



**BAUCHI STATE HIGH COURT
(CIVIL PROCEDURE) RULES
2022**

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BAUCHI STATE HIGH COURT CIVIL PROCEDURE RULES, 2022

In exercise of the powers conferred on me by Section 274 of the Constitution of the Federal Republic of Nigeria 1999 and all powers enabling me in that behalf I, Hon. Justice Rabi Talatu Umar, Chief Judge of the High Court of Bauchi State make these Rules:

1. The Civil Procedure Rules set out herein be the rules of Civil Procedure to be followed in the High Court of Bauchi State.
2. Where a matter arises in which no provisions or no adequate provisions exist in the Rules, the Court shall adopt such procedure as may, do substantial justice between the parties concerned. *The Civil Procedure Rules*
3. (1) A reference in these Rules to anything done under these Rules include a reference to anything done before the commencement of these Rules under any corresponding law or Rule of Court ceasing to have effect on the commencement of these Rules. *Were no Rules exist*
(2) Except where the context otherwise requires, any reference in these Rules to any enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment *Construction of reference to law, Rules*
4. The Forms set out in the Appendix to the Schedule shall be used where applicable with such variations as the circumstances of a particular case may require.
5. The Bauchi State High Court (Civil Procedure) Rules 1987 and all other corresponding legislation or subsidiary legislation applicable in the state and affecting practice and procedure in the High Court are hereby repealed. *Forms*
Provided that all acts done or proceedings taken or conducted pursuant to or in accordance with the said rules, legislations or subsidiary legislations before the commencement of this Law shall be deemed to have been validly done, taken or conducted in accordance with the provisions of this Law. *Amendment*
6. These Rules may be cited as the High Court of the Bauchi State (Civil Procedure) Rules 2022. *Short title*

Dated this..... day of2022.

Hon. Justice Rabi Talatu Umar
Chief Judge,
Bauchi State High Court, Bauchi.

COMMENCEMENT

These Rules shall come into effect on the day of **2022**

ORDER 1

Application and Interpretation

Application

(1) These rules shall apply to all proceedings including all part-heard cases, causes and matters in respect of steps to be further taken in such cases, causes and matters. The Court shall give such directions, as may be necessary or expedient to ensure conformity with the requirement of these Rules.

(2) Application of these Rules shall be directed towards the achievement of a just, efficient and expeditious dispensation of justice. Parties and Counsel shall be assisting the Court to further the overriding objectives of these Rules.

*Practice
Directions*

(3) The Chief Judge may give practice directions, generally or in respect of a particular case, for carrying out any of the rules in these Rules.

*Interpretation
of Terms*

(4) These Rules shall be interpreted in accordance with the Interpretation Act, or any re-enactment

(5) 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:

"Attorney-General" means the Attorney-General of Bauchi State.

"Chief Judge" means the Chief Judge of the High Court of Bauchi State.

"Claimant" means a party initiating an action and shall include a counter claimant.

"Convention country" means a foreign country with whom Nigeria share legal commitments on a matter.

"Court" means the High Court of Justice Bauchi State.

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

"Decision" means any decision of a court and includes judgment, ruling, decree, order, conviction, sentence or recommendation.

"Defendant" shall include a defendant to a counter claim,

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

"Law" means the High Court Law of Bauchi State, Act or any re- enactment.

"Legal Practitioner" means a Law Officer, a State Counsel or a person authorized to practice law in Nigeria.

"Minor" means a person who has not attained the age of 18 years.

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

"Person under legal disability" means person who lacks capacity to institute or defend any proceedings by reason of age, insanity, unsoundness of mind or otherwise.

"Probate action" means an action for the grant of probate of the will, or letters of administration of the estate of a decree pronouncing for or against the validity of an alleged will, not being an action that is non-contentious or common form probate business.

"Process Server" means any person or electronic means authorized to serve a court process under any enactment, regulation or rule of court.

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

"Registry" means the registry of the High Court of Bauchi State in the appropriate judicial division.

"Return date" means the day endorsed on a writ for the first appearance of the parties before a Court or any other date as the court may appoint and in the case of the undefended list it is the day fixed for hearing.

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

ORDER 2

Form and commencement of action

Mode of commencing Proceedings

1. Subject to the provisions of any enactment or rules of Court, civil proceedings may be begun by writ, originating summons, originating motion or petition.

Proceedings to commence by writ

2. (1) The under listed proceedings shall be commenced by writ except any applicable law requires that the proceedings shall be begun otherwise, than by writ:

a. Proceedings in which 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 in respect of damage or injury to any property.

b. Where the claim is based on or includes an allegation of fraud, or

c. Where an interested person claims a declaration.

Documents accompanying Writ

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

- (a) Statement of claim.
- (b) List of witness(es) to be called at the trial,
- (c) Written statements on oath of the witnesses, except a subpoenaed witness,
- (d) Copies of every document to be relied on at the trial and
- (e) Certificate of pre-action counselling; as in Form 6 and
- (f) An affidavit of non-multiplicity of action on the same subject matter

Pre-action counseling - Civil Form 6

- (3) The Claimant shall provide as many copies of the processes listed in Par (a) - (e) above for the use of the Court and as there are defendants to be served.

Form of Writ Civil Forms 1, 33

- (4) Where a claimant fails to comply with rules (2) and (3) above, his originating process shall not be accepted for filing by the registry.
- (5) Except in cases in which different forms are provided in these rules, the writ of summons shall be as in Form 1 with such modifications or variations as circumstances may require as in Form 33 (Fast Track).

- (6) 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. *Form of Writ for Service out of Nigeria
Civil Form 2*
3. (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. *Proceedings that may be begun by Originating Summons*
- (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. *Construction of an enactment*
- (3) The court shall not be bound to determine any such question of construction if in its opinion it ought not to be determined on originating summons but shall order pleadings. *Discretion of the court*
- (4) An originating summons shall be as in the Forms 3, 4 or 5 to these rules, with such variations as circumstances may require. It shall be prepared by the applicant or his legal practitioner, and shall be sealed and filed in the registry, and when so sealed and filed shall be deemed to be issued. *Forms of Originating Summons
Civil Forms 3, 4, 5*
- (5) An originating summons shall be accompanied by:
- (a) An affidavit setting out the facts relied upon;
 - (b) All the exhibits to be relied upon;
 - (c) A written address in support of the application;
 - (d) Certificate of pre-action counselling.
 - (e) An affidavit of non-multiplicity of action on the same subject matter
- Documents Accompanying Originating Summons*
- (6) The Claimant shall provide as many copies of the processes listed in (a) - (d) above for the use of the Court and as there are defendants to be served. *Penalty for non-compliance*
- (7) Where the Applicant fails to comply with rules (5) and (6) above, his originating process shall not be accepted for filing by the Registrar *Service outside Bauchi State*
4. Subject to the provision of the Sheriffs and Civil Process Act, a writ of summons or other originating process issued by the court for service in Nigeria outside Bauchi 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 Bauchi State and in theState".*
- Endorsement of date and time of filing*
5. (1) The Registrar shall indicate the date and time of presentation for filing on every originating process presented to him and shall arrange for service to be effected.
- (2) An originating process shall not be altered after it is sealed except upon an application to the court.
6. Proceedings may be commenced by originating motion or petition where these Rules or any written Law provide *Proceedings to be commenced by motion or petition*

