directs, no grant shall be made under this Rule unless all persons entitled in the same degree as the person incapable have been considered and excluded.
- (3) Where legal disability arises out of unsoundness of mind or insanity, notice of the application for a grant under this Rule shall, unless the Judge otherwise directs, be given to the guardian of such person entitled to the grant.

- (4) Where there is physical disability, notice of the application for a grant under these Rules shall, unless the Judge otherwise directs, be given to the person alleged to be incapable.

15. Notice of application to State.

Where the State is or may be beneficially interested in the estate of a deceased person, notice of the application for a grant shall be given by the Applicant to the Attorney General of Akwa Ibom State and the Judge may direct that no grant shall issue within a specified time after the notice has been given.

16. Accounts to be filed.

- (1) A person who has been granted Probate or Letters of Administration and/or appointed as Administrator by the Judge shall file the account of his administration in Court annually from the date of the grant or appointment until the completion of the administration.
- (2) An Executor or Administrator who fails to file his account within the prescribed period shall be liable to a penalty of not less than three hundred thousand naira for every year of default, failing which a fine for non-payment shall be enforceable by distress or confinement for a term not exceeding twelve months where distress is insufficient.
- (3) Where an account is filed in Court under this Rule, and if it appears to the Judge that the account by reason of improper, unvouched or unjustifiable entries or for other reason, it is not full and proper account, the Judge shall require the person filing the account to remedy such defects within such time as the Judge may deem reasonable.
- (4) Failure to remedy the defect within the time prescribed by the person referred to under sub-rule (1) of this Order shall be deemed to have failed to file an account within the meaning of this Rule and proceedings may be taken against such person.
- (5) The Registrar shall notify the Judge that an Executor or Administrator has failed to file his account as required by this Rule.
- (6) The Judge may upon the application by a party interested summon any Executor or Administrator to show cause why he should not be sanctioned for failure to file his account as required by this Rule.

- (7) The Judge may for good cause shown extend the time for filing such account.
- (8) An Executor or Administrator who fails to file his account after being granted an extension of time is liable to the penalty set out in sub-rule 2 of this Rule above and the procedure for bringing him before the Court shall be as set out in sub-rule 5 of this Rule.
- (9) The account shall be open to the inspection of any person who satisfies the Registrar that he is interested in the administration of the estate.
- (10) In this Rule, the word “account” shall mean and include any inventory and account of the administration, the vouchers in the hand of the Executor or Administrator relating thereto and an affidavit in verification.

17. Penalty for intermeddling.

Where any person other than the named Executor or Administrator or an officer of the Court or person authorised by the Judge takes possession of or administers or otherwise deals with the property of any deceased person, he shall, besides the other liabilities he may incur, be liable to a fine of not less than five hundred thousand naira as the Judge having regard to the condition of the person so interfering with the property and the other circumstances of the case may deem fit to impose.

18. Evidence of foreign law.

Where evidence of a foreign law is required in respect of an application for a grant, the Judge may accept an affidavit from any person who, having regard to the particulars of his knowledge or experience given in the affidavit, may be regarded as suitably qualified to give expert evidence of the law in question.

19. Amendment or revocation of grant.

- (1) Where a Judge is satisfied that a grant should be amended or revoked, he may make an Order upon the application by or with the consent of the person to whom the grant was made.
- (2) The Judge may in special circumstances upon an application by any person interested in the estate on notice to whom the grant was made make an Order to amend or revoke the grant.

ORDER 56
GRANT OF PROBATE OR LETTERS OF
ADMINISTRATION WITH WILL

1. Deposit of Will.

- (1) Any person may deposit his Will for safe custody in the Probate Registry sealed under his own seal and the seal of the Court.
- (2) An original Will, of which Probate or Administration with Will annexed is granted, shall be filed and kept in the Probate Registry in such manner as to secure its safety and convenient inspection.
- (3) A copy of such Will and of the Probate or Administration shall be immediately preserved in the Registry.

2. Will to be given out with Order of Judge.

- (1) No original Will shall be given out for any purpose without the Order of a Judge.
- (2) A certified transcript of the Probate or Administration with the Will annexed may be obtained under the seal of the Court.

3. Examination of Will as to due execution.

- (1) On receiving an application for Administration with Will annexed, a Judge shall inspect the Will to ascertain whether it appears to be:
 - (a) signed by the testator or by some other person in his presence and by his direction; and
 - (b) subscribed by two witnesses according to the applicable law.
- (2) Where the Will appears to be signed and subscribed, the Judge shall refer to the attestation clause and consider whether the wordings state that the Will has been executed in accordance with the law and the Judge shall not proceed further unless the Will appears to be so signed and subscribed.

4. Evidence as to due execution of Will.

- (1) Where a Will contains no attestation clause or the attestation clause is insufficient or where it appears to the Judge that there is doubt about the due execution of the Will, he shall before admitting it to proof require an affidavit as to due execution from one or more of the attesting witnesses, or if no attesting witness is conveniently available, from any other person who was present at the time the Will was executed.

- (2) Where no affidavit can be obtained in accordance with sub-rule 1 of this Rule, the Judge may, having regard to the desirability of protecting the interest of any person who may be prejudiced by the Will, require evidence by affidavit from any person he deems fit to show that the signature on the Will is the handwriting of the deceased, or on any other matter which may raise a presumption in favour of due execution of the Will.
- (3) Where the Judge after considering the evidence is satisfied that the Will was not duly executed, he shall refuse probate and mark the Will accordingly.

5. Proof of due execution where attesting witnesses are dead.

Where both attesting witnesses are dead or if from other circumstances such an affidavit cannot be obtained from either of them, resort shall be had to an affidavit sworn to by other persons present at the execution of the Will; but if no such affidavit can be obtained, proof shall be required of:

- a) that fact, and of the handwriting of the deceased and the attesting witnesses; and
- b) any circumstances raising a presumption in favour of the execution of the Will.

6. Evidence as to terms, condition and date of execution of Will.

- (1) Where in a Will there is an obliteration, interlineation or other alteration which is not authenticated in the manner prescribed by law or by the re-execution of the Will or by the execution of a codicil, the Judge shall require evidence to show whether the alteration was present at the time the Will was executed and shall give direction as to the form in which the Will is to be proved:
Provided that this sub-rule shall not apply to any alteration which appears to the Judge to be of no practical importance.
- (2) Where there is doubt as to the date on which the Will was executed, the Judge may require such evidence as he deems necessary to establish the date.

7. Interlineations, erasures and obliterations.

- (1) The Judge on being satisfied that the Will was duly executed, shall inspect it to see whether there are any interlineations, alterations, erasures or obliterations appearing in it and requiring to be accounted for.

-
- (2) Interlineations, alterations, erasures and obliterations are invalid unless such:
- (a) existed in the Will at the time of its execution; or
 - (b) if made afterwards, have been executed and attested in the mode required by the applicable law; or
 - (c) have been made valid by the re-execution of the Will or by subsequent execution of codicil to the Will.
- (3) Where interlineations, alterations, erasures or obliterations appear in the Will, unless duly executed or recited in or otherwise identified by the attestation clause, an affidavit in proof stating that the same existed in the Will before its execution, shall be filed.
- (4) Where no satisfactory evidence is adduced in respect of the time when an erasure or obliteration was made and the words erased or obliterated are not entirely effaced but can on inspection of the Will be ascertained, same shall form part of the probate.
- (5) Where any words have been erased which might have been of importance, an affidavit shall be required.

8. Attempted revocation of Will.

Any appearance of attempted revocation of a Will by burning, tearing or otherwise and every circumstance leading to a presumption of revocation by the testator shall be accounted for to the Judge.

9. Affidavit as to due execution of a Will.

- (1) The Judge may require an affidavit from any person for the purpose of satisfying himself regarding any matter referred to in Rules 4, 5, 6 and 7 of this Rule.
- (2) In any such affidavit sworn by attesting witness or other person present at the time of the execution of the Will, the deponent shall depose to the manner in which the Will was executed.

10. Will of blind or illiterate Testator.

Where the testator was blind or illiterate, the Judge shall not grant administration with the Will annexed, unless the Judge is satisfied by proof or by what appears on the face of the Will, that the Will was read over to the deceased before its execution or that he had at that time knowledge of its contents.

11. Documents referred to, annexed or attached to a Will.

- (1) Where a Will contains a reference to any document of such a nature that may raise the question whether or not it ought to form a constituent part of the Will, the Judge shall require the production of the document to ascertain whether it is entitled to Probate; and if it is not produced, a satisfactory account of its non-production shall be given.
- (2) Where there are vestiges of sealing wax or wafers or other marks on a Will, leading to the inference that any documents may have at some time been annexed or attached to a Will, a satisfactory account of the document shall be required and if it is not produced, a satisfactory account of its non-production shall be given.
- (3) A document cannot form part of a Will unless it was in existence at the time when the Will was executed.

12. Executor dying or not appearing to prove Will.

Where a person appointed Executor in a Will survives the testator but dies after appearing to prove the Will without having taken Probate or, having been called on by the Court to take Probate does not appear, his right in respect of the executorship shall cease entirely without any further renunciation by such Executor and the administration of the estate of the testator shall proceed as if that person had not been appointed Executor.

13. Production of testamentary papers.

- (1) Any person having in his possession or under his control any paper or writing of a deceased person being or purporting to be testamentary papers shall immediately deliver the original to the Probate Registrar of the Court.
- (2) Where any person fails to deliver such paper or writing within one month after having had knowledge of the death of the deceased, he shall be liable to a fine of not less than two hundred thousand naira as the Judge having regard to the condition of such person in default and other circumstances of the case may deem fit to impose.

14. Judge may order production.

Where it appears that any paper of the deceased being or purporting to be testamentary paper is in the possession of or under the control of any person, a Judge may upon an ex-parte application, whether a suit or proceeding respecting Probate or Administration is pending or not, order him to produce the paper and bring it into Court.

15. Examination in respect of purported testamentary papers.

- (1) Where it appears that there is reasonable grounds for believing that any person has knowledge of any paper being or purporting to be testamentary paper although it is not shown that the paper is in his possession or under his control a Judge may upon an application made ex-parte whether a suit or proceedings in respect of Probate or Administration is pending, order such person to appear in Court for examination in respect of same or on interrogatories.
- (2) Where satisfied after examination, the Judge may order the person to produce the paper in Court.

16. Notice to executor to come in and prove or renounce probate.

The Judge may on the application of any person claiming an interest under a Will, give notice to the Executor therein named to come in and prove the Will or to renounce Probate and such Executor shall within twenty-one days after notice, come in and prove or renounce the Will.

17. Liability for intermeddling before grant.

Where any Executor named in the Will of the deceased takes possession and administers or otherwise deals with any part of the property of the deceased and does not apply for Probate within three months after the death or after the termination of any suit or dispute in respect of Probate or Administration, he may in addition to any other liability be deemed to be in contempt of Court and shall be liable to such fine of not less than one hundred thousand naira as the Judge may deem fit to impose.

18. Engrossment of Will.

- (1) Where the Judge considers that in any particular case a photocopy of the original Will would not be satisfactory for purposes of record, he may require that an engrossment suitable for photo reproduction be lodged.
- (2) Where a Will contains traces of alteration which are not admissible to proof, there shall be lodged an engrossment of the Will in the form in which it is to be proved.
- (3) Any engrossment lodged under this Rule shall reproduce the punctuation, spacing and division into paragraphs of the Will and if it is one to which sub-rule 2 of this Rule applies, it shall be made book wise on durable paper following continuously from page to page.

- (4) Where any pencil writing appears on a Will, a copy of the Will or of the pages or sheets containing the pencil writing with portions of the original which appears in pencil underlined in red ink shall be lodged.

19. Grants to Attesting Witnesses.

Without prejudice to the right of an attesting witness or spouse of an attesting witness to a grant in another capacity, the witness or spouse of such witness shall not have any right to a grant as a beneficiary named in the Will.

20. Right of assignee to grant.

- (1) Where all the persons entitled under a Will to the estate of the deceased have assigned their whole interest in the estate to any person, the assignee shall replace the assignor for a grant of Probate in order of priority or if there are more than one assignor, the assignor with the highest priority, in the absence of a proving Executor.
- (2) Where there are two or more assignees, Probate may be granted to anyone or more but not exceeding four of them with the consent of the other assignees.
- (3) In any case where Probate is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the Registry.

21. Order of priority for grant where deceased left a Will.

Where the deceased died after the commencement of this Order, entitlement of any person to a grant of Probate or Administration with the Will annexed, shall be determined based on priority as follows:

- (a) the Executor;
- (b) any residuary legatee or devisee holding in trust for any other person;
- (c) any residuary legatee for devisee;
- (d) the ultimate residuary legatee or devisee, including one entitled on the happening of any contingency or where the residue is not wholly disposed of by the Will, any person entitled to share in the residue not so disposed of, or the personal representative of any such person:

Provided that:

- (i) a residuary legatee or devisee whose legacy or devise is vested in interest shall be preferred to one entitled on the happening of a contingency unless the Judge otherwise directs;
- (ii) where the residue is not in terms wholly disposed of, the Judge may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the estate ascertained at the time of the application for the grant, allow a grant to be made subject to Order 55 Rule 14, to any legatee or devisee entitled to or to a share in the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the Will;
- (iii) any specific legatee or devisee or any creditor or, subject to Order 55 Rule 14(3), the personal representative of any such person or where the estate is not wholly disposed of by Will, any person who notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion to it; and
- (iv) any specific legatee or devisee entitled on the happening of any contingency or any person having no interest under the Will who would have been entitled to a grant if the deceased had died wholly intestate.

22. Grants to successor of beneficiary.

Where the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant of Administration with the Will attached and has consented to such administration being granted to any person who would be entitled to his own estate if he himself died intestate, administration may be granted to not more than four of such persons: Provided that a surviving spouse shall not be regarded as a person in whom the estate has vested absolutely unless he would be entitled to the estate whatever its value maybe.

23. Renunciation of probate.

- (1) Renunciation of Probate by an Executor shall not operate as renunciation of any right which he may have to a grant of administration in some other capacity, unless he expressly renounces such right.
- (2) No person who has renounced a grant in one capacity may obtain a grant in another capacity without the leave of Court.
- (3) A renunciation of Probate or Administration may be retracted at any time on the Order of the Judge:

Provided that the leave to retract a renunciation of Probate may only be granted in exceptional circumstances after a grant has been made to such other person entitled in a lower degree.

24. Resealing.

- (1) A person granted Probate or Administration with Will attached by a Court outside the State for any person authorised in writing on his behalf, may apply for the resealing of the Probate or Administration.
- (2) Upon an application for the resealing which shall be supported by an affidavit sworn to by the person making the application, a Tax Clearance Certificate shall be lodged as if the application is for the grant in the State and an advertisement placed in such manner as the Judge may direct.
- (3) On an application for the resealing of a grant:
 - (a) the Judge shall not require a surety except where it appears to him that the Grant is made to a person or for the purpose mentioned in Order 57 Rule 4(a) and (b) or except where he considers that there are special circumstances making it desirable to require a surety;
 - (b) Order 57 Rule 4(2), (4), (5) and (6) and Order 57 Rule 3(4) shall apply with necessary modification; and
 - (c) a guarantee entered into by a surety shall be as in Probate Form 3 with such variations as circumstances may require.
- (4) Except by leave of the Judge, no grant shall be resealed unless it was made to such a person as is mentioned in Rule 24(3)(a) or (b) of this

Order or to a person to whom a grant could be made under Rule 10(2) of Order 55.

- (5) No limited or temporary grant shall be resealed except by leave of the Judge.
- (6) Every grant lodged for resealing shall include a copy of any Will to which the grant relates or shall be accompanied by a copy certified as correct by or under the authority of the Court by which the grant was made.
- (7) The Registrar shall send notice of the resealing to the Court which made the Order of grant.
- (8) Where the notice is received in the Registry from outside the State of the resealing of a grant made in the State, notice of any amendment or revocation of the grant shall be sent to the Court that resealed the Will.

25. Citations.

- (1) Notices in the nature of Citation shall be given in such manner as the Judge directs.
- (2) Every Citation shall be settled by the Registrar before being issued.
- (3) Every averment in a Citation and such other information as the Registrar may require shall be verified by an affidavit sworn to by the person issuing the Citation or by any of them if more than one:
Provided that the Registrar may in special circumstances accept an affidavit sworn to by the Legal Practitioner of such person.
- (4) The Citor shall enter a caveat before issuing a Citation.
- (5) Every Citation shall be served personally on the person cited unless a Judge, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.
- (6) Every Will referred to in a Citation shall be lodged in the Registry before the Citation is issued, except where the Will is not in the Citor's possession and the Judge is satisfied that it is impracticable to require it to be lodged.
- (7) A person who has been cited to appear:
 - (a) may, within eight days of service of the Citation upon him inclusive of the day of such service, or at any subsequent time if no application has been made by the

Citor under of Rule 26 or of Rule 27 of this Order, enter an appearance in the Registry by filing Probate Form 4 and making an entry in the appropriate book; and

- (b) shall serve on the Citor a copy of Form 5 sealed with the seal of the Registry.