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| Screening for ADR Matters | 7. All Originating Processes shall upon acceptance for filing by the registry be screened for suitability for ADR, and where it is considered appropriate, the chief judge may refer the case to:
(1) The Bauchi Multi Door Court House.
(2) Or other appropriate ADR institutions or practitioners in accordance with the practice directions that shall from time to time be issued by the Chief Judge. |
| <i>Certificate of pre-action counseling</i> | 8. A certificate of pre-action counseling signed by counsel and the litigant shall be filed along with the originating processes where proceedings are initiated by counsel, showing that the parties have been appropriately advised as to the relative strength or weakness of their respective cases, and the counsel shall be personally liable to pay the costs of the proceedings where it turns out to be frivolous, as in Form 6. |
| Affixing of NBA Seal by Counsel on Court processes | 9. All processes filed at the Registry, shall bear the seal of the Counsel filing the suit as provided by the Nigerian Bar Association, showing that the Counsel is fully enrolled as a legal practitioner and qualified to practice in Nigeria. |

ORDER 3
Place of Institution and Trial of Suits

Subject to the provisions of the High Court of Bauchi State Law on transfer of suits, the place for trial shall be regulated as follows:

Suits relating to land and property distrained or seized

1. All suit relating to land or any mortgage or charge on land or any interest in land, or any inquiry or damage to land and actions relating to personal property distrained or seized for any cause, may be commenced and determined in the judicial division in which the land is situated, or the distraint or seizure took place.

Suits for recovery of penalties, forfeitures and against public officers

2. All actions for recovery of penalties, forfeitures, and all actions against public officers may be commenced and tried in the judicial division in which the cause of action arose.

Suits upon contracts

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

Other suits

4. (1) All other suits may be commenced and determined in the judicial division in which the defendant resides or carries on business.
(2) Where there are several defendants who reside or carry-on business in different judicial divisions, the suit may be commenced in any one of those judicial divisions subject to any order or direction the court may make or gives as to the most convenient venue for trial of the suit.

5. Suits and interlocutory applications may be filed and served by Counsel vide electronic means. The Chief Judge may issue practice directions for the modalities and operation of electronically filed processes. *Electronic service*
6. If any suit is commenced in the wrong judicial division, it may be tried in that division unless the Chief Judge otherwise directs. *Suits commenced in wrong judicial division*

ORDER 4
Endorsement of Claim and Address

1. Every originating process shall contain a concise summary of the claim, the relief or remedy sought and the full names and address of the Claimant and the Defendant(s). *Summary of claim, particulars of parties*
2. Where a claimant sues, or the defendant or any of several defendants is sued in a representative capacity, the originating process shall state that capacity. *Endorsement to show representative capacity*
3. In probate actions the originating process shall state whether a claimant claims as creditor, executor, administrator, beneficiary, next of kin or in any other capacity. *Probate action*
4. (1) Where the claim is for debt or liquidated demand only, the originating process shall state the amount claimed for debt or in respect of such demand with costs and shall further state that the defendant may pay the amount with costs to the claimant's legal practitioner within the time allowed for appearance and that upon such payment the Proceedings shall terminate.
(2) The defendant may notwithstanding payment under this rule, have the cost taxed and if more than one sixth of the cost shall be disallowed, the claimant's legal practitioner shall pay the cost of taxation. *Endorsement for liquidated demand*
5. In all cases where a claimant in the first instance desires to have an account taken, the originating process shall so state. *Endorsement for an account*
6. (1) A claimant suing in person shall state on the originating process his address for service. If he lives and carries on business outside the jurisdiction, he shall state an address within the jurisdiction as his address for service.
(2) Where a claimant sues through a legal practitioner, the legal practitioner shall state on the originating process his address for service. If the legal practitioner is based outside the jurisdiction, he shall state an address within the jurisdiction as his address for service, telephone number(s) and email address. *Endorsement of address by claimant or legal practitioner*
7. Where an originating process is to be served on a defendant outside the jurisdiction the process shall state the address as provided in rule 6 of this Order. *Endorsement of address*

Consequence of non-disclosure and invalid address 8. Where the originating process does not state an address for service, it shall not be accepted by the Registrar and if any such address is illusory, fictitious or misleading, the Court may on the application of the defendant set aside the process.

Status quo Forms 1, 2, 3, 4, 5. 9. Every Originating process shall contain an endorsement by the Registrar that parties maintain status quo until otherwise ordered by the Court.

ORDER 5
Effect of Non-Compliance

Non-compliance with rules 1. (1) Where in beginning or purporting to begin any proceedings there has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, such failure shall not nullify the proceedings.
(2) Where at any stage in the course of or in connection with any proceedings there has by reason of anything done or left undone been a failure to comply with the requirements as to time, place, manner, or form, such failure may be treated as an irregularity. The court may give any direction as he thinks fit to regularize such steps.
(3) The court shall not wholly set aside any proceedings or writ or other originating process by which they were begun on the ground that the proceedings were required by any of this Rules to be begun by an originating process other than the one used.

Setting aside for irregularity 2. (1) An application to set aside for irregularity any step taken in the course of any proceedings may be allowed where it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.
(2) An application under this rule may be made by summons or motion and the grounds of objection shall be stated.

ORDER 6
Issue of Originating Process

Originating process to be printed on A4 paper 1. Originating process shall be prepared by a claimant or his legal practitioner, and shall be clearly printed on A4 good quality paper.

Sealing of originating process 2. (1) The Registrar shall seal every originating process and it shall be deemed to be issued.
(2) The claimant shall provide as many copies of the originating processes filed for the use of the Court and for service on the defendant(s).
(3) Each copy shall be signed by the legal practitioner or by a claimant where he sues in person and shall be certified after verification by the Registrar as being a true copy of the process filed.

Procedure after sealing 3. The Registrar shall after sealing an originating process:

- (a) Open a file;
(b) State in the file the number of copies supplied by the claimant;
(c) Endorse on the file the suit number, parties and date of filing, and
(d) Enter in the cause book (c) above
4. The Registrar shall promptly effect or cause to be effected by personal service of the originating process and accompanying documents duly certified on each defendant as provided under rule 2 (3) of this Order. *Copies to be served*
5. The originating process in probate actions shall be accompanied by an affidavit sworn to by a claimant or one of several claimants verifying the contents of the process. *Affidavit accompanying probate action*
6. (1) The life span of every originating process shall be 6 months. *Renewal of originating process*
(2) Where a Court is satisfied that it has proved impossible to serve an originating process on any defendant within its life span and a claimant applied before its expiration for renewal of the process, the Court may renew the original or concurrent process for three months from the date of such renewal. *Civil form 7*
A renewed originating process shall be as in Form 7 with such modifications or variations as circumstances may require.
7. The Court may order two renewals in each case strictly for good cause and upon prompt application, provided that no originating process shall be in force for longer than a total of nine months. The chief Registrar shall state the fact, date, and duration of renewal on every renewed originating process. *Endorsement of renewal*
8. Where an originating process is lost after issue, the Court may accept copy of the certified process in place of the lost one. *Loss of originating process*
9. (a) An originating process for service within jurisdiction may be issued and marked as a concurrent originating process with one for service within and for service outside jurisdiction. *Concurrent originating process and service*
(b) A claimant may at the issuance of an originating process or at any time during its life span, cause to be issued one or more concurrent originating processes each to bear the same date as the initial process marked "**CONCURRENT**" and have stated on it the date of issue.

ORDER 7
Service of processes

1. (1) Service of originating process shall be made by a Sheriff, Deputy Sheriff, Bailiff, Special Marshal or other officer of the court. The Chief Judge may also appoint and register any law chambers, courier companies or any other person or by electronic means. *Persons to serve originating process*
(2) Any person or corporate body serving a process pursuant to sub rule 1 above shall have the privileges and liabilities of an officer of the Court. The expenses of such special service shall be defrayed by the party on whose application

he is appointed unless the Court in any case sees reason to vary this rule.

(3) Where a party is represented by a legal practitioner service of court process of which personal service is not required may be made on such legal practitioner or on a person under his control.

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| <i>How to effect service</i> | 2. | An officer of court or process server shall serve an originating process by delivering to the party to be served a copy of the process duly certified as provided by Order 6 Rule 2(3). |
| <i>Service on legal practitioner</i> | 3. | No personal service of an originating process shall be required where the defendant has authorized his legal practitioner in writing to accept service and such legal practitioner enters appearance. |
| <i>Mode of service when not personal</i> | 4. | All processes for which personal service is not expressly required by these rules or any applicable law either on an individual, company or business shall be sufficiently served if left with an adult person resident or employed at the address for service given under Order 4 Rule 6 or if served by any other means as the court may order. |
| <i>Person under legal disability</i> | 5. | (1) Where a person under legal disability is a defendant, service on his guardian shall be deemed good and sufficient personal service, unless the court otherwise orders.
Provided that personal service on a minor who is over 16 years of age living independently or doing business is good and sufficient.
(2) The court may order that personal service on a person under legal disability shall be deemed good and sufficient. |
| <i>Prisoner or Detainee</i> | 6. | Where a detainee or prisoner is a defendant, service on the head or other officer in charge of the station, facility or correctional centre where the defendant is, or on an officer of the agency in charge of the station, facility or correctional centre shall be deemed good and sufficient personal service on the defendant. |
| <i>Partners</i> | 7. | (1) Where persons are sued as partners in the name of their firm, the originating process shall be served upon any one or more of the partners at the place of business within the jurisdiction or upon any person having control or management of the firm.
(2) The service of the originating process shall be deemed good service upon the firm whether any of the members are out of the jurisdiction or not and no leave to serve an originating process against them shall be necessary: (3) Where a firm has been dissolved to the knowledge of the claimant before the commencement of the action, the originating process shall be served upon every person within the jurisdiction sought to be made liable. |
| <i>Corporation or company</i> | 8. | Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process requiring personal service may be served on a registered company, corporation or body |

corporate, by delivery at the head office or any other place of business of the organization within the jurisdiction of the Court.

9. (1) Where the suit is against a foreign corporation or company within the meaning of section 54 of the Companies and Allied Matter Act having an office and carrying on business within the jurisdiction, and such suit is limited to a cause of action which arose within the jurisdiction, the originating process or other documents requiring personal service may be served on the principal officer, representative or by leaving it at the place of business of such foreign corporation or company within the jurisdiction: *Foreign Corporation or Company*
- (2) Where a foreign corporation or company has complied with the provisions of Chapter 3 of the Companies and Allied Matters Act, personal service shall be effected on one of the persons authorized to accept service on behalf of the said company.
10. Where a contract has been entered into within the jurisdiction by or through an agent residing or carrying on business within the jurisdiction on behalf of a principal residing or carrying on business out of the jurisdiction, an originating process in an action relating to or arising out of such contract may, before the determination of such agent's authority or of his business relations with the principal be served on such agent. A copy of the originating process shall be sent promptly by the claimant to the defendant at his address out of the jurisdiction. *Legal agent of principal who is out of jurisdiction*
11. (1) Where service of an originating process is required by this Rules or any other enactment and the court is satisfied that prompt service cannot be effected, the court may upon application by the claimant make such order for substituted service as may seem just. *Substituted service*
- (2) Every application to the court for substituted or other service, or for the substitution of notice for service shall be supported by an affidavit setting forth the grounds upon which the application is made.
- Where it appears to the court (either after or without an attempt at service) that for any reason prompt service cannot be conveniently effected, the court may order that service be effected either by:
- (a) delivery of the document to some adult inmate at the usual or last known place of abode or business of the person to be served; or
 - (b) delivery to some person being an agent of the person to be served, or to some other person, on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or other person, come to the knowledge of the person to be served; or
 - (c) advertisement in the Federal and or State *Gazette*, or in some newspaper circulating within the jurisdiction; or
 - (d) Notice put up at the principal court house, or some other place of public resort in the judicial division wherein the proceeding in respect of which the service is made is instituted, or at the usual or last known place of abode, or of business, of the person to be served.

- Substituted service by email*
- (e) (i) E-mail or any other scientific device now known or later developed and courier service or any other means convenient to the Court.
(ii) Provided service by email is contemplated by parties in a written agreement or subsequently agreed by Counsel in the course of proceedings.
- Where violence is threatened*
12. Where a person to be served, alone or in concert with others, resists service or applies or threatens violence to the process server, the process server may leave the process within the reach of person to be served, and this shall be deemed good and sufficient service.
- Proof of service generally*
13. (1) The process server shall after serving any process promptly depose to and file an affidavit setting out the fact, date, time, place and mode of service, describing the process served and shall exhibit the acknowledgment of service.
(2) Proof of service by email shall be evidenced by an affidavit with a printout of an email notifier attached thereto.
(3) The affidavit shall be prima facie proof of service.
14. (1) The party requiring service of any process shall pay in advance all costs and expenses incidental to service.
(2) The costs and expenses for service shall be as directed by the Chief Judge in Practice Directions from time to time.
- Expenses of service*
15. (1) Service of originating and other processes, shall be effected between the hours of 6am and 6pm provided that where service is effected after 6pm, such service will be deemed to have been effected on the next service day.
(2) Service shall not be effected on a Sunday or on a public holiday save in exceptional circumstances as may be authorized by the Court.
- Time of service on certain days*
16. Where parties are represented by counsel, advance copies of processes other than originating process may be served by email.
- Service of advance copies via email*
17. The court may serve hearing notices via email and/or SMS except as otherwise directed by the judge.
- Service of hearing notices via email*
18. (1) The Registrar shall keep a register in such form as the Chief Judge may direct for recording service of processes by any process server. The Registrar shall record the names of the clamant and defendant, the method of service, and the manner used to ascertain that the right person was served.
(2) Where any process was not served, the cause of failure shall be recorded in the register. Every entry in the register or certified copy shall be prima facie evidence of such matters.
(3) Such service shall be supported by a written (notify) report, a copy of which shall be kept in the court register referred to rule 18(1).
- Recording of service*