26. Citation to accept or refuse a grant.

- (1) A Citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right to the grant.
- (2) Where power to make a grant to an Executor has been reserved, a Citation calling on him to accept or refuse a grant may be issued at the instance of the Executors who have proved the Will or the Executors of the last survivor of the deceased Executors who have proof.
- (3) A Citation calling on an Executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased:

Provided that no Citation to take a grant shall issue while proceedings regarding the validity of the Will is pending.

- (4) A person cited who is willing to accept or take a grant may, upon filing an affidavit showing that he has entered an appearance and that he has not been served by the Citor with notice of an application for a grant to himself, apply ex-parte to the Judge for a grant.
- (5) If the time limited for appearance has expired and the person cited has not entered an appearance, the Citor may in the case of Citation:
- (a) under sub-rule (1) of this Rule apply to the Judge for a grant to himself;
- (b) under sub-rule (2) of this Rule apply to the Judge for an Order that a note be made on the ground that the Executor in respect of whom power was reserved has not appeared after being duly cited and that his rights or interests in respect of the grants have ceased; and

- (c) under sub-rule (3) of this Rule, apply to the Judge by Summons which shall be served on the person cited for an Order requiring such person to take a grant within a specified time or for a grant to himself or any other person specified in the Summons.
- (6) An application under sub-rule 5 of this Rule shall be supported by an affidavit stating that the Citation was duly served and that the person cited has not entered an appearance.
- (7) Where any person cited has entered an appearance but has not applied for a grant under sub-rule (4) of this Rule or has failed to prosecute his application with reasonable diligence, the Citor may in the case of a citation under:
 - (a) sub-rule (1) of this rule, apply by Summons to the Judge for an Order for a grant to himself;
 - (b) sub-rule (2) of this Rule, apply by Summons to the Judge for an Order striking out the appearance and for endorsement on the grant of such note as is mentioned in sub-rule 5(b) of this Rule; and
 - (c) sub-rule (3) of this Rule, apply by Summons to the Judge for an Order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the Summons; and the Summons shall be served on the person cited in each case.

27. Citation to propound a Will.

- (1) A Citation to propound a Will may be issued at the instance of a Citor having any interest contrary to that of the Executor or such other person and shall be directed to the Executor named in the Will and to the other persons interested in the Will.
- (2) Where the time limited for appearance has expired, the Citor may, where:
 - (a) no person cited has entered an appearance, apply to the Judge for a grant as if the Will was invalid and such application shall be supported by an affidavit stating that the Citation was duly served; and

- (b) the person who has entered an appearance has failed to propound the Will with reasonable diligence, apply to a Judge by Summons which shall be served on the person Cited who has entered an appearance for the Order mentioned in sub-rule (a) above.

www.sabilaw.org

ORDER 57

GRANT OF LETTERS OF ADMINISTRATION WITHOUT WILL

1. Letters of Administration.

A Judge in granting Letters of Administration shall ascertain the:

- (a) time and place of the deceased's death; and
- (b) value of the property to be covered by the administration.

2. Declaration of value of personal property.

An Applicant for a grant of Letters of Administration shall file full declaration of the personal property of the deceased and the value of such property in Court:

Provided that for the purpose of the fees payable on the Letters of Administration, the value of the property in respect of which the grant is made shall be deemed not to include:

- (a) any gratuity paid by the Government of the Federation of Nigeria or of a State to the estate of any person formerly employed by such Government or Statutory Corporation; and
- (b) sum of money payable to an estate from a Provident or Pension Fund established under the provisions of any applicable law.

3. Administration bond.

- (1) The person to whom administration is granted shall give a bond and provide two or more responsible sureties acceptable to the Judge affirming that the Administrator shall duly collect, get in and administer the personal property of the deceased.
- (2) The Judge may accept one surety only where the gross value of the estate does not exceed Five Million Naira or where a Corporation is proposed as a surety.
- (3) The bond shall be in form of a penalty representing twice the monetary value of the estate of the deceased unless the Judge deems it fit or expedient to reduce the amount.
- (4) The Judge may in any case direct that the Applicant provides additional bonds in order to limit the liability of any Administrator to such amount as the Court deems reasonable.

4. Guarantee.

- (1) The Judge shall not require a guarantee as a condition of making a grant:

-
- a) under Order 56:
 - (i) Rule 21, to a creditor or the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate; and
 - (ii) Rule 22, to a person or some persons who would if the person beneficially entitled to the whole of the estate died intestate be entitled to his estate;
 - b) under Order 55:
 - i) Rule 11, to the attorney of a person entitled to a grant;
 - ii) Rule 12, for the use and benefits of a minor; and
 - (iii) Rule 14, for the use and benefit of a person of mental or physical incapacity who is incapable of managing his affairs;
 - (c) to an Applicant who appears to the Judge to be resident elsewhere than in the State; or;
 - (d) except where the Judge considers that there are special circumstances making it desirable to require a guarantee.
- (2) Without prejudice to sub-rule 1 of this Rule, a guarantee shall not be required except in special circumstances where the Applicants or one of the Applicants is the Administrator General or a Trust Corporation.
 - (3) A guarantee entered into by a surety for the purpose of this Order shall be as in Probate Form 6 with such variation as circumstances may require.
 - (4) Except where the surety is a Corporation, the signature of the surety on the guarantee shall be attested by an authorised officer, Commissioner for Oaths or other person authorised by law to administer an Oath.
 - (5) Unless the Registrar otherwise directs:
 - (a) where a guarantee is required, it shall be given by two sureties except where the gross value of the estate does not exceed one million Naira or a Corporation is a proposed surety, in either of which case one surety may be sufficient;
 - (b) no person shall be accepted as surety unless he is resident in the State;

- (c) no officer of the Judiciary shall be a surety;
 - (d) the limit of the liability of the surety under a guarantee shall be the valued amount of the estate;
 - (e) any surety other than a Corporation shall justify his eligibility.
- (6) Where the proposed surety is a Corporation, an affidavit shall be filed by an authorised officer of the Corporation stating:
- (a) that the Corporation is empowered to act as surety and has executed the guarantee in the manner prescribed by its constitution;
 - (b) sufficient information as to the financial position of the Corporation to the satisfaction of the Judge and that its assets are sufficient to satisfy all claims which may be made against it under any guarantee which it has given or is likely to give.

5. Assignment of bond.

The Judge may upon being satisfied that the condition of the bond has been broken, assign the bond to another person who may sue on the bond in his own name as if it had originally been given to him and may recover the full amount recoverable in respect of any breach of the bond as trustees for any persons interested.

6. Inquiries before grant.

- (1) The Judge shall in granting Letters of Administration afford the appropriate facility consistent with due regard for the prevention of error or and fraud.
- (2) Before the issuance of Letters of Administration, all enquiries a Judge deems fit to make shall be answered to his satisfaction.

7. Administration Summons.

- (1) Any person claiming to be a Creditor or Legatee or the Next-of-Kin of the deceased, may apply for and obtain a Summons from the Court requiring the Executor or Administrator, as the case may be, to attend Court and show cause why an Order for the administration of the property of the deceased should not be made.

- (2) The Judge may, upon proof of service of the Summons or the appearance of the Executor or Administrator and proof of all other things as the Judge may direct, make an Order for the administration of the property of the deceased.
- (3) The Judge may:
 - (a) make or refuse to make any Order or give any special directions under sub-rule 1 of this Rule; and
 - (b) where there are applications for such an Order by more than one person or classes of persons, grant the administration to any Claimant or class of Claimants.
- (4) The service of the Order may subsequently be effected on such persons and on such terms as the Judge may direct.
- (5) Where the Judge makes such an Order, he may at any subsequent time make any further or other Orders which may appear requisite to secure the proper collection, recovery for safekeeping and disposal of the property or any part thereof.

8. Grant of administration in special circumstances.

- (1) In a case of intestacy, where the special circumstances of the case require the Judge may, on the application of any person having interest in the estate of the deceased, grant Letters of Administration to an officer of the Court, Consular Officer or to a person in the service of the Government.
- (2) The officer or persons appointed shall act under the direction of the Judge and shall be indemnified.
- (3) The Judge shall require and compel such person or officer to file in Court the account of his administration at intervals not exceeding twelve months.

9. Court may appoint Administrator.

- (1) Where a person dies intestate regarding his personal estate or left a will in respect of such estate without having appointed an Executor who is willing to take Probate or where the Executor is at the time of the death of such person, resident out of jurisdiction or is dead, the Judge may, where it appears necessary or convenient, appoint another person as Administrator of the estate of the deceased or any part of the estate.
- (2) Such Administrator shall give such security as the Judge shall direct and may be limited as the Judge shall deem fit.

10. Remuneration of Administrator.

The Judge may direct that any Administrator (with or without Will annexed) shall receive out of the personal and real estate of the deceased such reasonable remuneration not exceeding ten percent of the income of the estate.

11. Securing and administering estate of foreign national.

- (1) Where a citizen of any foreign country dies within jurisdiction without leaving a widower, widow or next-of-kin within the jurisdiction, the Probate Registrar shall:
 - (a) collect and secure all monies and other property belonging to the deceased; and
 - (b) inform the nearest Consular Officer of such country, of the death and transmit to him a list of the money and property of the deceased.
- (2) Application may be made to the Court under the Consular seal by such Consular Officer or any person authorised by him in writing for leave to administer the estate of the deceased and the Judge may make such Order:
 - (a) in respect of security for the payment of debt;
 - (b) for method of administration as the judge shall deem fit:

Provided that the Judge may vary such Order when and so often as it is expedient.

12. Addition of personal representative.

- (1) An application to add a personal representative shall be made to the Judge and supported by an affidavit deposed to by the Applicant, the consent of the person proposed to be added as personal representative and such evidence as the Judge may require.
- (2) On such application, the Judge may direct that a note of the addition of a personal representative shall be made on the original grant or he may impound or revoke the grant or make such Order as the circumstances of the case may require.

13. Grant where two or more persons entitled in same degree.

- (1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same degree.

- (2) A dispute between persons entitled to grant in the same degree shall be brought by application before the Judge.
- (3) If an application under this Rule is brought before the judge, he shall not allow any grant to be sealed until such application is finally disposed of.
- (4) Unless the Judge otherwise directs, administration shall be granted to:
 - (a) a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same degree; and
 - (b) a person not under legal disability in preference to an infant entitled in the same degree.

14. Joinder of Administrator.

- (1) An application to join a person entitled in a lower degree with a person entitled to a grant of administration shall, in default of renunciation by the persons entitled to priority to the former, be made to the Judge and be supported by an affidavit sworn by the person entitled, the consent of the person proposed to be joined as Administrator and such other evidence as the Judge may require.
- (2) An application to join with a person entitled to a grant of administration by a person having no right to such grant shall be made to the Judge and be supported by an affidavit sworn to by the person entitled, the consent of the person proposed to be joined as Administrator and such other evidence as the Judge may require:

Provided that there may, without any such application, be joined with a person entitled to administration:

- (a) any kin of the deceased having a beneficial interest in the estate on the renunciation of all other persons entitled to join in the grant; or
- (b) any person who the guardian of a minor may nominate for the purpose unless the judge otherwise directs; or
- (c) a Trust Corporation.

15. Grant under other enactment.

Nothing in these Rules shall operate to prevent a grant from being made to any person who is entitled to a grant under any enactment.

16. Grant of special administration.

- (1) A grant during absence may be made where, the absence of the proponents of the Will or of an Executor would delay or imperil the settlement of the deceased person's estates.
- (2) An application for a grant of special administration where a personal representative resides outside the State shall be made to the Judge by Motion.

17. Election to redeem life interest.

- (1) A surviving spouse who being the sole personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects to have the life interest redeemed, may give written notice of the election to the Registrar by filing a notice as in Probate Form 7 with such variations as circumstances may require.
- (2) A notice filed under this Rule shall be noted on the grant and the record shall be open to inspection.

18. Notice to prohibit grant: Caveats.

- (1) For the purpose of this Rule, a "Caveat" means a formal notification by an interested party to a Court, Judge or officer of the Court prohibiting a grant in respect of the estate of the deceased till the party giving the notice has an opportunity to be heard, and a "Caveator" means any person who enters a caveat.
- (2) A Notice to Prohibit a Grant of Administration may be filed in Court.
- (3) A person who desires to be notified before a grant is sealed may enter a Caveat in the Registry.
- (4) A Caveator may enter a Caveat by:
 - (a) completing Probate Form 8 in the appropriate book at the Registry and obtaining an acknowledgement of entry: or
 - (b) sending a Notice of Probate as in Form 9 to the Registry where the Caveat is to be entered either by hand or registered post.
- (5) Where the Caveat is entered by a Legal Practitioner on behalf of the Caveator, the name of the Caveator shall be stated in Probate Form 8.
- (6) Subject to the provisions of this Rule, a Caveat shall remain in force for three months from the date on which it is entered and may be renewed or a further Caveat may be entered after the expiration of the effective period.

-
- (7) The Registrar shall maintain an index of Caveats entered in the Registry indicating the date and time the Caveat is so entered, and on receiving an application for a grant, he shall cause the index to be searched and shall notify the Applicant of any Caveat that has been entered against the sealing of the grant for which application has been made.
- (8) The Registrar shall not allow any grant to be sealed if he has knowledge of an effective Caveat in respect of same:
Provided that, no Caveat shall operate to prevent the sealing of a grant on the day on which the Caveat is entered.
- (9) A Warning as in Probate Form 10 may issue from the Registry against a Caveator at the instance of any person interested called “the Person Warning.”
- (10) The Warning or a copy of the same shall be served on the Caveator and shall:
- a) state the interest of the Person Warning and the date of his Will, if he claims under a Will;
 - b) require the Caveator to give as in Probate Form 11, particulars of any contrary interest which he may have in the estate of the deceased.
- (11) A Caveator having an interest contrary to that of the Person Warning:
- (a) may within eight days of service of the Warning upon him inclusive of the day of such service, or at any subsequent time, if no affidavit has been filed under sub-rule 14 of this Rule, enter an appearance in the Registry by filing Probate Form 11 and making an entry in the appropriate book; and
 - (b) shall immediately serve on the Person Warning, a copy of Probate Form 11 sealed with the seal of the Registry.
- (12) A Caveator:
- (a) who has not entered an appearance to a Warning may, at any time, withdraw his Caveat by giving notice at the Registry and the Caveat shall cease to have effect; and
 - (b) shall immediately serve notice of the withdrawal on the Person Warning.

-
- (13) A Caveator having no interest contrary to that of the Person Warning but who desires to show cause against the sealing of a grant to such a person, may within eight days of service of the Warning upon him inclusive of the day of such service or at any subsequent time, if no affidavit has been filed under sub-rule 14 of this Rule, issue and serve a notice which shall be returnable before the Registrar.
- (14) The Caveat shall cease to have effect if:
- (a) the Caveator fails to enter an appearance within the time limited for same; and
 - (b) the Person Warning files an affidavit in the Registry showing that the Warning was duly served and that he has not entered a notice under sub-rule 13 of this Rule.
- (15) Upon commencement of a Probate Action, the Probate Registrar shall:
- (a) where a Caveat is in force other than the Caveat entered by Claimant, give to the Caveator notice of the commencement of the action; and
 - (b) upon the subsequent entry of a Caveat at any time when the action is pending, notify the Caveator of the existence of the action.
- (16) Unless the Judge otherwise directs:
- (a) a Caveat in force at the commencement of any proceeding by way of Citation or Motion shall, unless withdrawn pursuant to sub-rule 12 of this Rule remain in force until an application for a grant is made by the person shown to be entitled to the grant by a decision of the Court in such proceedings and upon such application, any Caveat entered by a party who had notice of the proceedings, shall cease to have effect;
 - (b) any Caveat in respect of which an appearance to a warning has been entered, shall remain in force until the commencement of a Probate Action;
 - © the commencement of a Probate Action shall, whether or not any Caveat has been entered, operate to prevent the sealing of a grant until application for a grant is made by the person shown to be entitled to the grant by a decision of

the Judge in such action; and upon such application, any Caveat entered by a party who was given notice under sub-rule 15 of this Rule shall cease to have effect.

- (17) Except with the leave of the Judge, no Further Caveat may be entered by or on behalf of any Caveator whose caveat has ceased to have effect under sub-rule 14 or 16 of this Rule.

19. Grant to be signed by the Chief Judge.

The grant of Letters of Administration under this Order shall be signed by the Chief Judge.

www.sabilaw.org

ORDER 58

PROCEEDINGS IN PROBATE AND ADMINISTRATION ACTIONS

1. Form of Suits.

Suits in respect of Probate or Letters of Administration shall with necessary modifications, be subject to Order 5 rule 4, Order 7 Rule 1(1) and Order 8 Rule 6 and the same rules of procedure as suits in respect of civil claims in these Rules.

2. Capacity of claim.

The Originating Process shall state whether the Claimant claims:

- (a) as Creditor, Executor, Administrator, Beneficiary, next-of-kin; or
- (b) in any other capacity.

3. Service outside Nigeria.

The service of a Writ of Summons will be allowed out of Nigeria in accordance with the provisions of these Rules.

4. Defences to be pleaded with particulars.

- (1) A party shall state with regard to every defence which is pleaded:
 - (a) the substance of the case on which the defence intends to rely; and
 - (b) where it is pleaded that the Testator was not of sound of mind, memory and understanding, particulars of any specific instances of delusion shall be pleaded.
- (2) Except by leave of a Judge, no evidence shall be given at the trial of any other issue apart from the issues mentioned in sub-rule 1 of this Rule.

5. Dispute of Defendant's interest.

Where the Claimant disputes the interest of the Defendant, he shall allege in his Statement of Claim that he denies the Defendant's interest.

6. Notice of opposition to Will.

The party opposing a Will shall be at liberty to cross-examine the witnesses produced in support of the Will and shall not in any event be liable to pay the cost of the other side unless the Judge finds that there was no reasonable ground for opposing the Will where he gives notice with his defence to the other party setting up the Will that he merely insists upon the Will being proved in solemn form of law.

7. Inquiry as to outstanding personal estate.

A Judgement or an Order for a general account of the personal estate of a Testator or an Intestate shall contain a direction for an enquiry as to what part of such personal estate is outstanding or undisposed of, unless the Judge shall otherwise direct.

8. Discretion to order cost.

- (1) A person who is or has been a party to any proceeding in the capacity of Trustee, Personal Representative or mortgagee shall, unless the Judge otherwise orders, be entitled to the cost of such proceeding in so far as such cost is not recovered from or paid by any other person out of the fund held by the Trustee or Personal Representative or the mortgagee, as the case may be.
- (2) The Judge may otherwise order cost only on the ground that the Trustee, Personal Representative or mortgagee has acted improperly or unreasonably or for his own benefit.

9. Originating Summons for relief.

- (1) An Originating Summons may be taken out for the reliefs provided under sub-rule 2 of this Rule by:
 - (a) the Executor or Administrator of a deceased person or any of them or;
 - (b) the Trustees or any of them under any deed or instrument; or
 - (c) any person claiming to be interested in the relief sought as Creditor, Beneficiary, next-of-kin, heir-at-law of a deceased person; or
 - (d) a cestui-que trust under any deed of trust or instruments; or
 - (e) a person claiming by assignment or administration under any such Creditor or other person.
- (2) The reliefs referred to in sub-rule 1 of this Rule include:
 - (a) any question affecting the rights or interests of the person claiming to be Creditor, Beneficiary, next-of-kin or heir-at-law or cestui-que trust;
 - (b) the ascertainment of any class of Creditors, Beneficiary next-of-kin or others;

- (c) the furnishing of any particular account by the Executors or Administrators or Trustees and the vouching, when necessary, of such account;
- (d) the payment into Court of any money in the hands of the Executors or Administrators or Trustees;
- (e) directing the Executors or Administrators or Trustees to do or abstain from doing any particular act in their capacity as Executors or Administrators or Trustees;
- (f) the approval of any sale, purchase, compromise or other transactions;
- (g) the determination of any question arising in the administration of the estate or trust.

10. Order for administration of Estate and Trustee.

Any of the persons named in Rule 9 of this Order may apply for and obtain an Order for:

- (a) the administration of the personal or real estate of the deceased;
- (b) the administration of the Trust;
- (c) any act to be done or step to be taken which the judge could have ordered to be done or taken if any such administration Order has previously been made.

11. Persons to be served.

The Originating Summons under Rules 9 and 10 of this Order shall in the first instance be served:

- (a) where the Originating Summons is taken out by an Executor or Administrator or Trustee:
 - (I) for the determination of any question under Rule 9(2) (a), (c), (f) or (g) of this Order, on any person whose right or interest are sought to be affected;
 - (ii) for the determination of any question under Rule 9(2) (b) of this Order, on any member or alleged member of the class;
 - (iii) for the determination of any question under Rule 9(2) (c) of this Order, on any person interested in taking such accounts;

- (iv) for the determination of any question under Rule 9(2) (d) of this Order, on any person interested in taking such money;
- (v) for relief under Rule 10(a) of this Order on the residuary legatee or next of kin or the residuary devisee or heirs as the case may be;
- (vi) for relief under Rule 10(b) of this Order, on the cestui-que trust;
- (vii) if there is more than one Executor or Administrator or trustee who do not concur in taking out the Originating Summons on such Executor or Administrator or Trustee who do not concur;

- (b) where the Originating Summons is taken out by any person other than the Executors, Administrators or Trustees, the Executors, Administrators or Trustees must be served.

12. Interference with Trustee's discretion.

The issue of a Summons under Rule 9 of this Order shall not interfere with or control any power or discretion vested in any Executor, Administrator or Trustee except where such interference or control may be necessarily involved in the particular relief sought.

13. Judge not bound to order administration.

The Judge may not pronounce or make Judgment or Order, whether Summons or otherwise for the administration of any Trust or of the estate of the deceased person, if the question between the parties can be determined without such Judgment or Order.

14. Order to be made where no account or insufficient account has been rendered.

Upon an application for administration or execution or trust by a Creditor or Beneficiary under a Will, intestacy or deed of trust, where no accounts or insufficient accounts have been rendered, the Judge may, in addition to the power already existing:

- (a) order the application to be stayed and the Executors, Administrators or Trustees to render proper statement of their accounts to the Applicant, failing which such Executors, Administrators or Trustees may pay the costs of the proceedings; and

- (b) where necessary, to prevent proceedings by other Creditors or persons beneficially interested, make the Judgment or Order for administration with a proviso that no proceedings shall be taken under such Judgement or Order without leave of the Judge.

15. Application for Order to produce Will.

- (1) An application for an Order requiring a person to bring in a Will or to attend for examination may, unless a Probate Action has been commenced, be made to the Court by Originating Summons which shall be served on any Executor, Administrator or Trustee.
- (2) An application for the issue of a subpoena to bring in a Will shall be supported by an affidavit setting out the ground for the application, and if any person served with the subpoena denies that the Will is in his possession or control, he may file an affidavit to that effect.

16. Limant.

An application for a grant limited to part of an estate may be made to the Judge and shall be supported by an affidavit stating:

- (a) whether the application is made in respect of the real estate only or any part of same, or real estate together with personal estate or in respect of trust estate only;
- (b) whether the estate of the deceased is known to be insolvent; and
- (c) that the persons entitled to a grant in respect of the whole estate in priority to the Applicant have been considered and excluded.

17. Grant in respect of perishable goods.

An application for an Order for grant of administration where the goods in the estate are of perishable nature may be made to the Judge and shall be supported by an affidavit setting out the grounds of the application.

18. Application to swear to the death of a person.

An application for leave to swear to the death of a person in whose estate grant is sought shall be supported by an affidavit setting out the grounds of the application and stating particulars of any policies of insurance effected on the life of the presumed deceased.

19. Application by Originating Summons.

An Originating Summons may be issued in respect of an application:

- (a) for the appointment of a new Trustee without a vesting or other consequential Order;

- (b) for a vesting Order or other Order consequential on the appointment of a new Trustee where the appointment is made by a Judge;
- (c) for vesting or other consequential Order in any case where a Judgment or order has been given or made for the sale, conveyance or transfer of any land or stock or the suing for or recovering of any chose in action; and
- (d) for a fund paid into Court in any case coming within the provisions of Orders 55 to 57 of these Rules.

20. Service of Originating Summons.

- (1) Where provision for the service of an Originating Summons is not made under this Order, the Originating Summons shall be served on any person the Judge may direct.
- (2) Where by the provision of this Order or by any direction given under sub-rule (1) of this Rule, an Originating Summons is required to be served on any person, it shall be served not less than five days before the hearing of the Summons.

21. Mode of service.

Unless the Judge otherwise directs or this Order provides, any notice or any other documents required to be given or served on any person may be given or served by leaving it at, or by sending it by courier to that person's address for service or if he has no address for service, his last known address or by posting it to that person's email address or the person's private social media accounts.

22. Application.

Subject in any particular case to the direction given by a Judge, this Order shall apply to any proceedings which is pending on the date on which these Rules come into operation as well as to any proceeding commenced on or after that date:

Provided that where the deceased died before the commencement of these Rules, the right to a grant shall, subject to the provision of any enactment be determined by the Rules in accordance with which the Court would have acted at the date of the death.

23. Interpretation.

- (1) In this Order unless the context otherwise requires:
“Authorised Officer” means any Officer of the Registry who is for the time being authorised by Law to administer an

Oath or to take any affidavit required for any purpose connected with his duties;

“Gross Values” in relation to any estate means the value of the estate without deduction of debts, encumbrances, expenses or Estate Duty;

“Oath” means the Affidavit required to be shown by an Applicant for a Grant;

“Personal Applicant” means a person other than a Trust Corporation who seeks to obtain a Grant without employing a Legal Practitioner; and “Personal Application” has a corresponding meaning;

“Registrar” means Probate Registrar;

“Registry” or “Probate Registry” means the Probate Registry of the Court; and

“Will” includes a Codicil and any Testamentary Document or copy or reconstruction of it.

- (2) Unless the context otherwise requires, a reference in this Order to a Rule or an enactment is a reference to these Rules or enactment as amended, extended or applied by any other Rule or enactment.
- (3) The provisions of the Interpretation Act shall apply to the interpretation of this Order.
- (4) The provisions of Order 42 shall apply to the computation, extension or abridgement of time under Orders 55 to 57 of these Rules.

ORDER 59

LEGITIMACY PROCEEDINGS

1. Definition.

In this Order, “Petitioner” means a person applying for a legitimacy declaration and a “Petition” has a corresponding meaning.

2. Practice and Rules of the Court.

The Practice and Rules of the Court shall so far as possible govern all proceedings under the Legitimacy Law, if any, subject nevertheless to the particular provisions of this Order.

3. Matters to be stated.

(1) A Petition shall:

- (a) be headed “In the matter of the Legitimacy Law” and “In the matter of (the persons to be declared legitimated)”;
- (b) shall be in the prescribed Form, with such variations, modifications, and additions as the circumstances may require, and
- (c) shall state among other matters:
 - (i) the place and date of the marriage concerned;
 - (ii) the status and residence of each of the parents and the occupation and domicile of the father of the person whose legitimacy the Court is asked to declare:
 - (a) at the date of his birth, and
 - (b) at the date of the marriage;
 - (iii) whether there are living other issues of the parents of such person as aforesaid and the respective names and dates of birth of all such issues;
 - (iv) the person, if any, affected by the legitimation of such person as aforesaid and the value so far as is known of the property, if any, thereby involved;
 - (v) whether any, and if so, what previous proceedings under the Legitimacy Law, or

otherwise with reference to the paternity of such person as aforesaid, or the validity of the marriage leading to his legitimation have been taken in any Court; and

(vi) that there is no collusion.

(2) A Petition shall also include an undertaking by the Petitioner, if not an infant or person under legal disability, to pay the costs of the Respondents if the Court so directs.

(3) Where the Petitioner is an infant or person under legal disability, he shall petition by a next friend or guardian and the full names, occupation or description, and residence or place of business of the next friend or guardian shall be stated in the Petition and there shall be lodged by him with the Petition an undertaking to be responsible for costs.

4. Petitioner resident outside the State.

Where the Petitioner does not reside in the State, the Petition shall state an address within the State at which the Petitioner may be served with any Summons, Notice, Order of Court or other processes.

5. Security for costs by Petitioner resident outside the State.

Where it appears on the presentation of a Petition that the Petitioner does not reside in the State, the Petition shall not be filed until security for cost, by deposit of money or otherwise, has been given to the satisfaction of the Registrar:

Provided that where the Petition is filed through a Legal Practitioner, an undertaking by him, in a form to be approved by the Registrar to be responsible for the costs shall be sufficient.

6. Persons to be Respondents.

The Respondents to a Petition shall be the Attorney-General of the State and all persons whose interest may be affected by the legitimacy declaration asked for, and the Court may at any time direct any persons not made Respondents to be made Respondents and to be served with the Petition and affidavit, and may adjourn the hearing of the Petition for that purpose on such terms as to costs or otherwise as may be just.

7. Affidavit of verification by Petitioner.

The Petition shall be accompanied by an affidavit made by the Petitioner, or by his next friend or guardian, if any, verifying the facts of which he has personal knowledge, and deposing as to his belief in the truth of the other facts alleged in the Petition, and the affidavit shall be filed with the Petition.

8. Copies of petition to be filed

- (1) There shall be filed with the Petition as many copies of the Petition and the affidavit as there are Respondents to be served and two copies for the use of the Court.
- (2) There shall be lodged with the Petition every birth, death or marriage certificate intended to be relied upon at the hearing.

9. Copies of papers to be sent to Attorney-General

- (1) A copy of the Petition and a copy of the affidavit shall be delivered or sent by registered post by the Petitioner to the Attorney-General at least two months before the Petition is presented or filed.
- (2) Any document or notice addressed to the Attorney-General shall be addressed to him at the Attorney-General's Chambers, Ministry of Justice, Uyo.

10. Personal service on the Respondents.

A sealed copy of the Petition and the affidavit shall unless the Court otherwise directs, be served personally on every Respondent except the Attorney General at least thirty days before the hearing.

11. Filing of Answers.

- (1) A Respondent may within twenty-eight days after service of the Petition upon him file an answer to the Petition.
- (2) Every Answer which contains matters other than a simple denial of facts stated in the Petition shall be accompanied by an affidavit made by the Respondent verifying such other matters as far as he has personal knowledge thereof, and deposing to his belief in the truth of the rest of such other matter.
- (3) There shall be filed with the Answer as many copies of the Answer and the Affidavit, if any, as there are other parties to be served and also two copies for the use of the Court.

- (4) The Registrar shall within forty-eight hours of receiving them send by post one sealed copy of the Answer and the affidavit, if any, to the Petitioner, the Attorney-General and any other Respondents.

12. Evidence.

Evidence on the hearing of the Petition shall be given orally:

Provided that the Court or a Judge in Chambers may, on application made before or at the hearing, for good cause shown, direct that any particular fact or facts alleged in the Petition or answer may be proved by affidavit.

13. Costs.

The Court may make such Orders as to costs as it thinks just.

14. Copy of Order to be supplied.

A copy of the Order made on the hearing of a Petition sealed with a seal of the Court shall be supplied by the Registrar to any party to the proceedings on payment of the prescribed fee.

www.sabilaw.org

ORDER 60

FEES AND ALLOWANCES

1. **Fees: First, Second, Third, Fourth and Fifth Schedules.**

Subject to the provisions of any written law and of the foregoing Orders:

- (a) the fees set out in the First, Second, Third, Fourth and Fifth Schedules hereunder shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in those Schedules; and
- (b) the allowances set out in Part II of the Fifth Schedule shall be payable to the various categories of witnesses mentioned therein by any person at whose instance they testify: Provided that a witness who testifies at the instance of the Court acting on its own motion shall be paid out of public revenue.

2. **Regulations: Sixth Schedule.**

The Regulations set out in the Sixth Schedule shall be observed by all officers of Court concerned with the rendering of services or collection of fees, demurrages and penalties payable under the provisions of the foregoing Orders.

3. **Specific Services: Seventh Schedule.**

The fees set out in the Seventh Schedule relate to fees payable on the services specified therein.

ORDER 61

APPLICATION AND REPEAL

1. Application

These Rules shall apply to all civil proceedings in the High Court of Akwa Ibom State, including all part-heard causes and matters.