ORDER 8
Service Outside Nigeria and Service of Foreign Process

1. The court may allow any originating or other process to be served outside Nigeria where;
- (a) The subject matter of the claim is land situated within jurisdiction, or
 - (b) Any act, deed, will, contract, obligation, or liability affecting land or hereditaments situated within jurisdiction, is sought to be construed, rectified, set aside or enforced, or
 - (c) Any relief is sought against any person domiciled or ordinarily resident within jurisdiction, or
 - (d) The claim is for administration of the personal estate of any deceased person, who at the time of his death was domiciled within jurisdiction or for the execution (as to property situated within jurisdiction) of the trusts or any written instrument, which ought to be executed according to a law of the State Assembly, or
 - (e) The claim is brought against the defendant to enforce, rescind, dissolve, annul or otherwise affect a contract or to recover damages or other relief for or in respect of a contract;
 - (i) Made within jurisdiction, or
 - (ii) Made by or through an agent residing or carrying on business within jurisdiction on behalf of a principal residing or carrying on business outside jurisdiction, or
 - (iii) Which by its terms or by implication is to be governed by the applicable law in Bauchi State, or parties have agreed that the court shall have jurisdiction to entertain any claim in respect of such contract, or is brought against the defendant in respect of a breach committed within jurisdiction, of a contract wherever made notwithstanding that such breach was preceded or accompanied by a breach out of jurisdiction which rendered impossible the performance of the contract which ought to have been performed within jurisdiction.
 - (f) The claim is founded on a tort committed within jurisdiction, or
 - (g) An injunction is sought as to anything to be done or any nuisance within jurisdiction is sought to be prevented or removed, whether or not damages are sought or
 - (h) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within jurisdiction, or
 - (i) The claim is by a mortgagee or mortgagor in relation to a mortgaged property situated within jurisdiction and seeks relief of the nature or kind following, that is; sale, foreclosure, delivery of possession by the mortgagor; redemption, re-conveyance, delivery of possession by the mortgagee; but does not seek (unless and expect so far as permissible under paragraph (e) of this

Where service of process is allowed outside Nigeria

rule) any judgment or order for payment of any monies due under the mortgage, or

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

(k) The proceedings relate to probate matters, or

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

Agreement as to service

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

Service abroad by letter of request

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

Civil Form 8

(a) The process to be served shall be sealed with the seal of the court for service outside Nigeria, and shall be transmitted to the Solicitor General of the Federation by the Chief Registrar, with a copy translated, if not in English, into the language of that country and with a request for its further transmission to the appropriate authority. The request shall be as in Form 8 with such modifications or variations as circumstances may require;

Civil Form 9

(b) A party wishing to serve a process under this rule shall file a praecipe as in Form 9 with such modifications or variations as circumstances may require;

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

Civil Form 10

(d) Where a certificate, declaration, affidavit or other notification transmitted as aforesaid states that efforts to serve a process have failed, the court may, on an ex parte application, order substituted service. The process, a copy, the order for substituted service, and a request as in Form 10 with such modifications or variations as circumstances may require shall be sealed and transmitted to the Solicitor General of the Federation;

Notwithstanding the foregoing provision a claimant may with leave of court serve any originating process by courier.

These provisions shall not affect the powers of a court in cases (the court) where lands, funds, choses in action, rights or property within jurisdiction are sought to be dealt with or affected. The court may, without assuming jurisdiction, over any person outside jurisdiction, cause such person to be informed of the nature or existence of the proceedings with a view to such person having an opportunity of claiming, opposing or otherwise intervening.

Where leave is not granted or not required

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

(a) The party desiring such service shall file in the registry a request as in Form 11 with such modifications or variations as circumstances may require and the request shall state the medium through which it is desired that service shall be effected, either;

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

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

(c) The documents to be served shall be sealed with the seal of the court for use out of the jurisdiction and shall be forwarded by the chief Registrar to the permanent secretary, federal ministry of foreign affairs for onward transmission to the foreign country;

(d) An official certificate, transmitted through the Nigerian diplomatic agent to the court, establishing the fact and the date of the service of the document, shall be deemed to be sufficient proof of service within the requirements of these rules.

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

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

*Service of
foreign process*

(a) The letter of request for service shall be accompanied by two copies of the process or citation in English and two translated copies to be served.

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

(c) Service shall be effected by delivering to and leaving with the person to be served a copy of the process or citation, and a translated copy in accordance with the rules and practice of the court.

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

(e) The Registrar shall examine and verify the particulars of charges, approve or vary it (a lesser figure),

(f) The Chief Judge shall forward to the Attorney- General a letter of request for service, the approved amount for service, evidence of service and a certificate appended to it.

- Inapplicability of Rule 4* 6. Rule 4 of this order shall not apply to or render invalid, defective or insufficient any otherwise valid or sufficient mode of service in any foreign country with which a convention has been made, provided that no mode of service expressly excluded by the convention shall be allowed.
- Service on behalf of foreign tribunals* 7. Where in any civil suit pending before a court or tribunal in a foreign country with which a convention in that behalf has been made, request for service of any process or document on any person within the jurisdiction is received by the Chief Judge from the appropriate authority in that country, the following procedure shall, subject to any special provisions in the convention, be adopted;
- (a) The process server shall deliver the original or a copy, along with a copy of its translation to the party to be served;
- (b) The process server shall submit the particulars of the costs and expenses of service to the Registrar who shall certify the amount payable for service;
- (c) The Registrar shall transmit to the appropriate foreign authority a certificate establishing the fact and date of service, or indicate reasons for failure to serve, and notify the authority of the amount certified under paragraph (b) of this rule.
- Substituted service of foreign process* 8. In appropriate cases, upon application, a court may order substituted or other service of the foreign process.

ORDER 9 Appearance

- Mode of entering appearance and service* 1. (1) A defendant served with an originating process shall, within the period prescribed for appearance, file in the registry as many copies of the completed and signed memorandum of appearance as in Form 12 with such modifications or variations as circumstances may require for the use of the court and for service on the other parties.
- (2) The Registrar shall, on receipt of the memorandum of appearance, make an entry and stamp the copy with the seal showing the date he received it and return the sealed copy to the person making the appearance.
- (3) A defendant entering appearance shall within 7 days, serve a sealed copy of the memorandum of appearance on a claimant's legal practitioner or on the claimant if he sues in person and on any other defendants. The memorandum shall in addition to any other endorsement required by these rules include the defendant's email address and telephone number.
- Civil Form 12*
- Defendant appearing in person or represented by legal practitioner* 2. (1) A defendant appearing in person shall state in the memorandum of appearance an address for service within Bauchi State.
- (2) Where a defendant appears by a legal practitioner, the legal practitioner shall state in the memorandum of appearance his place of business, an address for service within Bauchi State, his telephone(s) and email address and where any

such legal practitioner is only the agent of another legal practitioner he shall also state the name and place of business of the principal legal practitioner.