2. Repeal

The Akwa Ibom State High Court (Civil Procedure) Rules, 2009 is hereby repealed and shall cease to apply to all civil proceedings in the High Court of Akwa Ibom State from the commencement of these Rules, including all part-heard causes and matters.

www.sabilaw.org

APPENDIX

FORMS

| No. | TITLE | |
|-----|--|-------------------|
| 1. | General Form of Writ of Summons: | O. 4 r. 3 (3) |
| 2. | Writ for Service outside Nigeria: | O. 4 r. 3 (4) |
| 3. | General Form of Originating Summons: | O. 4 r. 4 (3) |
| 4. | Originating Summons: | O. 4 r. 4 (3) |
| 5. | Form of <i>ex-parte</i> Originating Summons: | O. 4 r. 4 (3) |
| 6. | Form of Memorandum for Renewed Originating Process: | O. 5 r. 5 (3) |
| 7. | Request to Minister of Foreign Affairs to transmit Writ to Foreign Government: | O. 7 r. 2 (1) (a) |
| 8. | Request for Service Abroad: | O. 7 r. 2 (1) (b) |
| 9. | Letter forwarding request for Substituted Service: | O. 7 r. 2 (1) (d) |
| 10. | Request to Minister of Foreign Affairs to transmit Notice of Writ to a foreign Government: | O. 7 r. 3 (1) |
| 11. | Memorandum of Appearance: | O. 8 r. 1(1) |
| 12. | Application to place matter on the Fast Track: | O. 10 r. 2 |
| 13. | Notice of Approval to place case on Fast Track List: | O. 10 r. 4(2) |
| 14. | Notice of Denial of Approval to place case on FastTrack List: | O. 10 r. 4(2) |
| 15. | Notice of Counterclaim: | O. 17 r. 6 |
| 16. | Concession to Defence: | O. 17 r. 13 |
| 17. | Notice of payment into Court: | O. 20 r. 1 (6) |
| 18. | Acceptance of sum paid into Court: | O. 20 r. 2 (1) |
| 19. | Acceptance of sum paid into Court by one of several Defendants: | O. 20 r. 4 (2) |
| 20. | Interrogatories: | O. 24 r. 2 |
| 21. | Answer to Interrogatories: | O. 24 r. 6 |
| 22. | Affidavit and grounds of objection in answer to request for discovery of Documents: | O. 24 r. 8 (3)(b) |
| 23. | Form of Order for Accounts and Inquiries: | O. 25 r. 11 |
| 24. | Legal Practitioner's Undertakings as to Expenses to take evidence abroad: | O. 30 r. 7 (a) |

| | | |
|-----|---|----------------|
| 25. | Letter of Request to take Evidence Abroad: | O. 30 r. 7 (b) |
| 26. | Order for appointment of Nigerian Diplomatic Agent as Special Examiner: | O. 30 r. 8 |
| 27. | Form of Praecipe: | O. 30 r. 19 |
| 28. | <i>Subpoena ad Testificandum</i> : | O. 30 r. 20 |
| 29. | <i>Habeas Corpus ad Testificandum</i> : | O. 30 r. 20 |
| 30. | <i>Subpoena duces tecum</i> : | O. 30 r. 20 |
| 31. | Form of Guarantee for the Acts and Defaults of a Receiver: | O. 35 r. 10 |
| 32. | Receiver's Security by Undertaking: | O. 35 r. 10 |
| 33. | Receiver's Account: | O. 35 r. 13 |
| 34. | Affidavit verifying Receiver's Account: | O. 35 r. 14 |
| 35. | Notice of Appeal (Civil): | O. 38 r. 2 (4) |
| 36. | Certificate of the Chief Registrar: | Or. 48 r. 8 |
| 37. | Form for Foreclosure and Redemption: | Or. 49 r. 2 |
| 38. | Form for Foreclosure and Redemption: | Or. 49 r. 2 |
| 39. | Form for Foreclosure and Redemption: | Or. 49 r. 2 |
| 40. | Originating Summons for Possession: | O. 51 r. 2 |
| 41. | Order for Possession: | Or. 51 r. 6 |

PROBATE FORMS

1. Application for Grant of Probate: Or. 55 r. 1
2. Application for Grant of Letters of Administration
(Without Will): Or. 55 r. 1
3. Surety's Guarantee on Application for Resealing: O.56 r. 24 (3)(c)
4. Appearance to Warning/Citation: O. 56 r. 25 (7) (a)
5. Entry of appearance by a person cited: Or. 56 r. 25(7)(b)
6. Surety's Guarantee: O. 57 r. 4 (3)
7. Notice of Election to redeem Life Interest: O. 57 r. 17(1)
8. Caveat: O. 57 r. 18 (4)(a)
9. Notice to Prohibit Grant: O. 57 r. 18 (4)(b); Or. 57 r. 18(5)
10. Warning to Caveator: O. 57 r. 18 (9)
11. Appearance to Warning/Citation: Or. 57 r. 18(10)(b); Or. 57 r. 11(a)

www.sabilaw.org

SCHEDULES

1. First Schedule: Fees payable and allowances to witnesses in the High Court of Justice, Akwa Ibom State.
2. Second Schedule: Allowances to Witnesses
3. Third Schedule: Notaries Fees of Office
4. Fourth Schedule: Fees for Registration of judgements
5. Fifth Schedule: Regulations regarding Fees
6. Sixth Schedule: Miscellaneous Provisions on Fees.

www.sabilaw.org

**HIGH COURT OF AKWA IBOM STATE
(CIVIL PROCEDURE) RULES
FORM 1
General Form of Writ of Summons
(O. 4 r. 3(3))**

20.....

(here put the letter and number (see note (a) following this form)

In the High Court of Akwa Ibom State

In the Judicial Division

Between

A.B..... Plaintiff/Claimant

And

C.D..... Defendant

To C.D. of in the of

You are hereby commanded that within forty-two days after the service of this writ on you, inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit of A. B. and take Notice that in default of your so doing, the Plaintiff/Claimant may proceed therein and Judgement may be given in your absence.

Dated this day of, 20.....

.....
Registrar

Memorandum to be subscribed on the Writ

N/B: This writ is to be served within three calendar months from the date thereof or if renewed, within three calendar months from the date of the last renewal, including the day of such date and not afterwards.

Form of Writ of Summons, etc. - continued

The defendant may enter appearance personally or by Legal Practitioner either by handing in the appropriate forms duly completed at the Registry of the High Court of the Judicial Division in which the action is brought or by sending them to the Registry by registered post. Indorsement to be made on the writ before issue thereof.

The plaintiff/claimant's claim is for, etc.

This writ was issued by G. H. of..... whose address for service is agent for of Legal Practitioners for the said claimant who resides at the city, town or district and also the name of the (mention) street and number of the house of the plaintiff/claimant's residence, (if any).

Indorsement to be made on copy of writ forthwith after service.

This writ was served by me at on the defendant (here insert mode of service) on the day of, 20....

Indorsed theday of, 20

.....

(Signed)

.....

(Address)

Note:

- (a) **Heading and Title:** If the action is for administration, the writ must be headed "In the matter of the Estate of "Deceased." If it is a debenture holder's action, the writ must be headed "'in the matter of the A. B. company,'" and in a probate action, "In the matter of the A. B., deceased'". "A writ of summons claiming administration of a trust or settlement may be entitled "In the matter of the (trust or settlement)."

- (b) Indorsement of claim: If the claimant sues, or defendant is sued in a representative capacity, the indorsement must state in what capacity the claimant sues or the Defendant is sued. (See O. 4 r. 2).
If the claim is for a debt or liquidated demand only, the indorsement even though not special, must strictly comply with the provisions of O .4 r. 4 including a claim for four days costs.
- (c) Address for service: (See O. 4 r. 6). The address must be within the jurisdiction.
- (d) Address of claimants: In the case of a company in liquidation, the plaintiff/claimant's address should run “..... plaintiff/claimants, who are a company in liquidation. The liquidator is (name of liquidator or address of liquidator).”
In the case of a foreign corporation within the meaning of Part 10 of the Companies and Allied Matters Act, the claimant address should run thus: “..... plaintiff/claimants, who are a foreign corporation within the meaning of the Companies and Allied Matters Act. The registered name and address of the person to be served are (here add registered name and address)”.
- (e) Indorsement on service: (See O.7 r.13).
- (f) Probate actions: In these actions, the indorsement of claim must show the nature of the plaintiff/claimant's interest under which he claims (See O. 4 r. 3); and the alleged interest of the defendant.

Before the writ is issued, the following certificate must be indorsed on it:

The Registry, High Court of Akwa Ibom State

In the Judicial Division,

A sufficient affidavit in verification of the indorsement of this writ to authorise the signing and stamping thereof has been produced to me this day of, 20.....

.....

(Signature of Registrar)

FORM 2

Writ for Service outside Nigeria

(O.4 r. 3(4))

To C. D. of you are hereby commanded that within (here insert the number of days directed by the Court or Judge ordering the service or Notice) days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Judicial Division of the High Court of Akwa Ibom State in an action at the suit of A.B and take Notice, that in default of your so doing, the plaintiff/claimant may proceed therein and judgement may be given in your absence.

Dated this day of, 20.....

By Order of the Court.

.....
Registrar

Memorandum to be subscribed on the writ

N.B: This writ is to be served within three calendar months from the date thereof or if renewed, within three calendar months from the date of the last renewal, including the day of such date and not afterwards.

The defendant (or defendants) may appear hereto entering appearance (or appearances) either personally or by Legal Practitioner at the Registry of the Judicial Division in which the Writ is issued.

This writ was served (as in Form No. 1)

Indorsement to be made on the writ before the issue thereof.

N.B: This Writ is to be used where the defendant or all the defendants or one or more defendants is or are out of the jurisdiction.

Note:

The above indorsement “N.B” must be on every writ and concurrent writ for service out of the jurisdiction. The indorsement “N.B” need not be made on a writ against defendants domiciled abroad, but whom it is intended to serve within the jurisdiction.

Indorsement: If the claim is for a debt or liquidated demand only, the indorsement even though not special, must strictly comply with the provisions of O.4 r. 4 (1), including a claim for costs.

See also Form No. I, supra

FORM 3

General Form of Originating Summons

(O.4 r. 4(3))

In the High Court of Akwa Ibom State

.

In the Judicial Division

(If the question to be determined arises in the administration of an Estate or a Trust, entitle it: In the matter of the Estate or Trust)

Between

A.B..... Plaintiff/Claimant

And

C. D. and E.F..... Defendants

Let of within forty-two days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons which is issued upon the application of who claimed to be (state the nature of the claim), for the determination of the following questions: (State the questions).

Dated the day of, 20.....

This summons was taken out by....., Legal Practitioner for the above-named.....

FORM 4
Originating Summons

(O.4 r. 4(3))

No of, 20.....

In the High Court of Akwa Ibom State.

In the Judicial Division

In the matter of A. B., a Legal Practitioner (Re Taxation of costs, etc.) (or as may be).

Let A.B. of attend the Court, (or Chief Registrar's Office) High Court of Akwa Ibom State, on the day of, 20..... at 9 o'clock in the forenoon (on the hearing of an application on the part of)

(state relief sought). (If for leave, endorse “award under the Arbitration Law”). Add “And that the respondent do pay the costs of this application to be taxed.”

Dated the day of, 20.....

This summons was taken out by

Note:

It will not be necessary for you to enter an appearance in the High Court Registry, but if you do not attend either in person or by your Legal Practitioner, at the time and place above mentioned (or at the time mentioned in the endorsement thereon), such order will be made and proceedings taken as the Judge may think just and expedient.

FORM 5

Form of *Ex-parte* Originating Summons

(O. 4 r. 4(3))

In the High Court of Akwa Ibom State

In the..... Judicial Division

Suit No

In the matter of A.B., an infant (or, as may be).

Let all parties concerned attend before the Judge (or Chief Registrar's Office), High Court of Akwa Ibom State, at the time specified in the margin hereof, on the hearing of an application on the part of the above-named A. B., an infant, by C. D. his next friend, etc.

The Summons was taken out by of agents for, of Legal Practitioner for the Applicant.

www.sabilaw.org

FORM 6

Form of Memorandum for Renewed Originating Process

(O. 5 r. 5(3))

(Heading as in Form No. 1)

Seal of renewed Originating Process in this action shall be indorsed as follows –

The Originating Process renewed on the day of,.....
20..... pursuant to Order of Court made day of,
20..... for three months.

(Copy of original Originating Process and the Indorsement)

www.sabilaw.org

FORM 7

Request to Minister of Foreign Affairs to transmit Originating Process to Foreign Government

(O. 7 r. 2 (1)(a))

The Chief Judge of Akwa Ibom State presents his compliments to the Minister of Foreign Affairs, and encloses herewith, a Notice of Writ of Summons issued in an action of A.B. versusC.D. pursuant to order out of the Judicial Division of the High Court of Akwa Ibom State for transmission to the Ministry of Foreign Affairs in (name of country) with the request that the same may be served personally upon (name of defendant to be served) against whom proceedings have been taken in the Judicial Division of the High Court of Akwa Ibom State and with the further request that such evidence of the service of the same upon the said defendant, may be officially certified to the High Court of Akwa Ibom State or declared upon oath or otherwise, in such manner as is consistent with the usage or practice of the Courts of the (name of country) in proving service of legal process.

The Chief Judge requests that in the event of efforts to effect personal service of the said Notice of writ proving ineffectual, the Government or Court of the said country be requested to certify the same to the High Court of Akwa Ibom State.

FORM 8

Praecipe

Request for Service Abroad

(O. 7 r. 2(1)(b))

I (or we) hereby request that the Originating Process in this action be transmitted through the proper channels to (name of country) for service (or substituted service) on the defendant (name him) at (address of defendant) or elsewhere in (name of country). And I (or we) hereby personally undertake to be responsible for all expenses incurred by the Ministry of Foreign Affairs in respect of the service hereby requested and on receiving due notification of the amount of such expense, I (or we) undertake to pay the same into the High Court Registry for transmission to the Permanent Secretary of the Ministry of Foreign Affairs.

Dated this day of, 20

.....
Signature of Legal Practitioner

www.sabilaw.org

FORM 9

Letter forwarding Request for Substituted Service

(O. 7 r. 2 (1)(d))

The Chief Judge of Akwa Ibom State presents his compliments to the Minister of Foreign Affairs and encloses herewith, a writ of summons in the case of versus in which the claimant has obtained an order of the Judicial Division of the High Court of State (which is also enclosed) giving leave to make a request that the said Writ may be served by substituted service on the Defendant at in the (name of country).

The Chief Judge requests that the said writ and order may be forwarded to the proper authority in (name of country) with the request that the same may be transmitted by post addressed to the defendant at (the last known place of abode or place of business) of the said defendant, or there delivered in such manner as may be consistent with the usage or practice of the Courts of (name of country) for service of legal process where personal service cannot be effected and with the further request that the same may be officially certified to the Judicial Division of the High Court of State or declared upon oath or otherwise, in such manner as is consistent with the practice of the Courts of the (name of country) in proving service of legal process.

FORM 10

Request to Minister of Foreign Affairs to transmit Notice of Writ to a Foreign Government

(O. 7 r. 3 (1))

The Chief Judge of Akwa Ibom State presents his compliments to the Minister of Foreign Affairs and encloses herewith a writ of summons issued in an action of versus (insert name of the defendant), pursuant to Order 8, out of theJudicial Division of the High Court of State delivery to the Government of (insert name of the Convention country) and to request that an official certificate may in due course be dispatched to the Judicial Division of the High Court of State, stating that the Writ of Summons has been delivered and on what date.

www.sabilaw.org

FORM 11
Memorandum of Appearance

(O. 8 r. 1 (1))

(In the High Court of Akwa Ibom State State)

In the Judicial
Division Suit No.....

Between

A.B..... Plaintiff(s)/Claimant(s)

And

C. D Defendant(s)

Please enter an appearance for 1 (a) sued as 1 (b)

.....

.....

in this action

Dated the day of, 20.....

Signed

Whose address for service 1 (c)

.....

N. B.: Additional notes for the guidance of defendants seeking to enter an appearance are given on the back. Please read carefully.

Notes:

1. (a) The Defendant must give his or her full name.
- (b) Give name by which the defendant is described in the writ if this differs from defendant's full name, otherwise delete words "such as".

- (c) A defendant appearing in person must give his residence or some other place within the Judicial Division of State to which communication for him should be sent. Where he appears by a Legal Practitioner, the Legal Practitioner's place of business.
2. Where the defendant is a firm, the appearance must be entered by the individual partners by name with the description "Partner in the firm of"
 3. Where the defendant is an individual trading in a name other than his own, the appearance must be entered by him in his own name with the addition of the description "Trading as"
 4. Where the defendant is a limited liability company, the appearance must be entered by a Legal Practitioner.
 5. Where the appearance is being entered by leave of the Court, a copy of the order granting leave must accompany this form.
 6. Where the defendant has no defence or admits the Claimant's claim, the entry of appearance will delay judgement and may increase the costs payable by the defendant.
 7. Acknowledgment of service shall be as follows –
 I, acknowledge that on the day of, 20..... at (time and place) received the following documents –
 - (a)
 - (b)
 - (c)

I also acknowledge that I am the person referred to in the signed and stamped copy of the originating process.

Dated this day of, 20

.....

Signature

FORM 12

Application to place matter on the Fast Track

(O. 10 r. 2 & r. 4(1)(d))

In the High Court of Akwa Ibom State State

Date.....

The Hon Chief Judge
Akwa Ibom State High Court
Uyo

Suit No:

CLAIMANT

AND

DEFENDANT

I hereby apply for the above-named matter forwarded herewith to be placed on the Fast Track List of the Court.

I undertake to comply with all the conditions.

(Claimant(s) or Counsel to Claimant/Claimants)

FOR THE COURT:

Approved/Refused to be heard in the Fast Track.

.....

Chief Judge

FORM 12

General Form of Writ of Summons (Fast Track)

(O. 10 r. 2 & r. 4(1)(d))

20.....

(here put the letter and number (see note (a) following this form)

In the High Court of Akwa Ibom State

In the

Judicial Division

Between

A.B.....Plaintiff/Claimant

And

C. DDefendant

To C.D. ofin theof

You are hereby commanded that within days after the service of this writ on you, inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit of A. B. and take Notice that in default of your so doing, the Plaintiff/Claimant may proceed therein and Judgement may be given in your absence.

Dated thisday of,

20.....

www.yablaw.org

.....

Registrar

Memorandum to be subscribed on the Writ

N/B: This writ is to be served within three calendar months from the date thereof or if renewed, within three calendar months from the date of the last renewal, including the day of such date and not afterwards.

Form of Writ of Summons, etc. - continued

The Defendant may enter appearance personally or by Legal Practitioner either by handing in the appropriate forms duly completed at the Registry of the High Court of the Judicial Division in which the action is brought or by sending them to the Registry by registered post. Indorsement to be made on the writ before issue thereof.

The Plaintiff/Claimant's claim is for, etc.
This writ was issued by G. H. of..... whose address for service is agent for of Legal Practitioners for the said Claimant who resides at the city, town or district and also the name of the (mention) street and number of the house of the Plaintiff/Claimant's residence, (if any).

Indorsement to be made on copy of writ forthwith after service.

This writ was served by me at on the defendant (here insert mode of service) on the day of, 20....

Indorsed the day of, 20

.....

(Signed)

.....

(Address)

Note:

(a) Heading and Title – If the action is for administration, the writ must be headed "In the matter of the Estate of "Deceased." If it is a debenture holder's action, the writ must be headed "'in the matter of the A. B. company,'" and in a probate action, "In the matter of the A. B., deceased'". "A writ of summons claiming administration of a trust or settlement may be entitled "In the matter of the (trust or settlement)."

(b) Indorsement of claim – If the claimant sues, or defendant is sued in a representative capacity, the indorsement must state in what capacity the claimant sues or the Defendant is sued. (See O.4 r.2).

If the claim is for a debt or liquidated demand only, the indorsement even though not special, must strictly comply with the provisions of O.4 r.4 including a claim for four days costs.

- (c) Address for service – (See **O.4 r.6**). The address must be within the jurisdiction.
- (d) Address of claimants – In the case of a company in liquidation, the plaintiff/claimant's address should run “ plaintiff/claimants, who are a company in liquidation. The liquidator is (name of liquidator or address of liquidator).”

In the case of a foreign corporation within the meaning of Part 10 of the Companies and Allied Matters Act, the claimant address should run thus: “ plaintiff/claimants, who are a foreign corporation within the meaning of the Companies and Allied Matters Act. The registered name and address of the person to be served are (here add registered name and address)”.

- (e) Indorsement on service – (See **O.7 r.13**).
- (f) Probate actions – In these actions, the indorsement of claim must show the nature of the plaintiff/claimant's interest under which he claims (See **O.4 r.3**); and the alleged interest of the defendant.

Before the writ is issued, the following certificate must be indorsed on it –

The Registry, High Court of Akwa Ibom State

In the Judicial Division,

A sufficient affidavit in verification of the indorsement of this writ to authorise the signing and stamping thereof has been produced to me this day of, 20.....

.....
(Signature of Registrar)

FORM 13

Notice of Approval to Place Case on Fast Track List

O.10 r. 4 (2)

In the High Court of Akwa Ibom State State

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

Suit No:

..... Claimant

And

.....Defendant

NOTICE OF ACCEPTANCE TO PLACE CASE ON FAST TRACK DIVISION

PLEASE TAKE NOTICE that following your application in the above-named matter, the above case has been placed on the FAST TRACK LIST.

PLEASE NOTE that henceforth this matter shall be dealt with in accordance with FAST TRACK procedures, directions, applications and guidelines.

Dated at Uyo this day of 20.....

REGISTRAR (FAST TRACK)

FOR SERVICE:

FORM 14

Notice of Denial of Approval to Place Case on Fast Track List

(O. 10 r. 4 (2))

In the High Court of Akwa Ibom State

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

Suit No.

Between

..... Claimant

And

..... Defendant

NON-ACCEPTANCE TO PLACE CASE ON FAST TRACK LIST

I refer to your application to place the above-named case on Fast Track List and wish to inform you that the case cannot be placed on Fast Track List. It has accordingly been placed on the General Cause List.

You may contact the Registrar for other details on this matter.

Dated at High Court, Uyo this..... day of 20.....

REGISTRAR (FAST TRACK)

FORM 15

Notice of Counterclaim

(O. 17 r. 6)

(In the High Court of Akwa Ibom State State)

In the Judicial Division

Between

A. B. Plaintiff/Claimant

And

C. D. Defendant(s)

To the within-named X. Y.

Take Notice that if you do not appear to the counterclaim of the within-named C.D., within eight days from the service of this defence and counterclaim upon you, you will be liable to have judgement given against you in your absence.

Appearance to be entered at the Judicial Division, High Court Registry, State.

www.sabilaw.org

FORM 16

Concession to Defence

(O. 17 r. 13)

(In the High Court of Akwa Ibom State State)

In the Judicial Division

Between

A. B. Plaintiff/Claimant

And

C. D., E. F. and G. H Defendant(s)

The Claimant concedes to the defence stated in paragraph of the Defendants' defence (or, of the Defendant's further defence).

www.sabilaw.org

FORM 17

Notice of Payment into Court

(O. 20 r. 1 (6))

(In the High Court of Akwa Ibom State State)

In the Judicial Division

Between

A. B. Plaintiff/Claimant

And

C. D., E. F. and G. H Defendant(s)

Take Notice that the defendant has paid into Court N and says that sum is enough to satisfy the claimant's claim for N.....

Dated the day of, 20.....

.....

P. O., Legal Practitioner for the Defendant, C.D.

To X. Y., the Claimant's Legal Practitioner and to Mr. R. S., Legal Practitioner for the defendant, E. F.

To be filled in by the Cashier, High Court

Received the above sum of naira kobo into Court in this action.

Dated the day of, 20.....

FORM 18

Acceptance of sum paid into Court

(O. 20 r. 2 (1))

(In the High Court of Akwa Ibom State State)

In the Judicial Division

Between

A. B. Plaintiff/Claimant

And

C. D., E. F. and G. H Defendant(s)

Take Notice that the claimant accepts the sum of N paid by the defendant (C.D.) into Court in satisfaction of the claim in respect of which it was paid in (and abandons his other claims in the action).

Dated the day of, 20.....

.....

X. Y., Claimant's Legal Practitioner

To

Mr. P. O., Legal Practitioners for the defendant C.D. and Mr. R. S., Legal Practitioner for the defendant, E. F.

FORM 19

Acceptance of sum paid into Court by one several Defendants

(O. 20 r. 4 (2))

(In the High Court of Akwa Ibom State State)

In the Judicial Division

Between

A. B. Plaintiff/Claimant

And

C. D., E. F. and G. H Defendant(s)

Take Notice that the claimant accepts the sum of Npaid by the defendant (C.D.) into Court in satisfaction of his claim against the defendant C. D.

Dated the day of, 20.....

.....

X. Y., Claimant's Legal Practitioner

To:

Mr. P. O., Legal Practitioners for the Defendant C.D. and Mr. R. S., Legal Practitioner for the Defendant, E. F.

FORM 20
Interrogatories

(O. 24 r. 2)

(In the High Court of Akwa Ibom State)

In the Judicial Division

Suit No:

Between

A. B. Plaintiff/Claimant

And

C. D., E. F. and G. H. Defendant(s)

Interrogatories on behalf of the above-named (claimant or defendant C. D.) for the examination of the above-named (defendants E. F. and G. H. or claimant).

1. Did not, etc.
2. Has not, etc.

(The defendant E. F. is required to answer the interrogatories numbered)

(The Defendant G. H. is required to answer the interrogatories numbered)

Dated the day of, 20.....

FORM 21

Answer to Interrogatories

(O. 24 r. 6)

(In the High Court of Akwa Ibom State)

In the Judicial Division

Suit No:

Between

A. B. Plaintiff/Claimant

And

C. D., E. F. and G. H Defendant(s)

The answer of the above-named defendant (E. F.), to the interrogatories for his examination by the above-named claimant.

In answer to the said interrogatories, I, the above-named (E. F.), make Oath and say as follows-

I, the above-named defendant (E. F.), do hereby solemnly swear by the Almighty God that this is my name and handwriting and that the fact deposed by me in this affidavit are the truth, the whole truth and nothing but the truth.

FORM 22

Affidavit and grounds of objection in answer to request for discovery of documents

(O. 24 r. 8(3)(b))

(In the High Court of Akwa Ibom State)

In the Judicial Division

Suit No:

Between

A. B. Plaintiff/Claimant

And

C. D., E. F. and G. H Defendant(s)

I, the above-named defendant C. D., make an oath and say as follows –

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the First Schedule hereto.
2. I object to produce the said documents set forth in the Second part of the said First Schedule hereto (state grounds of objection).
3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the Second Schedule hereto.
4. The last-mentioned documents were last in my possession or power on (state when and what has become of them and in whose possession they now are).

5. To the best of my knowledge, information and belief, I have not now and never had in my possession, custody or power or that of my Legal Practitioners or agent or in the possession, custody or power of any other persons or person on my behalf, any deed account, book of account, voucher, receipt, letter, memorandum, paper or writing or any copy of or extract from any such document or any other document whatsoever, relating to the matters in question in this suit or any of them or wherein any of them, other than and except the documents set forth in the said First and Second Schedule hereto.

Dated the day of, 20

Sworn to
(Jurat)

.....
.....

www.sabilaw.org

FORM 23

Form of Order for Accounts and Inquiries

(O. 25 r. 11)

(In the High Court of Akwa Ibom State)

In the Judicial Division

Suit No:

Between

A. B. Plaintiff/Claimant

And

C. D., E. F. and G. H Defendant(s)

This Court doth order that the following accounts and inquiries be taken and made, that is to say –

- 1.
- 2.
- 3.
- 4.

And it is ordered that the following further inquiries and account be made and taken, that is to say –

- 5.
- 6.
- 7.
- 8.

And it is ordered that the further consideration of this Cause be adjourned and any of the parties are to be at liberty to apply as they may be advised.

FORM 24

Legal Practitioner's Undertaking as to Expenses

(O. 30 r. 7(a))

(Heading as in Form No. 1)

I (or we) hereby undertake to be responsible for all expenses incurred by the Ministry of Foreign Affairs in respect of the letter of request issued herein on the and on receiving due notification of the amount of such expenses, undertake to pay the same as directed by the Chief Registrar of the High Court.

The following have been appointed as agents for the parties in connection with the execution of the above letter of request –

Claimant's Agent of

Defendant's Agent of

Dated the day of, 20

www.sabilaw.org

.....

Legal Practitioner for

.....

.....

FORM 25

**Letter of Request to take Evidence Abroad
(Convention Country)**

(O. 30 r. 7(b))

To the competent Judicial Authority of in the
.....of

Whereas a civil (commercial) action is now pending in the
Judicial Division of the High Court of Akwa Ibom State, Nigeria, in which
.....is the plaintiff/claimant and is the
defendant.

And in the said action the plaintiff/claimant claims

And whereas it has been represented to the said Court that it is necessary for the
purpose of justice and for the due determination of the matters in dispute between the
parties, that the following persons should be examined as witnesses upon oath touching
such matters, that is of, and
..... of and it appears that such
witnesses are resident within your jurisdiction.

Now, I the Chief Judge of the High Court of Akwa Ibom State, Nigeria have the honour
to request, and do hereby request, that for the reasons aforesaid and for the assistance
of the said Court, you will be pleased to summon the said witness (and such other
witness(es) as the agents of the said claimants and defendant shall humbly request you
in writing so to summon) to attend at such time and place as you shall appoint before
you or such other person as according to your procedure is competent to take the
examination of witnesses and that you will cause such witnesses to be examined (upon
the interrogatories which accompany this letter of request) *viva voce* touching the said
matters in question in the presence of the agents of the claimant and defendant or such
of whom as shall, on due Notice given attend such examination.

And I further have the honour to request that you will permit the agents of both the said claimant and defendant or such of them as shall be present to be at liberty to examine (upon interrogatories and *viva voce* upon the subject matter thereof or arising out of the answers thereto) such witnesses as may, after due Notice in writing, be produced on their behalf and give liberty to the other party to cross-examine the said witnesses (upon cross-interrogatories and *viva voce*) and the party producing the witness(es) for the examination liberty to re-examine him *viva voce*.

And I further have the honour to request that you will be pleased to cause (the answer of the said witness(es) and all additional *viva voce* questions, whether on examination, cross-examination, or re-examination), the evidence of such witness(es), to be reduced into writing and all books, letters, papers and documents produced upon such examination to be duly marked for identification and that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as is in accordance with your procedure, cross-interrogatories and a note of the charges and expenses payable in respect of the execution of this request to be sent, through the Ministry of Foreign Affairs from whom the same was received for transmission to the High Court of State.

And I further request that you will cause me or the agents of the parties (if appointed), to be informed of the date and place where the examination is to take place.

Dated the day of, 20.....

Note:

“Due Notice in writing” this refers to a Notice given by the Legal Practitioner having conduct of the action.

FORM 26

**Order for appointment of Nigerian Diplomatic Agent as Special Examiner
(in Convention Country)**

(O. 30 r. 8)

(Heading as in Form 1)

Upon hearing the Legal Practitioners on both sides and upon reading the affidavit of,
it is ordered that the Nigerian Diplomatic Agent or his deputy at
be appointed as Special Examiner for the purpose of taking the examination, cross-
examination and re-examination, *viva voce*, on oath or affirmation, of
..... witnesses on the part of the
at in (name of country).

The Examiner shall be at liberty to invite the attendance of the said witnesses and the
production of documents, but shall not exercise any compulsory powers otherwise
such examination, shall be taken in accordance with the Nigerian High Court
procedure. The Legal Practitioners to give the
..... Legal Practitioners days Notice in writing of the
date on which they propose to send out this Order to for
execution and that days after the service of such Notice, the
Legal Practitioners for the claimants, and defendants respectively do exchange the
names of their agents at to whom Notice relating to the
examination of the said witnesses may be sent.

And that days (exclusive of Sundays) prior to the
examination of any witness hereunder, Notice of such examination shall be given by
the agent of the party on whose behalf such witness is to be examined by the agent of the
other party (unless such Notice is dispensed with).

And that the depositions when taken together with any documents referred to therein or
certified copies of the documents or of extracts therefrom, be transmitted by the
Examiner under seal, to the Chief Registrar of the High Court, State,

Nigeria, on or before the day of next, or such further or other days as may be ordered, there to be filed in the proper office.

And that either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions.

And that the trial of this action be stayed until the filing of such examination and the cost of the examinations are assessed in the action.

Dated the day of, 20

Note:

If the Convention requires that the invitation or Notice to the witnesses must expressly state that no compulsory powers may be used, this requirement must be complied with.

www.sabinaw.org

FORM 27

Form of Praecipe

(O. 30 r. 19)

(In the High Court of Akwa Ibom State)

In the Judicial Division

Suit No:

Between

A. B. Plaintiff/Claimant

And

C. D and others Defendant(s)

Seal Writ of Subpoena on behalf of the

directed on returnable.

Dated this day of, 20.....

(Signed)

(Address).....

Legal Practitioner for the

www.sabilaw.org

FORM 28

Subpoena ad Testificandum

(O. 30 r. 20)

(In the High Court of Akwa Ibom State)

You are commanded in the name of the Governor of Akwa Ibom State to have who it said is detained in your custody in Correctional Centre, at before the Court at on the day of at 0' clock in the forenoon and so from day to day until the above action is tried, to give evidence in his above-named cause and immediately after the said shall have so given his evidence, you shall duly conduct him to the correctional centre from which he shall have been brought.

Dated this day of, 20

.....

Judge

www.sabilaw.org

FORM 29

Habeas Corpus ad Testificandum

(O. 30 r. 20)

(In the High Court of Akwa Ibom State)

In the Judicial Division

Suit No:

Between

A. B. Plaintiff/Claimant

And

C. D. Defendant(s)

The Comptroller of Nigeria Correctional Centre at

You are commanded in the name of the Governor of Akwa Ibom State to have who is said to be detained under your custody in correctional centre at before the Court at on the day of, 20 at o'clock in the forenoon, and so from day to day until the above action is tried, to give evidence in the above-named cause and immediately after the said shall have so given his evidence you shall duly conduct him to the Correctional Centre from which he shall have been brought.

Dated this day of, 20

.....

Judge

FORM 30

Subpoena duces tecum

(O. 30 r. 20)

(In the High Court of Akwa Ibom State)

In the Judicial Division

Suit No:

Between

A. B. Plaintiff/Claimant

And

C. D. Defendant(s)

To of

You are commanded in the name of the Governor of Akwa Ibom State to attend before the Court at on the day of, 20 at the hour of o'clock in the afternoon and so from day-to-day until the above cause is tried, to give evidence on behalf of the and also to bring with you and produce at the time and place aforesaid.

(Specify documents to be produced)

Dated this day of, 20

.....

Judge

FORM 31

Form of Guarantee for the acts and defaults of a Receiver

(O. 35 r. 10)

(In the High Court of Akwa Ibom State)

In the Judicial Division

PARTIES

Suit No:

Re:v.....

Guarantee for N Annual Premium N.....

This guarantee is made the day of, 20.....

Between(XYZ)..... of (hereinafter called the “Receiver”) of the first part, the above named the registered office of which is at in (hereinafter called the “Surety”) of the second part and the Governor of Akwa Ibom State. By an Order of the High Court of Akwa Ibom State Judicial Division dated the day of, 20....., and made in the above-mentioned action, the Receiver has been appointed to receive (and manage) (follow words of the order). And it was ordered that the Receiver should give security to the satisfaction of the Judge on or before the day of, 20.....

And whereas the Surety has agreed at the request of the Receiver to issue this Guarantee in consideration of the annual premium above mentioned (the first payment of which the Surety hereby acknowledges) which Guarantee has been accepted by the Judge as a proper security pursuant to the said order in testimony whereof one of the Registrars of the High Court, has signed an allowance in the margin hereof.