3. The Registrar shall not accept any memorandum of appearance which does not contain an address for service. If any such address is illusory, fictitious or misleading, the appearance may be set aside by the court on the application of a claimant or other parties. *Fictitious address*
4. If two or more defendants in the same action appear through the same legal practitioner the memorandum of appearance shall include the names of all the defendants appearing. *Defendants appearing through same legal practitioner*
5. If a defendant files an appearance after the time prescribed in the originating process, he shall be bound by the provisions of Order 56 Rule 10 or any amount that the Chief Judge may determine from time to time for each day of default. *Penalty for late appearance*
6. In probate matters any person not named in the originating process may intervene and appear in the matter on filing an affidavit showing his interest in the estate of the deceased. *Intervener in probate matters*
7. Any person not named as a defendant in an originating process for recovery of land may with leave of the court appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or through his tenant. *Recovery of land*
8. Any person appearing to defend an action for the recovery of land as a landlord, in respect of property of which he is in possession only through his tenant, shall state in his memorandum of appearance that he appears as landlord. *Landlord appearance*
9. A person under legal disability shall enter an appearance by his guardian. *Appearance by person under legal disability*
10. In this order the word "Tenant" includes a sub-tenant or any person occupying any premises whether on payment of rent or otherwise. *Tenant*

ORDER 10

Default of Appearance

1. Where an appearance has not been entered for a person under legal disability, a claimant shall apply to the court for an order that a person be appointed guardian for such defendant and when appointed the person may appear and defend. The application shall be made after service of the originating process and notice of the application shall be served on the person intended to be appointed the guardian of the defendant. *Default of appearance by person under legal disability*

Default of appearance

2. Where any defendant fails to appear, a claimant may proceed upon proof of service of the originating process under the appropriate provisions of these Rules.

Liquidated demand

3. Where the claim in the originating process is a liquidated demand and a defendant or any of the defendants fail to appear, a claimant may apply to the court for judgment on the claim in the originating process or such lesser sum and interest as the court may order.

Liquidated demand several defendants

4. Where the claim in the originating process is a liquidated demand and there are several defendants of whom one or more appear to the process and another or others fail to appear, a claimant may apply to the court for judgment against those who have not appeared and may execute the judgment without prejudice to his right to proceed with the action against those who have appeared.

Judgment in default of appearance

5. Where the claim in the originating process is for pecuniary damages, or for detention of goods with or without a claim for pecuniary damages, and the defendant or any of the defendants fail to appear, a claimant may apply to the court for judgment. The value of the goods and the damages or the damages only as the case may be shall be ascertained in such manner and subject to the filing of such particulars as the court may direct before judgment for that part of the claim.

Several defendants

6. Where the claim in the originating process is as provided in rule 5 of this Order and there are several defendants, judgment may be entered against the defendant in default of appearance. The value of the goods and the damages only as the case may be shall be ascertained in such manner and subject to filing such particulars as the court may direct before judgment for that part of the claim.

Detention of goods damages and liquidated demand

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

Recovery of land

8. If an appearance is not entered within the time prescribed in the originating process in a claim for recovery or if appearance is entered but the defence is limited to part only, a claimant may apply to the court for judgment stating that the person whose title is asserted in the originating process shall recover possession of the land, or of that part of it to which the defence does not apply.

Mesne profit

9. Where in an originating process for recovery of land a claimant claims mesne profits, arrears of rent, damages for breach of contract or wrong or injury to

the premises, he may apply for judgment as in rule 8 of this order for the land, and may proceed to prove the other claims.

10. In any case to which rules 3 - 8 of this order do not apply and the defendant or any of the defendants fails to appear, but by reason of payment, satisfaction, abatement of nuisance, or any other reason, it is unnecessary for a claimant to proceed, he may apply to the court for judgment for costs; but such application shall be filed and served in the manner in which service of the originating process was effected or in such manner as the court shall direct. *Judgment for costs upon payments*
11. Where judgment is entered under any of the preceding rules of this order, the court may on an application by the defendant set aside or vary such judgment on terms. The application shall be made within a reasonable time, showing evidence of payment of penalty, a good defence to the claim and a reasonable cause for the default. *Setting aside judgment*
12. In all claims not specifically provided for under this order, where the party served with the originating process does not appear within the time prescribed, a claimant may proceed as if appearance had been entered. *Default of appearance in actions not specifically provided for*
13. Notice of any application under this order shall be served on the other party. *Compulsory service*

ORDER 11 **Summary Judgment**

1. Where a claimant believes that there is no defence to his claim, he shall file with his originating process the statement of claim, the exhibits, the depositions of his witnesses and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief and a written brief in support of the application. *Application for summary judgment*
2. A claimant shall deliver to the Registrar as many copies of the processes and documents as referred to in Rule 1 of this Order for the use of the court and service on the defendants. *Extra copies of process*
3. Service of processes and documents referred to in Rule 1 of this Order shall be effected in the manner provided under Order 7. *Service*
4. Where a party served with the processes and documents referred to in Rule 1 of this Order intends to defend the suit he shall, not later than the time prescribed for defence, file:
 - (a) His statement of defence;
 - (b) Depositions of his witnesses;
 - (c) The exhibits to be used in his defence;
 - (d) Counter affidavit; and
 - (e) A written brief in reply to the application for summary judgment.*Where defendant intends to defend*

- Defence* 5. (1) Where it appears to the court 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 the court that the defendant has no good defence the court may enter judgment for a claimant.
(3) Where it appears to the court that the defendant has a good defence to part of the claim, the court may enter judgment for that part of the claim and grant leave to defend that part to which there is a defence.
- Several defendants* 6. Where there are several defendants and it appears to the court that any of the defendants has a good defence and ought to be permitted to defend the claim and other defendants have no good defence and ought not to be permitted to defend the former may be permitted to defend and the court shall enter judgment against the latter.
- Oral submission* 7. Where provision is made for written briefs under this rule, each party shall be at liberty to advance before the court oral submission to expatiate his written brief.

ORDER 12

Application for Account and Inquiries

- Application for account and ..* 1. Where in an originating process a claimant seeks an account under order 4 Rule 5 or where the claim involves taking an account, if the defendant either fails to appear, or after appearance fails to satisfy the court that there is a preliminary question to be tried, the court shall, on application make an order for the proper accounts, with all necessary inquiries and directions.
- How application is made* 2. An application for account shall be supported by an affidavit filed on a claimant's behalf, stating concisely the grounds of his claim to an account. The application may be made at any time after the time prescribed for defence.
- Order for an account* 3. Where an order is made for account under this order, the account may be taken by the court or a referee appointed by the court.
- Account to be made, verified etc* 4. (1) Where an account has been ordered to be taken, the accounting party shall make out his account and unless the Court otherwise directs, verify it by an affidavit to which the 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 lodge the account with the court and shall at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.
- Erroneous account* 5. Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that

any item in his account is erroneous in respect of amount or 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 be, the grounds for alleging that the item is erroneous.