Now this Guarantee witnesses as follows –

1. The Receiver and the Surety hereby jointly and severally covenant with the Governor of State and his successors that the Receiver shall and will from time to time, duly account for what he has already received since the date of the said order appointing him and shall hereafter be or become liable to

pay account for as such Receiver (and Manager) as aforesaid including as well every sum of money or other property so received during the period for which he has been appointed as also every sum of money or other property so received in respect of any extended period for which he may be appointed and shall and will pay or deliver every such sum or property as the Court or a Judge thereof may direct.

2. Provided always that it is hereby mutually agreed as follows:

- (a) If the Receiver shall not, for every successive twelve months to be computed from the date of his appointment or within fifteen days after the expiration of such twelve months, pay at the office of the Surety, the annual premium or sum of N....., then the Surety shall be at liberty to apply by Summons in the said action to be relieved from all further liability as such Surety under this Guarantee save or except in respect of any damage or loss occasioned by any act or default of the Receiver in relation to his duties as such Receiver (and manager) prior to the hearing and determination of such Summons;
- (b) a statement under the hand of any Registrar of the High Court of Akwa Ibom State of the amount which the Receiver shall be liable to pay and has not paid under this Guarantee, that loss or damage has been incurred through the act or default of the Receiver, shall be conclusive evidence in any action or information by the Governor of Akwa Ibom State against the Receiver and Surety or either of them or by the Surety against the Receiver of the truth of the contents of such statement and shall constitute a binding charge not only against the Receiver and his personal representatives, but also against the Surety and his funds and property without being necessary for the Governor of Akwa Ibom State to take any legal or other necessary proceedings against the Receiver for the recovery thereof and without any further or other proof being given in that behalf in any action to enforce this Guarantee; and
- (c) the liability of the Surety under this Guarantee is limited to the sum of N..... provided that a Registrar of the High Court may by his signature to the indorsement on this Guarantee (in the form printed thereon), reduce the said liability of the Surety still further or (but only with the consent of the Surety by an instrument in writing duly executed) increase such liability as may be necessary and upon such indorsement, this Guarantee shall continue in full force but in that case, that premium shall be correspondingly reduced or increased.

3. It is hereby agreed between the Receiver and the Surety as follows:
- (a) the Receiver will on being discharged from his office or on ceasing to act as such Receiver (and Manager) as foresaid, forthwith give written Notice thereof to the Surety through Registered Post and also within seven days of such Notice, furnish to the Surety free of charge an official copy of the order (if any), of the Judge discharging him; and
 - (b) the Receiver and his personal representative shall and will at all times hereafter indemnify the Surety and its property and funds against all loss, damage, costs and expenses, which the Surety or its funds or property may or might otherwise sustain by reason of the Surety having executed this Guarantee at his request.

In witness whereof, the Receiver has hereunder set his hand and Seal and the Surety has caused its common seal to be affixed the day of, 20..... in the matter of Increased liability.

(To be attached by way of indorsement to Guarantee).

The liability of the Surety under the within written Guarantee has with the consent of the Receiver and the Surety been increased from N..... to N..... in respect of any acts or omissions to which the within written Guarantee, and this indorsement being limited to the increased sum above relates, committed by the Receiver subsequent to the date hereof the total liability of the Surety in respect of both the within written guarantee stated.

Sealed with the Seal of the Receiver and also the Common Seal of the Surety this day of, 20 as evidence of such increased liability and the admission thereof by the Receiver and the Surety respectively.

Signed, Sealed and delivered by the Receiver in the presence of

The Common Seal of the Surety was hereunder affixed in the presence of

FORM 32

Receiver's Security by Undertaking

(O. 35 r. 10)

(In the High Court of Akwa Ibom State)

In the Judicial Division

(TITLE)

Suit No:

Re:v.....

I, of the Receiver (and Manager) appointed by order dated (or proposed to be appointed) in this action, hereby undertake with the Court to duly account for all monies and property received by me as such Receiver (or Manager) or for which I may be held liable and to pay the balances from time to time found from me and to deliver any property received by me as such Receiver (or Manager) at such time and in such manner in all respects as the Court or Judge shall direct.

And we, hereby jointly and severally (in the case of Guarantee or other Company strike out "jointly and severally") undertake with the Court to be answerable for any default by the said as such Receiver (as Manager) and upon such default, to pay to any person or persons or otherwise as the Court or a Judge shall direct, any sum or sums not exceeding in the whole N that may from time to time be certified by a Registrar of the High Court to be due from the said Receiver and we submit to the jurisdiction of the Court in this action to determine any claim made under this undertaking.

Dated this day of, 20.....

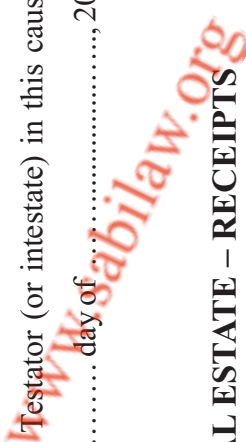
(Signatures of Receiver and his Sureties. In the case of a Surety being a guarantee or other company, it must be sealed or otherwise duly executed).

FORM 33
Receiver's Account
(O. 35 r. 13)

(Title)
 Suit No of 20

To accord with the Order

The (.....) account of A.B., the Receiver appointed in this cause (or pursuant to an order made in this cause, dated the day of), to receive the rents and profits of the real estate and to collect and get in the outstanding personal Estate of C.D, the Testator (or intestate) in this cause named, from the day of 20..... to the day of 20.....



REAL ESTATE – RECEIPTS

| No. if Items | Date when Received | Tenant's Name | Description of Premises | Annual Rent N | Arrears Due atN | Amount Received | Arrears Remaining due | Observetions |
|--------------|--------------------|---------------|-------------------------|---------------|-----------------------|-----------------|-----------------------|--------------|
| | | | | | | | | |

PAYMENT AND ALLOWANCES ON ACCOUNT OF REAL ESTATE

| No. if Items | Date of payment on Allowance | Names of Persons to whom Paid or Allowed | For what purpose paid or allowed | Amount N |
|--------------|------------------------------|--|---|-------------|
| | | | One year Insurance of Due..... Bill for repair at house let to..... Allowance for a half-year's income..... Tax due..... Total payment N..... | |

www.sabirlaw.org

FORM 34

Affidavit verifying Receiver's Account

(O. 35 r. 14)

(In the High Court of Akwa Ibom State)

In the Judicial Division of High Court of of Nigeria

Between

A. B. Plaintiff/Claimant

And

C. D. and E. F., Defendant(s)

I, of the Receiver appointed in this Cause, make oath and say as follows –

1. The document now shown to me marked A is, as its purports to be, a full and true account of for the period therein specified.
2. and my Sureties named in the guarantee (or undertaking) dated the day of, 20..... are both alive and neither of them has become bankrupt or insolvent.
3. The Co. Ltd., my Surety name in the guarantee (or undertaking) dated the day of, 20 is still carrying on business and no petition or other proceeding for its winding-up is pending.

Additional paragraphs as to wages and petty cash are sometimes necessary.

FORM 35

Notice of Appeal (Civil)

(O. 38 r 2 (4))

In the Magistrate's Court of the Magisterial
District

Suit No

A. B. versus C. D.

Take Notice that the Claimant (or Defendant, as the case may be) A. B. (or C. D.; name the party who is appealing) appeals from the judgement (or order or decision) dated the day of, 20..... in the above proceedings.

And further take Notice that his grounds of appeal are

.....

.....

.....

Dated the day of, 20

.....

A. B. (or C. D.) (or the Legal Practitioner acting for him)

To C.D. (or A. B.) of

FORM 36

Certificate of Chief Registrar

(O. 48 r. 8)(1)

PARTIES

Pursuant to the direction given to me by Hon. Justice, I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuance of the judgement (or order), in this cause dated the day of, 20, is as follows –

1. The defendants of have received the amount of N and they have paid or are entitled to be allowed an account thereof, sums to the amount of N leaving a balance due from (or to), them of N on that account.
2. The particulars of the above receipts and payments appear in the account marked verified by the affidavit of filed on the day of, 20 and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums (state the same here or in a schedule), and except that I have disallowed the items of disbursement in the said account numbered and (or in cases where a transcript has been made).
3. The defendants have brought in an account verified by the affidavit of filed on the day of, 20 and which account is marked and is to be filed with this certificate. The account has been altered and the account marked in and which also to be filed with this certificate, is a transcript of the account as altered and passed.

N. B.:

The above numbers are to correspond with the numbers in the order after each statement. The evidence produced is to be stated as follows –

The evidence produced on this account (or inquiry) consists of the following document
..... filed on the day of, 20
..... of the affidavit of C.D., filed

www.sabilaw.org

FORM 37

Form for Closure and Redemption

(O. 49 r. 2(1))

It is ordered that the defendant do give the claimant possession on or before the day of, 20 of the land hereinafter described and comprised in a mortgage (or charge) dated the day of, 20 that is to say (here describe the property).

And it is ordered that the claimant do recover against the defendant, the sum of N for costs (or his cost of this summons to be taxed).

And it is ordered that upon the defendant paying to the claimant the monies remaining due to the claimant upon the security of the said mortgage (or charge), the claimant (subject and without prejudice to the due exercise of any power of sale for the time being vested in him), do re-deliver to the defendant possession of the property subject to the said mortgage (or charge).

And it is ordered that all parties be at liberty to apply to the Court as they may advised.

www.sabiray.org

FORM 38

Form for Closure and Redemption

(O. 49 r. 2(1))

It is ordered that the claimant do recover against the defendant N secured by a mortgage (or charge) dated the day of, 20..... being the total of the principal sum of N and N..... for interest thereon at percent, per annum less tax to the day of (date of order) and N..... for costs (or his costs of this Summons to be taxed).

And it is ordered that the defendant do give the claimant possession on or before the day of, 20..... of the land hereinafter described and comprised in the said mortgage (or charge); that is to say (description of the property).

And it is ordered that upon the defendant paying to the claimant the monies hereby ordered to be recovered and all other monies (if any), secured to the claimant by the said mortgage (or charge), the claimant (subject and without prejudice to the due exercise of any power of sale for the time being vested in him) do re-deliver to the defendant, possession of the property subject to the said mortgage (or charge) and release to the defendant, the security constituted by the said mortgage (or charge).

And it is ordered that all parties be at liberty to apply to the Court as they may be advised.

FORM 39

Form for Closure and Redemption

(O. 49 r. 2(1))

It is ordered that the claimant shall recover against the defendant, N secured by a mortgage (or charge) dated the day of, 20..... (being the total of the principal sum of N and N..... for interest thereon at percent, per annum less tax to the day of (date of order) and N..... for costs (or his costs of this Summons to be fixed)).

And it is ordered that upon the defendant paying to the claimant the monies ordered to be recovered, all other monies (if any) secured to the claimant by the said mortgage (or charge), the claimant (subject and without prejudice to the due exercise of any power of sale for the time being vested in him) do release to the defendant, the security constituted by the said mortgage (or charge).

And it is ordered that all parties be at liberty to apply to the Court as they may be advised.

www.sabirlaw.org

FORM 40

Originating Summons for Possession

(O. 51 r. 2)

(In the High Court of Akwa Ibom State)

In the Judicial Division of High Court of of Nigeria

Suit No:

Between

A. B. Plaintiff/Claimant

And

C. D., E. F., and G. H., Defendant(s)

(if any), whose name is known to the Plaintiff/Claimant

To (C.D and) every (other) person in occupation of

Let all persons concerned attend before at the Judicial Division of the High Court of State on the day of, 20..... at o'clock in the noon for the hearing of an application by AB for an order that he do recover possession of on the ground that he is entitled to possession and that the person(s) in occupation is (are) in occupation without his licence or consent.

Dated the day of, 20

This summons was taken out by of Legal Practitioner for the said Plaintiff/Claimant whose address is (or this summons was taken out by of for of Legal Practitioner for the said claimant whose address is) (or when the claimant acts in person).

This summons was taken out by the said Plaintiff/Claimant who resides at and is (state occupation) and (if the plaintiff/claimant does not reside within the jurisdiction) whose address for service is

Note:

Any person occupying the premises who is not named as a defendant by this summons, may apply to the Court personally or by a Legal Practitioner to be joined as a defendant. If a person occupying the premises does not attend personally or by a Legal Practitioner at the time and place above mentioned, such order will be made as the Court may think just and expedient.

www.sabilaw.org

FORM 41
Order for Possession

(O. 51 r. 6)

(Heading as in Form 1)

Upon hearing and upon reading the affidavit of
..... filed on the day of
....., 20..... it is ordered that the Plaintiff/Claimant A.B. do recover
possession of the land described in the Originating Summons as
..... and the Defendant
..... do give possession of the said land on and that
the Defendant do pay the Plaintiff/Claimant
N..... costs (or costs to be taxed). (The above costs have been taxed and
allowed at N..... as appears by a Taxing Officer's Certificate dated the
..... day of, 20.....).

Dated the day of, 20.....

.....
Judge

PROBATE FORM 1

APPLICATION FOR GRANT OF PROBATE

(Order 55 Rule 1)

Please complete this Form using CAPITAL LETTERS,
placing a tick in boxes where applicable

Probate File Number

1. Swearing the Oath

You are required to swear an oath to state
that the information you provide in this
application is true to the best of your
belief. Where would you like to do this?

1. WILL/CODICIL

| | | | |
|----------------------|----------|----------|----------|
| Date of Will/Codicil | D | M | Y |
|----------------------|----------|----------|----------|

| | | |
|---|---------|--|
| Details of witness to the Will (if available) | Name | |
| | Address | |
| | Name | |
| | Address | |

2. DECEASED

| | | |
|-------------------------|-------------|--|
| Name of Deceased Person | Surname | |
| | Other Names | |

| | |
|------------------------------|--|
| Permanent address upon death | |
|------------------------------|--|

| | | | |
|--------------------------|----------|----------|----------|
| Date of Birth (if known) | D | M | Y |
|--------------------------|----------|----------|----------|

| | | | |
|---------------|----------|----------|----------|
| Date of Death | D | M | Y |
|---------------|----------|----------|----------|

| | | |
|--|----------------------|--|
| What was the marital status of the person who has died when he/she died? | Married | |
| | Never Married | |
| | Divorced | |
| | Judicially Separated | |
| | Widowed | |

| | |
|--|--|
| If they divorced or judicially separated, what is the name of their former spouse? | |
|--|--|

| | |
|--|--|
| What was the date of the dissolution or judicial separation? | |
| Court of dissolution or judicial separated | |

| | | |
|---|----------|--|
| Particulars of the properties of the deceased | Personal | |
| | Real | |

3. RELATIVES OF THE DECEASED

| | | | |
|---|------|---------|--|
| Did the Deceased leave any surviving spouse(s)? | Yes | | |
| | No | | |
| Details of surviving spouse(s) | Name | Address | Type of marriage (i.e. customary or otherwise) |
| | | | |

| Did the Deceased leave any surviving spouse(s)? | Name | Age | Parents of child | Address of the child |
|---|------|-----|------------------|----------------------|
| | | | | |

| | | |
|--|---------------|---------|
| Details of Parents (state if alive or dead) | Father's name | Address |
| | Mother's name | Address |

| Details of Siblings | Name | State whether of whole or half blood | Address |
|---------------------|------|--------------------------------------|---------|
| | | | |
| | | | |
| | | | |
| | | | |

4. EXECUTORS

| Details of the Executors | Name | Age | Occupation | Address | Telephone number | Email Address | Relationship |
|--------------------------|------|-----|------------|---------|------------------|---------------|--------------|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

5. DETAILS OF LEGAL PRACTITIONER (where applicable)

| Name | Address | Telephone number | Email Address |
|------|---------|------------------|---------------|
| | | | |

DECLARATION: We the Executors hereby declare that the information provided in this application is true to the best of our knowledge.

SIGNED BY THE EXECUTORS

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

**BEFORE ME
COMMISSIONER OF OATHS**

PROBATE FORM 2

APPLICATION FOR LETTERS OF ADMINISTRATION (WITHOUT WILL)

(Order 55 Rule 1)

Please complete this form using CAPITAL LETTERS, placing a tick in the box where applicable

Probate File Number

| | | |
|--|--|----------------------|
| 1. SWEARING THE OATH | | |
| You are required to swear an oath to state that the information you provide in this application is true to the best of your knowledge and belief. Where would you like to do this? | | Probate Registry Uyo |
| | | Probate Registry Uyo |

2. DECEASED

| | | |
|-------------------------|-------------------|--|
| Name of deceased person | Surname | |
| | Other names/Alias | |

| | |
|------------------------------|--|
| Permanent address upon death | |
|------------------------------|--|

| | | | |
|--------------------------|----------|----------|----------|
| Date of Birth (if known) | D | M | Y |
|--------------------------|----------|----------|----------|

| | | | |
|---------------|----------|----------|----------|
| Date of Death | D | M | Y |
|---------------|----------|----------|----------|

| | | |
|---|-----------------------------|--|
| What was the marital status of the person when he/she died? | Married | |
| | Never Married | |
| | Divorced | |
| | Judicially Separated | |
| | Widowed | |

| | |
|--|--|
| If they divorced or judicially separated, what is the name of their former spouse? | |
|--|--|

| | |
|--|--|
| What was the date of the dissolution or judicial separation? | |
| Court of dissolution or judicial separation | |

| | | |
|---|----------|--|
| Particulars of the properties of the deceased | Personal | |
| | Real | |

3. RELATIVES OF THE DECEASED

| | | | |
|---|-----|---------|---|
| Did the deceased leave any surviving spouse(s)? | Yes | | |
| | No | | |
| Details of surviving spouse(s) | | Address | Type of marriage (i.e.) customary or otherwise) |
| | | | |

| Details of children (including legally adopted children, if any) | Name | Age | Parent of each child | Address of the child |
|--|------|-----|-------------------------|-------------------------|
| | | | | |

| | | |
|--|---------------|---------|
| Details of parents (state if alive or dead) | Father's Name | Address |
| | Mother's Name | Address |

| Details of siblings | Name | State whether of whole or half blood | Address |
|---------------------|------|---|---------|
| | | | |
| | | | |
| | | | |
| | | | |

| | |
|---|--|
| Who are the beneficiaries of the Estate? | |
| | |
| | |
| | |

4. ADMINISTRATORS

| Details of the proposed Administrators | Name | Age | Occupation | Address | Telephone Number | E-mail Address | Relationship to deceased |
|--|------|-----|------------|---------|------------------|----------------|--------------------------|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

www.sabilaw.org

Note: Proposed Administrators under 18 shall be represented by his/her Guardian

5. SURETIES

| Details of the proposed Sureties | Name | Age | Occupation | Address | Telephone Number | E-mail Address | Relationship with the family |
|----------------------------------|------|-----|------------|---------|------------------|----------------|------------------------------|
| | | | | | | | |

6. DETAILS OF LEGAL PRACTITIONER (where applicable)

| Name | Address | Telephone Number | E-mail Address |
|------|---------|------------------|----------------|
| | | | |

Declaration: We the proposed Administrators hereby declare that the information provided in this application is true to the best of our knowledge.

SIGNED BY THE PROPOSED ADMINISTRATORS _____

BEFORE ME

COMMISSIONER OF OATHS

(Probate Registry)

Check list: Please submit this application form in the following requirements

Death Certificate issued by hospital/Death Certificate issued by National Population Commission/Affidavit of loss of Death Certificate and Police Report

Means of identification of the proposed Administrators (driver's License/Passport/National Identification Card/Voter's Card)

2 Passport photographs of each of the proposed Administrators

One passport photograph of the deceased person.

Bank certificate with entries by the Banks and Registrars (where applicable)

Evidence of payment for the Application Forms

Affidavits of faithful administration and accountability of Administrators

The evidence of ownership of deceased's real property/properties within Akwa Ibom State (where applicable). This may include a copy of a Certificate(s) of Occupancy/registered Deed of Assignment)/Power of Attorney/Sublease/Conveyance/a Survey Plan/approved Building Plan.

Where the value of the Estate is above 1,500,000.00 (One Million Five Hundred Thousand Naira), two Sureties will be required to be provided by the Administrators. The documents to be submitted by the sureties are as follows:

- a) The Sureties' affidavit of means (this can be deposed at the Registry)
- b) 2 (Two) passport photographs of each Surety along with copies of their means of identification (Driver's Licence/ Passport/National Identification Card/Voter's Card).
- c) A recent 6 months Bank statement of account for one of the Sureties.

- d) Evidence of ownership of real property within Akwa Ibom State for one of the Sureties. This may include a copy of a Certificate of Occupancy, a registered Deed of Assignment/ Power of Attorney/Sublease/Conveyance/a Survey Plan/approved Building Plan

OR

- a) The Sureties' affidavit of means (this can be deposited at the Registry)
- b) 2 (two) passport photographs of each Surety along with copies of their means of identification (Driver's Licence/ Passport/National Identification Card/Voter's Card)
- c) A recent 6 months Bank statement of account for one of the Sureties
- d) A Civil Servant Grade level 13 or above will be required to submit copies of the letter of employment from the Civil Service Commission, the letter of last promotion and a current payslip with originals to be provided for sighting in the place title documents.

www.sabilaw.org

PROBATE FORM 3

Surety's Guarantee on Application for Resealing

(Order 56 Rule 24(3)©

In the High Court of Akwa Ibom State

Probate Registry Suit No.....
In the Estate of..... deceased
Whereas..... of..... died on the
.....day of20..... and Letters of Administration of
his Estate were on the..... day of..... 20..... granted
by the..... to..... (and.....) and are about to be
sealed in the State under the Succession Law.

NOW THEREFORE:

1. I/WEof.....
(and..... of..... (and
of hereby (jointly and severally)
guarantee that I/WE will, when lawfully required to do so, make good
any loss which any person interested in the Administration of the Estate of
the deceased in the State may suffer in consequence of the breach by the
Administrator(s) of his/her/their duty:
9. to collect and get in the Estate of the deceased which is situated in the State
and administer it according to law;
10. when required to do so by the Court, to exhibit on oath in the Court a full
inventory of the Estate which is situated in the State and when so required,
to render an account of the Estate, or
11. the giving of time to the Administrator(s) or any other forbearance or
indulgence shall not in any way affect my/our liability under this
Guarantee.

12. The liability under this Guarantee shall be continuing and shall be for the whole amount of the loss mentioned in paragraph I above, but (my) (our) (aggregate)total liability shall not in any event exceed the sum of N.....

Dated this..... day of..... 20.....
Signed, Sealed and delivered by the above named in the presence of a Commissioner for Oaths, (or other person authorized by law to administer an oath)
(The Common Seal of..... was hereunto affixed in the presence of.....)

www.sabilaw.org

PROBATE FORM 4

Appearance to Warning/Citation

(Order 56 Rule 25(7)(a))

In the High Court of Akwa Ibom State

The Probate Registry Suit No:

Caveat No: dated the..... day of..... 20.....

Full name and address of person warning (or Citor):
.....

Interest of person warning (or Citor):

Full name and address of Caveator (or person Cited).....
.....

Date of Will:

Interest of Caveator;

Enter an appearance for the above named Caveator (or person Cited) in this matter.

Dated this..... day of20.....

.....

Legal Practitioner (or In person)

PROBATE FORM 5

Appearance to Warning/Citation

(Order 56 Rule 25(7)(b))

In the High Court of Akwa Ibom State

The Probate Registry Suit No:

Caveat No: dated the..... day of..... 20.....

Full name and address of person warning (or Citor):

.....

Interest of person warning (or Citor):

Full name and address of Caveator (or person Cited).....

Date of Will:

Interest of Caveator;

Enter an appearance for the above named Caveator (or person Cited) in this matter.

Dated this..... day of20.....

.....
Legal Practitioner (or In person)

PROBATE FORM 6

Surety's Guarantee

(Order 57 Rule 4(3))

In the High Court of Akwa Ibom State.

Probate Registry Suit No:.....

In the Estate of..... deceased.

Whereas..... of..... died on the
.....day of20..... and.....

(and.....) (hereinafter called "the Administrators"

is/are the intended Administrator(s) of his Estate.

NOW THEREFORE

1. I/WE of.....
(and..... of..... and
..... of..... hereby (jointly and
severally) guarantee that I/WE will, when lawfully required to do so, make
good any loss which any person interested in the Administration of the Estate of
the deceased may suffer in consequence of the breach by the Administrator(s) of
his/her/their duty:
4. to collect and get in the Estate of the deceased and administer it according to
law;
5. when required to do so by the Court to exhibit on oath in the Court a full
inventory of the Estate and when so required, to render an account of the Estate;
or
6. when so required by the Court, to deliver up the Grant to the Court.
7. The giving of time to the Administrator(s) or any other forbearance or
indulgence shall not in any way affect my/our liability under this Guarantee.
8. The liability under this Guarantee shall be continuing and shall be for the whole
amount of the loss mentioned in paragraph 1 above, but (my/our) aggregate
total liability shall not in
9. any event exceed the sum of N.....

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

Signed, Sealed and delivered by the above named in the presence of
..... a Commissioner for Oaths (or other person
authorized by law to administer an oath]

(The Common Seal of..... was hereunto affixed in the presence
of.....)

www.sabilaw.org

PROBATE FORM 7

Notice of Election to redeem Life Interest

(Order 57 Rule 17(1))

In the High Court of Akwa Ibom State

The Probate Registry Suit No:

In the Estate of..... deceased.

Whereas..... of..... day of..... 20.....
died..... wholly/partially intestate leaving his/her lawful wife/husband and
..... lawful issue of the said.....

And whereas Probate/Letters of Administration of the Estate of the said
..... were granted to me, the said (and
to..... of.....)

And whereas (the said has ceased to be a personal
representative because.....) and I am now the sole personal
representative:

Now, I, the said hereby give notice that I elect to redeem the life
interest to which I am entitled in the Estate of the..... Late
.....by retaining N....., its
capital value, and N....., the costs of the transaction.

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

(Signed)

.....

PROBATE FORM 8

Caveat

(Order 57 Rule 18(4)(a))

In the High Court of Akwa Ibom State

Probate Registry Suit No:

Let no Grant be sealed in the Estate of late of

..... who died on the..... day of..... 20.....

without notice to.....

Dated this..... day of20

(Signed)

.....
(Legal Practitioner for the said Caveator)

whose address for service is.....

www.sablaw.org

PROBATE FORM 9

Notice to Prohibit Grant

(Order 57 Rule 18(4)(b) & Order 57 Rule 18(5))

(In the High Court of Akwa Ibom State State)

IN THE MATTER OF DECEASED

LET NOTHING be done in the matter of.....

of deceased, who died on the..... day

of20at..... and had at the time of his death his

fixed place of abode at..... within the jurisdiction of

this Court, without warning being given to.....

of

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

.....

Signature

PROBATE FORM 10

Warning to Caveator

(Order 57 Rule 18(8))

In the High Court of Akwa Ibom State

The Probate Registry Suit No:

To:

....., a party who has entered a Caveat in the Estate of..... deceased.

You are hereby warned that within 8 days after service hereof upon you, inclusive of the day of such service

13. to enter an appearance either in person or by your Legal Practitioner at the Probate Registry, Uyo setting forth what interest you have in the Estate of the above-named.....of..... deceased contrary to that of the party at whose instance this warning is issued; or

14. If you have no contrary interest but wish to show cause against the sealing of a Grant to such party to issue and serve a Summons for direction by the Registrar of the said registry.

And take notice that in default of your so doing, the Court may proceed to issue a Grant of Probate or Administration in the said Estate notwithstanding your Caveat.

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

.....
Registrar

Issued at the instance of:

(Here set out the name and interest including the date of the Will, if any, under which the interest arose), the party warning, the name of his Legal Practitioner and the address for service, if the party warning is acting in person, this must be stated).

PROBATE FORM 11

Appearance to Warning/Citation

(Order 57 Rule 18(10)(b) & Order Rule 11(a))

In the High Court of Akwa Ibom State

The Probate Registry Suit No:

Caveat No: dated the..... day of..... 20.....

Full name and address of person warning (or Citor):

.....

Interest of person warning (or Citor):

Full name and address of Caveator (or person Cited)

Date of Will:

Interest of Caveator;

Enter an appearance for the above named Caveator (or person Cited) in this matter.

Dated this..... day of20.....

.....
Legal Practitioner (or In person)

*(To the Probate Registrar)
Regulations regarding fees*

- 15. No process, shall, except by special Order of Court, be issued until:
 - (2) all fees payable thereon as provided shall have been paid, and*
 - (3) an Account thereof initiated as received shall have been set forth by the Officer issuing the process both in the margin and in the counterfoil thereof**
- 16. All such fees shall be carried to Account immediately the process is issued and*
- 17. all documents, for or in respect of which any fee or fees shall have been paid, shall bear an indorsement initiated by the Registrar or other Officer showing the amount of the fee or fees so paid and the Receipt referring to payment, provided that when any form of process is specified, the fees thereof shall be sufficient for the Registrar or other Officer to initial the amount of such fees appearing thereon, and to quote the number of the Receipt*
- 18. Every Registrar or other Officer submitting any Writ of Summons or other Process whatever for signature by a Judge shall at the same time produce the stump of the receipt given for the fees of such process.*
- 19. No document in respect whereof a fee is payable shall be used in any legal proceeding, unless it shall have been initialled as aforesaid by the Registrar or other Officer or unless the Court shall be entitled at same time to demand the production of the stump of the Receipt given for the fees of such process.*
- 20. All fees for service, execution and mileage shall be paid into revenue.*
- 21. No hearing fee or other shall be returned, except upon a voucher, payable at the Treasury, in favour of the party entitled to receive the same and prepared at the direction of the Judge before whom the cause or matter is set down and comes on for hearing.*

FIRST SCHEDULE
FEE PAYABLE AND ALLOWANCES TO WITNESSES
IN THE HIGH COURT OF JUSTICE, AKWA IBOM STATE

PART 1 - FEES PAYABLE
FEES PAYABLE IN THE HIGH COURT ON COMMENCEMENT OF
CAUSES OR MATTERS OTHER THAN MATRIMONIAL OR
LEGITIMACY CASES

(Order 59 Rule 1)

| Item | Matter | Court Fee | N |
|------|--|-----------|---|
| 1. | For the recovery of a specific sum | | |
| | (a) Not exceeding N500,000 | 2,000.00 | |
| | (b) Exceeding N500,000 but not exceeding N1,000,000 | 5,000.00 | |
| | (c) Maximum fee | 10,000.00 | |
| 2. | For the recovery of an unspecified sum, the fee payable is the same as the Maximum fee under item 1 (c) namely, | 10,000.00 | |
| 3. | For an account to be taken and payable of the sum found due | | |
| | (a) initial fee | 1,000.00 | |
| | (b) second fee (payable before setting down for judgment): N100 per N1,000 Or part thereof found due in excess of N2,000 | 100.00 | |
| | (c) Maximum fee | 3,000.00 | |
| 4. | For possession of property, as between landlord and tenant — | | |
| | (a) where the annual rent or value does not exceed N12,000 | 100.00 | |
| | (b) where the annual rent or value exceeds N12,00 per N6,000 or part thereof | 600.00 | |
| | (c) maximum fee | 10,000.00 | |
| 5. | For a declaration of Right of Occupancy to land | 2,000.00 | |
| 6. | Claim for possession of property (other than as between landlord and tenant). | 2,000.00 | |

7. For the administration of the property of a deceased person where there is no dispute regarding succession or distribution:
- (a) Where the gross value of the property does not exceed N100,000.00 N2,000.00
 - (b) Where the gross value of the property exceeds N100,000.00 but is not up to N10m N2000.00 per N1,000,000.00
 - (c) Where the gross value of the property is in excess of N10m but is not up to N25m N3,000 per N100,000.00
 - (d) Where the gross value of the property is in excess of N25m N5,000.00 per N100,000.00.
 - (e) Where no value is specified N7,000.00
8. For the administration of the property of a person of unsound mind: same as under item 7.
9. For the determination of question relating to the distribution, of succession to the property of a deceased person, or to the Trust whether the person who created the Trust is dead or alive:
- (a) Where the gross value of the property does not exceed N100,000.00 N2,000.00
 - (b) Where the gross value of the property exceeds N100,000.00 but is not up to N10m 2,000.00 per N100,000.00
 - (c) Where the gross value is in excess of N10m but not up to N25m N3,000.00 per N100,000.00
 - (d) Where the gross value of the property is in excess of N25m N5,000.00 per N100,000.00
 - (e) Where no gross value is specified N7,000.00
10. For any relief or assistance not specifically provided for N1,000.00
11. Fast Track filing fees N100,000.00