6. In taking any account directed by any judgment or order, all just allowance shall be made without any direction to that effect. *Allowances*
7. (1) If it appears to the court 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 then make such order for staying the proceedings or expediting them or for the conduct thereof and for costs as the circumstances require. *Delay in prosecution of account, etc*
(2) The Court may direct any person or legal practitioner to take over the conduct of proceeding in question and to carry-out any direct made by an order under this rule and may make such orders as it thinks fit as to the payment of legal practitioner's costs.
8. Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons ascertained without reserving any part of the shares to meet the subsequent costs of ascertaining those other persons. *Distribution of fund before all entitled persons are ascertained*

ORDER 13

I. Parties Generally

1. All persons may be joined in one action as claimants in whom any right to relief is alleged to exist whether jointly or severally and judgment may be given for such claimant(s) as they may be found to be entitled to, without any amendment. *Joints or several claims*
2. Where an action has been commenced in the name of the wrong person as claimant or where it is doubtful whether it has been commenced in the name of the right claimant, the court may order the substitution or addition of any other person as claimant on such terms as may be just. *Action in the name of wrong claimant*
3. 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 set-off or counterclaim as against the parties other than a claimant so included, notwithstanding the inclusion of such claimant or any proceeding based on it *Misjoinder and counter-claimant*
4. Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. Judgment may *Any person as defendant*

be given against one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

- Action against a wrong defendant* 5. Where an action has been instituted against a wrong defendant or where the name of a defendant has been incorrectly stated, the court may upon application order a substitution or addition of any person as defendant or correction of any such name on any term as may be just.
- Defendant need not be interested in all the reliefs* 6. (1) It shall not be necessary for every defendant to be interested in the relief sought in every cause of action included in any proceeding against him.
(2) The court 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, put to expense, attend or defend any proceedings in which he may have no interest.
- Joinder of persons* 7. A claimant may at his option join as parties to the same action, all or any of the persons severally or jointly and severally, liable on any contract, including parties to bills of exchange and promissory notes.
- Doubt as to the person from whom relief is sought* 8. Where a claimant is in doubt as to the person from whom he is entitled to redress, he may, in accordance with this Rules, or as may be prescribed by any special order, join two or more defendants, so that the question as to which, if any, of the defendants is liable and to what extent, may be determined as between all parties.
- Persons unknown* 9. Where in land matters a claimant is unable to identify the person against who he claims, he may subject to the Rules of this court describe such a person as a “person unknown”.
- Substitution of name* 10. Such a Defendant under this Rule may by leave of court apply for the substitution of his name as a defendant in lieu of the reference to him as a “person Unknown”.
- Person under disability* 11. Persons under legal disability may sue or defend by their guardians or a guardian appointed for that purpose.
- Guardian* 12. Where the name of any person is to be used in any action as guardian of a person under legal disability or other party or as relation, a written authority for that purpose signed by that person shall be filed with the process.
- Trustees, executors and administrators* 13. (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 or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such person.
(2) The court 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.
(3) This rule shall apply to trustees, executors and administrators in proceedings to enforce a security by foreclosure or otherwise.

14. (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may sue or be sued on behalf of or for the benefit of all persons so interested. *Numerous persons*
- (2) Where there are numerous persons having the same interest in one suit and they seek to defend the action, the court may allow one or more of such persons to defend the action on behalf of or for the benefit of all persons so interested.
15. (1) Where in any proceedings concerning;
- (a) The administration of estate; or
- (b) Property subject to a trust; or
- (c) Land devolved under other interest as family or community property; or
- (d) The construction of any written instrument, including a statute; or
- (e) Torts or any other class action the court is satisfied that;
- (i) The person, the class or some members of the class interested cannot be ascertained or readily be ascertained;
- (ii) The person, the class or some members of the class interested if ascertained cannot be found;
- (iii) Though the person or the class and the members can be ascertained and found; it is expedient for the purpose of efficient procedure that one or more persons be appointed to represent that person or class or member of the class, the court may make the appointment. The decision of the court in the proceedings shall be binding on the person or class of person so represented.
- (2) Notice of appointment made by the court under this rule and all processes filed in court shall be served on a person(s) so appointed and published in a National newspaper.
- (3) If in any proceedings mentioned in sub-rule 1 of this rule, several persons having the same interest in relation to the matter to be determined attend the hearing by separate legal practitioners, then unless the court considers that the circumstances justify separate representation, not more than one set of costs of the hearing shall be allowed to these persons, and the judgment or order shall be made accordingly.
16. Where in any proceedings mentioned in sub-rule (1) of rule 13 of this order, a compromise is proposed and some of the absent persons who are interested in or may be affected by the compromise are not parties to the proceedings (including unborn or unascertained persons) but where: *Power to approve compromise*
- (i) There are some other persons having the same interest before the court who assent to the compromise or on whose behalf the court sanctions the compromise, or
- (ii) The absent persons are represented by a person under rule 13 of this order who so assents; the court if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that such

compromise shall be binding on the absent persons, and they shall be bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts.

Where there is
no personal
representative

17.

(1) If in any proceedings it appears to the court that any deceased person who was interested in the proceedings has no legal representative, the court may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for the purpose of the proceeding, on such notice to such persons (if any) as the court shall think fit, either specifically or generally by public advertisement. The order so made and any order consequent thereon shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal representative of the deceased had been a party to the proceedings.

(2) Where a party in a proceeding dies and the cause of action survives but the person entitled to proceed fails to proceed, the court may on the application of the legal practitioner of either party order any person to take the place of the deceased and proceed with the suit.

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

Proceedings
not defeated
by misjoinder or
non-joinder

18.

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

(2) The court 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 court to be just, order that the names of any parties improperly joined be struck out.

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

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

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

Application to

19.

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

(2) Where the application is to add a claimant or a defendant, the application shall be accompanied by the statement of claim or defence as the case may be, all the exhibits intended to be used and the depositions of all the witnesses; Except where the application is to substitute a deceased party with another person in which case the application may not be accompanied by such documents specified above.

20. Where a defendant is added or substituted the originating process shall be amended accordingly and the claimant shall unless otherwise ordered by the court file an amended originating process and cause the new defendant to be served in the same manner as the original defendant. *Where defendant is added*
21. (1) Where it appears to the court that any person not a party in the proceedings may bear eventual liability either in whole or in part, the court 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. *Third party may be joined by any of the parties*
(2) The order and existing processes shall be served on the third party within the time prescribed for delivering the defence.
22. Where a party is joined to any proceeding as a third party he may after service enter appearance within 8 days and not later than 35 days if he resides or carries on business outside jurisdiction or within such further time as the court may order. *Appearance by third party*
23. If a third party duly served with the order and all processes does not enter an appearance or defaults in filing any pleading, he shall be deemed to admit the validity of and shall be bound by any judgment given in the action whether by consent or otherwise. *Default by third party*
24. 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. *Subsequent third party*

II. Actions against firms and persons carrying on business in names other than their own.

25. Any two or more persons claiming or alleged to be liable as partners and doing business within the jurisdiction may sue or be sued in the name of the firms, if any, of which they were partners when the cause of action arose and any party to an action may in such case apply to the court 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 court may direct. *Action by and against firms*
26. (1) When an originating process is issued by partners in the name of their firm, the claimants or their legal practitioners shall, on demand in writing by or on behalf of any defendant declare in writing the names and residential addresses of all the persons constituting the firm on whose behalf the action is brought. *Disclosure of partners names*
(2) Where the claimants or their legal practitioners fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the court may direct.
(3) Where the names of the partners are so declared, the suit shall proceed in the same manner and the same consequences in all respects shall follow as if

they had been named as claimants in the originating process provided that the proceedings may continue in the name of the firm.