MATRIMONIAL CAUSES COURT FEES

| | | |
|-----|--|----------|
| 12. | Filing an application under section 30 of the Matrimonial Causes Act, for leave to institute proceedings | 5,000.00 |
| 13. | Filing a petition or supplementary petition | 2,000.00 |
| 14. | Sealing a notice of petition or notice of proceedings in place of a lost notice | 500.00 |
| 15. | Sealing a concurrent notice of petition or notice of proceedings | 500.00 |
| 16. | Extending the time for serving a notice of petition or notice of proceedings | 1,000.00 |
| 17. | Filing an answer or supplementary answer by which the Respondent to a petition institutes proceedings of a kind referred to in paragraph (a) or (b) of the definition of ‘matrimonial cause’ in section 114 of Matrimonial causes Act, that is to say — | |
| | (a) Proceedings for a decree of — | |
| | (i) Dissolution of marriage; | |
| | (ii) Nullity of marriage; | |
| | (iii) Judicial separation; | |
| | (iv) Restitution of conjugal rights; or | |
| | (v) Jactitation of marriage | 2,000.00 |
| | (b) Proceedings for a declaration of the validity of the dissolution or annulment of a marriage by decree or otherwise or of a decree of judicial separation, or for a declaration of the continued operation of a decree of judicial separation, or for an order discharging a decree of judicial separation. | 2,000.00 |
| 18. | Filing any other answer or supplementary answer | 1,000.00 |
| 19. | Filing a reply by a party cited by a person named in answer | 1,000.00 |
| 20. | Amending a pleading by virtue of paragraph (a) of Order VIII, Rule 3 of the Matrimonial Causes Rules | 500.00 |
| 21. | Filing a notice of address for service | 500.00 |
| 22. | Filing a notice of change of address for service | 500.00 |
| 23. | Filing a request, under Rule 39 of Order XI of the Matrimonial Causes Rules, to set an undefended suit down for trial | 500.00 |

| | | |
|-----|---|----------|
| 24. | Filing a request, under Rule 41 of Order XI of the Matrimonial Causes Rule, to set a defended suit down for trial | 500.00 |
| 25. | Issuing a certificate that a decree has become absolute | 1,000.00 |
| 26. | Filing an application under the Third Schedule to the Matrimonial Causes Act | 500.00 |
| 27. | Filing an application to the Court, other than an application referred to in item 11 or 15 | 500.00 |
| 28. | Filing an application for a certificate of means, not being an application filed as a result of a Registrar being unable to make an assessment until the Certificate has been issued | 500.00 |
| 29. | Filing any other application to a Registrar | 500.00 |
| 30. | Filing a request for assessment of maintenance pending suit | 500.00 |
| 31. | Filing a request to refer proceedings for ancillary relief, other than Proceedings instituted by the filing of an application, to the Court under Rule 7 or 20 of Order XIV of the Matrimonial Causes Rules | 500.00 |
| 32. | Filing a request to refer maintenance proceedings to the Court under Rule 11 or Order XIV of the Matrimonial Causes Rules | 500.00 |
| 33. | Stating, at the request of a party, a matter for the opinion of the Court under Rule 10 of Order XIX of the Matrimonial Causes Rules | 500.00 |
| 34. | Filing a request for a review of a Registrar's decision | 500.00 |
| 35. | Filing a consent order, other than a consent order determining proceedings instituted by application to the Court determining an application made to a Registrar | 500.00 |
| 36. | Giving a certificate of a decree or order for registration in another Court | 1,000.00 |
| 37. | Registering a decree or order under Section 89 of the Matrimonial Causes Act | 1,000.00 |
| 38. | Filing a request, under Rule 5 of Order VI of the Matrimonial Causes Rules, for service in a Country that is a party to a Convention regarding Legal Proceedings in Civil and Commercial matters | 500.00 |

39. Filing a notice of intervention by a person other than the Attorney-General or a delegate of the Attorney-General 500.00
40. All other fees payable shall be in accordance with the fees payable under the Rules of Court or other provisions relating to the practice and procedure of the High Court

LEGITIMACY CASES

41. For the petition 1,000.00
42. For a sealed decree or copy thereof 500.00

PROBATE AND ADMINISTRATION

43. On drawing up an administration decree 500.00
44. On drawing up order on further consideration where the property administered exceeds N50,000 1,000.00
45. On filing application for probate or administration 2,000.00
46. On filing oath of executor or administrator 500.00
47. On taking justification of sureties: for each surety 500.00
48. On filing administration bond 500.00
49. On entering a caveat 1,000.00
50. On every warning to a caveat 500.00
51. On probate or letter of or order for administration: where the value of the property affected by the grant or Order:
- (a) Does not exceed N50,000 250.00
- (b) Exceed N50,000 but does not exceed 100,000 500.00
- (c) Exceeds N100,000 but does not exceed N1,000.00 per N100,000 or part thereof 1,000.00
- (d) Exceeds N1,000,000: per N200,000 or part thereof 10,000.00
52. On inventory taken by a Court Officer 500.00
- (a) For the first three hours or part thereof.
- (b) For every subsequent hour or part thereof 500.00
53. On application to search index to a grant or Will or to inspect a grantor Will 1,000.00
54. On deposit of Will for safe custody 1,000.00

**APPLICATIONS, AFFIDAVITS, JUDGMENTS, ORDERS,
SECURITY BONDS, WARRANTS AND WRITS**

| | | |
|-----|--|----------|
| 55. | On application for warrant to detain a ship | 5,000.00 |
| 56. | On application for a writ of Habeas Corpus | 1,000.00 |
| 57. | On filing any other application: | |
| | (a) if alone | 1,000.00 |
| | (b) if accompanied by other papers | 1,500.00 |
| 58. | On filing an affidavit | 500.00 |
| 59. | On filing a security bond | 500.00 |
| 60. | On filing any other paper | 500.00 |
| 61. | On justification of sureties: for each surety | 500.00 |
| 62. | For the issue of a warrant to detain an absconding defendant | 5,000.00 |
| 63. | For the issue of a writ of Habeas Corpus | 1,000.00 |
| 64. | For the drawing up of any order or judgment | 500.00 |
| 65. | For a special interpreter of a language not in common use per day or part thereof, as the Court may order | 500.00 |
| 66. | For an inquiry by a court Officer where so ordered: for each sitting | 1,000.00 |
| 67. | for an account taken by a Court officer where so ordered per N100.00 or part thereof found to have been received | 500.00 |
| 68. | For taking down a person's statement where so ordered as the Court may direct | 500.00 |
| 69. | For searching the archives: for each period of six months or part thereof | 500.00 |
| 70. | for drawing up a bill of costs where so directed per folio of 72 words | 500.00 |
| 71. | For taking costs where so directed: per N5,000 or part thereof | 500.00 |
| 72. | For preparing a copy where authorized; per folio of 72 words | 500.00 |
| 73. | For every subpoena | 500.00 |
| 74. | on warrant for prisoner to give evidence | 500.00 |

| | | |
|-----|---|----------|
| 75. | On commission to take evidence: | |
| | (a) out of the jurisdiction | 1,000.00 |
| | (b) maximum fee payable | 500.00 |
| 76. | For attesting the execution or signature of an instrument (other than an instrument regarding payment of pension by Government) not otherwise provided for | 1,000.00 |
| 77. | For swearing an affidavit or making a declaration (other than under section 20 of the Sales by Auction Law or the Marriage Act or one required by the regulations of a Government) per deponent | 1,000.00 |
| 78. | For marking any paper annexed to an affidavit or declaration | 500.00 |
| 79. | For sealing any document not in a proceeding | 500.00 |
| 80. | For certifying a copy as a true copy per folio of 72 words or part thereof | 500.00 |
| 81. | For payment into Court (except when ordered by the Court or proceeds of execution): | |
| | (a) Not exceeding N50,000: per N 1,200 or part thereof | 1,200.00 |
| | (b) Maximum fee payable | 1,500.00 |
| 82. | On appointment of Commissioner to administer oaths and take declarations (not being a Government Officer) | 500.00 |
| 83. | For sealing a letter of request | 500.00 |
| 84. | On transfer of a foreign judgment | 1,000.00 |
| 85. | for certificate of service of foreign process (where not disallowed by convention) | 1,000.00 |
| 86. | On every petition to the Chief Judge or a judge or a Registrar (not being an application otherwise provided for) unless waived by a judge or the Chief Registrar | 500.00 |
| 87. | For the service of any document or process initial fee plus kilometre charges. | |
| | (a) If within a kilometre from the Court | 500.00 |
| | (b) For every subsequent distance or part thereof (one way) | 500.00 |
| | (c) if beyond five kilometres per day or part thereof of the time needed for travelling | 1,000.00 |

88. On application to transfer a civil case before the High Court from one judge to another, or to a Magistrate, or to a Customary Court, save where the application is allowed to be made orally at the hearing of the case 2,000.00
89. On an order transferring a civil case before the High Court from the judge to another, or Magistrate's Court or to a Customary Court, where the order is made on the application of a party 2,000.00
90. On an application to the Chief Judge or a Judge to transfer a Civil case from one Magistrate's Court to another Magistrate's Court or to the High Court, or from one Magistrate to another within the same district 2,000.00
91. On an order transferring a civil case from one Magistrate's Court to another Magistrate's Court or the High Court, or from one Magistrate to another within the same district where the order is made on the application of a party 2,000.00
92. On setting down for hearing a civil case transferred from a Magistrate's Court to the High Court, whether or not the transfer was made on the application of a party, the difference between the fee for instituting the case in the Magistrate's Court and the fee which would have been charged had the case been instituted in the High Court in the first instance, or whichever be the greater 500.00
93. On setting down a civil case transferred to or ordered to be retrieved by the High Court, where the transfer or Retrieval was ordered on the application of a party: the fee which would have been paid if the case had been instituted in the High Court.
94. Appeals
- (a) on the petition, if in time 500.00
 - (b) on the petition if out of time 1,000.00
 - (c) if not dismissed summarily, on setting down for hearing.. 500.00
 - (d) copies of Customary Court record or petition of appeal, whether for use of Court or of respondent per folio of 72 words 20.00
95. Giving notice to a respondent 500.00
96. For proceedings or services other than those provided for in Items 92 to 94 the same fees as are chargeable in a case Begun in the High Court.

**FEES PAYABLE IN CRIMINAL APPEALS FROM THE
MAGISTRATE'S COURTS**

97. (a) Fees payable to Magistrates' Courts: upon giving or
Recording notice of appeal (whether verbal or in writing) 500.00
- (b) Filing memorandum on grounds of appeal 1000.00
- (c) Service of grounds of appeals on, or notice to respondent 500.00
- (d) Certified copy of proceedings per folio 20.00
- (e) Copies thereof for respondent per folio 20.00
98. Fees payable to the High Court: entering an appeal to the
Court of Appeal on a matter of law 2,000.00
99. (a) fees payable to Magistrates' Courts or High Courts: on every
subpoena (unless specially directed by the Court
to be issued) 500.00
- (b) Service of subpoena 500.00

**FEES PAYABLE IN CIVIL APPEALS FROM THE
MAGISTRATES' COURT**

100. On an application under section 54(3) of the Magistrates' Courts Law or
on filing a notice of appeal 1,000.00
101. in respect of any other matter or service the following fee shall be paid:
- (a) Where the matter or service is to be done or rendered in the
Magistrate's Court 500.00
- (b) Where the matter or service is to be done or rendered in
the High Court 500.00

SECOND SCHEDULE
ALLOWANCES TO WITNESSES

| | |
|---|----------|
| Professionals, mercantile agents, bank managers, surveyors and any officer of the public service whose salary is not less than Grade Level 08 | 1,000.00 |
| Merchants, captains of ships, mercantile assistants and officers in the public service whose salary is less than Grade Level 08 or its equivalent | 1,000.00 |
| Auctioneers, master tradesmen, pilots, clerks and the like | 1,000.00 |
| Artisans, journey men and the like | 1,000.00 |
| Servants, labourers, canoe men and the like | 1,000.00 |
| Others not specifically provided for or whose income is less than N1,200 per annum | 1,000.00 |
| Transport Allowance: | |
| (a) By private car per kilometre | 300.00 |
| (b) By private motorcycle per kilometre | 200.00 |

NOTE:

The travelling expenses of witnesses shall be allowed according to the sums reasonably and actually paid by them.

No allowance is payable to an officer of the public service who is summoned as a witness by the State or by any department of the Government. In all other cases he is allowed costs and travelling expenses as if he were not in the public service.

Fees, costs and expenses payable to an officer in the public service shall be paid into revenue unless otherwise ordered.

**THIRD SCHEDULE
NOTARIES' FEES OF OFFICE**

| | Court Fee |
|---|------------------|
| Noting protest on bill or note | 500.00 |
| Extending protest on bills of exchange or promissory notes. | 500.00 |
| Should the acceptor or drawer of a bill or note reside out of town, and the notary present the bill or note, a further charge for the first two kilometres of | 500.00 |
| And for additional two kilometres | 500.00 |
| Minuting or noting ship's protest | 500.00 |
| Extending ship's protest | 500.00 |
| Furnishing copy of extended protest | 500.00 |
| Attestation to any document | 500.00 |
| Declaration thereto for each additional declarant | 500.00 |
| Attendances each | 1,000.00 |
| Translations | |
| For every folio of seventy-two words | 00.50 |
| Attestation to translation | 500.00 |
| Translation of common attestation to power for stocks | 500.00 |

**FOURTH SCHEDULE
FEES FOR REGISTRATION OF JUDGMENTS**

| | |
|---|----------|
| Registration of a Certificate of a Judgment of a High Court | 2,000.00 |
| Registration of common attestation to power for stocks | 1,000.00 |

FIFTH SCHEDULE
REGULATIONS REGARDING FEES

Fees to be paid before issue of process

1. No summons, warrant writ or subpoena shall except by special Court be issued until:
 - (a) All fees payable thereon as contained in the appropriate schedule of fees shall have been paid: and
 - (b) An account thereof, initialled as received, shall have been set forth by the officer issuing the process both in the margin and in the counter-foil thereof.

Fees to be carried to account on process being signed

2. All such fees shall be carried to account immediately on the process being signed by the Judge.

Documents to be endorsed with amount of fees and number of receipt.

4. Every document, for or in respect of which any fee or fees shall have been paid, shall bear an endorsement initialled by the Registrar or other officer showing the amount of the fee or fees so paid and the number on the receipt referring to the payment: Provided that when any form of process specifies the fees thereof, it shall be sufficient for the Registrar or other officer to initial the amount of such fees appearing thereon, and to quote the number of the receipt.

Counterfoil receipt to be produced on signature.

4. Every Registrar or other officer submitting any writ of summons or other process whatever for signature by a Judge shall at the same time produce the stump of the receipt given for the fees of such process.

No document to be used, unless fee paid

5. No document in respect whereof a fee is payable shall be used in any legal proceedings, unless it shall have been initialled as aforesaid by the Registrar or other officer or unless the Court shall be otherwise satisfied that the proper fees in respect thereof have been paid.

Fees for service, etc, to be paid into revenue

6. All fees for service, execution and mileage shall be paid into revenue

Mode of returning fees.

7. No hearing fee or other fee shall be returned except upon a voucher payable at the Treasury, in favour of the party entitled to receive it and prepared at the direction of the Judge before whom the cause or matter is set down and comes on for hearing.

www.sabilaw.org

SIXTH SCHEDULE
MISCELLANEOUS PROVISIONS ON FEES

- | | | |
|-----|---|------------|
| (a) | On filing of motion for stay of Execution pending appeal but before execution of judgment | 2,000.00 |
| (b) | (i) On filing of motion for stay of execution after execution of judgment | 2,000.00 |
| | and | |
| | (ii) Demurrage fees for a period not exceeding 60 Days of pendency of motion | 15,000.00 |
| (c) | For every day after 60 days, N200 demurrage fees till determination of application by the High Court. | |
| (d) | Any party who defaults in performing an act within the time authorised by the Judge or under these Rules, shall pay to the Court an additional fee of N200 for each day of such default at the time of the application for extension of time. | |
| (e) | Fast Track Filing fee | 100,000.00 |

All such demurrage fees shall be paid into the Treasury of the Court and such payment shall be a precondition to the hearing of an application for the release of any property attached by a Court order or the release of such property except otherwise ordered by the Court.

Subject to Order Rules 12 and 13 of these Rules, all Government Ministries, Departments, Parastatals, Agencies and Pro-bono volunteer advocacy bodies approved by the Chief Judge are exempt from payment of filing fees in this scale of filing fees and are to be treated as official.

Made at..... this..... day of..... 2023 by the Honourable Chief Judge of Akwa Ibom State, Hon. Justice Ekaette F. F. Obot

SEVENTH SCHEDULE
REGULATIONS REGARDING FEES

Fees to be paid before issue of process

1. No process shall, except by special order of Court, be issued until:
 - (a) All fees payable thereon as provided shall have been paid, and
 - (b) An account thereof, initiated as received shall have been set forth by the Officer issuing the process both in the margin and in the counterfoil thereof.
2. All such fees shall be carried to account immediately the process is issued.

Fees to be carried to account on issued process being signed

3. Every document, for or in respect of which any fee or fees shall have been paid, shall bear an indorsement initialled by the Registrar or other Officer indorsed with showing the amount of the fee or fees so paid and the receipt referring to the amount of fees payment:

Provided that when any Form of process specifies the fees thereof, it shall be sufficient for the registrar or other officer to initial the amount of such fees appearing thereon, and to quote the number of the receipt.

Documents to be indorsed with amount of fees and number of receipts.

4. Every Registrar or other Officer submitting any Writ of Summons or other process whatever for signature by a Judge shall at the same time produce the stump of the receipt given for the fees of such process.

Counterfoil receipt to be produced or signature: No document to be used unless fees unless fees are paid.

5. No document in respect whereof a fee is payable shall be used in any legal proceeding, unless it shall have been initialled as aforesaid by the Registrar or other Officer or unless the Court shall be satisfied that the proper fees in respect thereof have been paid.
6. All fees for service, execution and mileage shall be paid into revenue.
7. No hearing fee or other fee shall be returned, except upon a voucher, payable at the Treasury, in favour of the party entitled to receive the same and prepared at the direction of the Judge before whom the cause or matter set down and comes on for hearing

MEMBERS OF THE HIGH COURT RULES COMMITTEE

Hon. Justice Ekaete F. Fabian-Obot (Honourable Chief Judge) *Chairman*

Hon. Justice Archibong E. Archibong *(Alternate Chairman)*

Mrs. Mfon Edemekong

(Representative of the Hon. Attorney-General & Commissioner for Justice)

Ekpenyong Ntekim, Esq.

Samuel Ikpo, Esq.

David Ekpo, Esq.

Anieflok Ekwere, Esq.

Torosco Bright Eyene, Esq.

Ememobong Nicholas, Esq.

Secretary:

The Chief Registrar

www.sabilaw.org