Appearance of partners 27. (1) Where persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall continue in the name of the firm.
(2) Where an originating process is served upon a person having the control or management of the partnership business no appearance by him shall be necessary unless he is a member of the firm sued.

Application of rules to actions between co-partners 28. 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.

Person trading as firm 29. Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm name, and, so far as the nature of the case will permit, all rules relating to proceedings against firms shall apply.

III. Change of parties by death or otherwise.

Actions not abated where cause of action survives 30. 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 judgment, but judgment may in such case be entered notwithstanding the death.

Order to carry on proceedings 31. (1) Where by reason of death or bankruptcy, or any other event occurring after the commencement of a proceeding and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the 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, or transmission of interest or liability, or of any such person interested having come into existence.
(2) An order obtained under this rule shall be served upon the continuing party or parties, or their legal practitioner and 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 within the same time and in the same manner as if he had been served with the originating process, and shall be served with the originating and all processes.

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

32. 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 inured or devolved. *Assignment creation or devolution of estate or title*
33. Where any person who is under no legal disability or being under any legal disability but having a guardian in the proceedings is served with an order under Rule 30, such person may apply to the court within 14 days from the service of the order to discharge or vary such order. . *Application to discharge order by persons under disability having a guardian*
34. Where any person under any legal disability and not having a guardian in the proceedings is served with an order under Rule 30, such a person may apply to the court within 14 days from the appointment of the guardian for such party to discharge or vary such order and until such period has expired the order shall have no effect as against the person under legal disability. *Application by persons under disability having no guardian*

IV. Legal Practitioners or Agents

35. Where by these rules any act may be done by any party in any proceedings, such act may be done either by the party in person, or by his legal practitioner, or by his agent (unless an agent is expressly barred under these rules). *Acts may be done by legal practitioner or agent*

ORDER 14

Joinder of Causes of Action

1. Subject to the provisions of these rules, the 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 the court may order separate trials of such causes of action or may make such order as may be necessary or expedient for their separate disposal. *Causes of action may be joined*
2. (1) An action for recovery of land may be joined with an action for declaration of title, mesne profit, arrears of rent or damages for breach of any contract under which the land or any part of it is held, or for any wrong or injury to the premises. *Recovery of land*
(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 on the mortgage or charge on such land.
3. Claims by or against an executor or administrator as such may be joined with claims by or against him personally if such claim are alleged to arise with reference to the estate over which the claimant or defendant sues or is sued as executor or administrator. *Executor and Administrator*

Claims by claimant

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

ORDER 15 Pleadings

Filing of pleadings

1. (1) A statement of claim shall include the relief or remedy to which a claimant claims to be entitled.
(2) A defendant shall in all matters file his statement of defence, set-off or counterclaim, if any not later than 21 days after service on him of the originating process and accompanying documents. A counterclaim shall have the same effect as a cross action, so as to allow the court deliver a final judgment in the same proceedings. A set-off must be specifically pleaded.
(3) A claimant shall within 14 days of service of the statement of defence and counterclaim if any file his reply and defence if any to such defence or counterclaim.
Where a defendant sets up a counterclaim, if a claimant or any other person named as a party to such counter claim contends that the claim raised ought not to be disposed of by way of counterclaim, but in a separate proceedings, the court may at any time make such order as it thinks fit.

Pleadings to state material facts and not evidence

2. (1) Every pleading shall contain, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved and shall, 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.

Particulars to be given when necessary

3. (1) In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence and in all other cases, in which particulars may be necessary, particulars (with dates and items if necessary) shall be stated in the pleadings.
(2) In an action for libel or slander if the claimant alleges that the words or matter complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of his allegation.

Further and better statement of particulars

4. 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 the court at the first pre-trial conference. The court may grant such application upon such terms as it thinks fit.

5. (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. *Denial*
(2) A general denial in any pleadings shall not operate as denial of any specific fact in the pleadings of the opposing party.
6. Each party shall specify in his pleadings any condition precedent, the performance or occurrence of which is intended to be contested. *Conditions precedent*
7. (1) All grounds of defence or reply which makes an action unmaintainable 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. *Defence grounds to be specifically pleaded*
(2) Where a party raises any ground which makes a transaction void or voidable or such matters as fraud, limitation law, release, payment, performance, facts showing insufficiency in contract or illegality either by any enactment or by common law, he shall specifically plead it.
8. No pleading shall raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party. *Pleadings to be consistent*
9. A party may by his pleadings join issues upon the pleadings of the opposing party and such joinder of issues shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined except any fact which the party may be willing to admit. *Joinder of issue*
10. Wherever the contents of any documents are material it shall be sufficient in any pleading to state its effect as briefly as possible, without setting out the whole or any part, unless the precise words of the document or any part are material. *Effect of documents to be stated*
11. 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. *Notice*
12. 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, it may be stated in the alternative. *Implied contract or relation*
13. A party may not allege in any pleadings any matter or fact the law presumes in his favour or as to which the burden of proof lies upon the other side, unless it has been specifically denied. *Presumption of law*

14. In every case in which the cause of action is a stated or settled account it shall be alleged with particulars but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, it shall not be alleged in the pleadings.
15. No technical objection shall be raised to any pleadings on the ground of any alleged want of form.
16. The court may at the pre-trial conference in any proceedings order to be struck out or amended, any matter in any endorsement or Pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the action; and may in any such case, if the court shall think fit, order costs of the application to be paid as between legal practitioner and client.
17. (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 condition of mind as a fact without setting out the circumstances from which it is to be inferred.
(2) Where in an action for libel or slander the defendant pleads that any of the words or matters complained of are fair comment on a matter of public interest or were published upon a privileged occasion, the claimant shall, if he intends to allege that the defendant was actuated by express malice, deliver a reply giving particulars of the facts and matters from which such malice is to be inferred.
(3) Where in an action for libel or slander the defendant alleges that the words complained of consist of statement of fact, they are true in substance and in fact, and where 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.
18. (1) The court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action or anything in any pleading or in the endorsement, on the ground that:
- (a) It discloses no reasonable cause of action or defence as the case may be; or
 - (b) It is scandalous, frivolous, or vexatious; or
 - (c) It may prejudice, embarrass or delay the fair trial of the action; or
 - (d) It is an abuse of the process of court;
 - (e) The court may order the action to be stayed or dismissed or judgment to be entered accordingly as the case may be.
- (2) No evidence shall be admissible on application under paragraph (1) (a).
(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

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

19. (1) Where a pleading subsequent to reply is not ordered, then, at the expiration of 7 days from the service of the defence or reply (if a reply has been filed) pleadings shall be deemed closed. *Close of pleading*
- (2) Where a pleading subsequent to reply is ordered, and the party who has been ordered or given leave to file fails to do so within the period limited for that purpose, then, at the expiration of the period so limited the pleadings shall be deemed closed.

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

ORDER 16 **Statement of Claim**

1. (1) Every statement of claim, defence or counter claim shall state specifically the relief claimed or sought in the alternative, and it shall not be necessary to ask for general or other relief, which may be given as the court may think fit. *Statement of claim*
- (2) Where the claimant seeks relief in respect of several distinct claims or causes of complaint based upon separate and distinct grounds, they shall, as far as may be, separately and distinctly stated. The same rule shall apply where the defendant relies upon several distinct ground of defence, set-off or counterclaim based upon separate and distinct facts.
2. Whenever a statement of claim is filed, the claimant may alter, modify or extend his claim without any amendment of the endorsement of the writ. The claimant may not completely change his cause of action endorsed on the writ without amending the writ. *Claim beyond endorsement on writ*

ORDER 17 **Defence and Counterclaim**

1. The statement of defence shall be accompanied by copies of documentary evidence, list of witnesses, their written statements on oath and Certificate of Pre-action counselling *Statement of defence*
2. When a party in any pleading denies an allegation of fact in the pleadings of the opposing party, he shall not be evasive, but answer the point of substance. *Evasive denial*

If an allegation is made with diverse circumstances, it shall not be sufficient to deny it in those circumstances.

- Denials generally* 3. (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, contract, delivery, and amount claimed.
(4) In an action upon a bill of exchange, promissory note or cheque, a defence in denial must deny some matter of fact, such as the drawing, making, endorsing, accepting, presenting or notice of dishonour of the bill or note.
- Persons in representative capacity* 4. If either party wishes to deny the right of any other party to claim as executor, or a trustee or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny it specifically.
- Pleading to damages* 5. No denial or defence shall be necessary as to damages claimed or their amount; they are deemed to be in issue in all cases, unless expressly admitted.
- Set off and counter claim* 6. Where any defendant seeks to rely upon any ground as supporting a right of set-off or counter claim, he shall in his defence state specifically that he does so by way of supporting a right of set off or counterclaim.
- Title of counter claim* 7. Where a defendant by his defence sets up any counter claim which raises questions between himself and the claimant along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim, stating the names of all persons who, if such counterclaim were to be enforced by cross action would be defendants to the cross action, and shall deliver his defence to as many of them as are parties to the action within the period required to deliver it to the claimant.
- Claim against persons not party*
Civil form 13 8. Where any person stated in rule 7 of this Order is not a party to the action, he shall be summoned to appear by being served with a copy of the defence and counterclaim, and such service shall be regulated by the same rules as those governing the service of the originating process. Every defence and counter claim so served shall be endorsed in Form 13 with such modifications or variations as circumstances may require.
- Appearance by added parties* 9. Any person not already a party to the action, who is served with a defence and counterclaim, must appear as if he had been served with an originating process to appear in an action.
- Reply to counterclaim* 10. Any person not already a party to the action, who is named in a defence as party to a counterclaim, 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.

11. If, in any case in which the defendant sets up a counterclaim, the action of the claimant is stayed, discontinued or dismissed, the counterclaim may nevertheless be proceeded with. *Discontinuance of the claimant's claim*
12. Where in an action, a set off or counterclaim is established as a defence against the claimant's claim, the court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case. *Judgment for balance*
13. (1) Any ground of defence which arises after the action has been filed, but before the defendant has delivered his defence, and before the time limited for doing so has expired, may be raised by the defendant in his defence, either alone or together with other grounds of defence. *Ground of defence after action filed*
(2) If after a defence has been delivered along with a set-off or counterclaim and any basis for answer or ground of defence arises to any such set-off or counterclaim, it may be raised by the claimant in his reply (in the case of a set-off) or defence to counterclaim, either alone or with any other ground of reply or defence to counterclaim.
14. Where any ground of defence arises after the defendant has delivered a defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counterclaim arises after reply, or after the time limited for delivery of a reply has expired, the claimant may, within 8 days after such ground of defence has arisen or at any subsequent time by leave of the court deliver a further defence or further reply, as the case may be. *Further defence or reply*
15. Whenever any defendant in his defence or in any further defence under rule 14 of this order alleges any ground of defence which has arisen after the commencement of the action, the claimant may concede to such defence (which concession may be as in form 14 with such modification as circumstances may require) and may obtain judgment up to the time of the pleading of such defence, unless the court either before or after the delivery of such concession otherwise orders. *Concession to defence*
Civil Form 14
16. A respondent to an originating summons shall file a counter affidavit with all the exhibits he intends to rely upon and a written address within 21 days after service of the originating summons. *Defence to originating summons*

ORDER 18

Reply

1. Where the claimant desires to make a reply, he shall file it within 7 days from the service of the defence. *Filing of reply*

ORDER 19
Alternative Dispute Resolution

A – Reference to ADR

Judge to encourage ADR

1. It shall be the duty of a court or a judge to encourage settlement of matters either by:
- a) Arbitration
 - b) Conciliation
 - c) Mediation
 - d) Or any other method of dispute resolution.

Consent Cases to be referred to BMDC Time within which to report settlement

2. (1) Where parties consent to settlement of disputes, the court or judge shall by an enrolment order refer the case to the BMDC for resolution within 21 days except otherwise ordered by the court.
(2) Where a court makes a referral, the court or judge shall by an enrollment order as in Form 15 refer the case to the BMDC for resolution within 14 days except otherwise ordered by the court.
(3) Where a party refuses to submit to ADR and loses the case in court, he shall pay a penalty as may be determined by the court.

ADR Directives & Sanctions

3. (1) Where a case is deemed suitable for ADR under Order 2 Rule 7 or has by directives been referred to ADR under Rule (2)(2) above, the judge may consider and give appropriate directives to parties on the filing of statement of case and other necessary issues.
- (a) The claimant shall file his statement of case within fourteen (14) days of the Order of the judge.
 - (b) The defendant shall file his response within fourteen (14) days of service of the claimant's statement of claim.
- (2) The parties shall file a notice of compliance with Rule 3(1) above to the judge within twenty (20) days of giving the Order.
(3) Failure to comply with filing the notice of compliance within time shall attract a sum of two hundred (N200) naira fine per day.
(4) A party applying for an extension of time to comply with Rule 3(1) above, shall upon filing such application attach thereto evidence of payment.

Cost

4. The court in making any order as to cost during or after a trial shall consider any directive made under this Order and the disposition of the parties thereto.

Extension of time to report settlement

5. Where parties are unable to complete the settlement process within the time specified in the order, the referring judge may extend the order whenever he considers it expedient having regard to the facts and circumstances of the case.

Where settlement has broken down

6. The referring judge shall proceed to entertain a case where parties report that the settlement has broken down or it cannot be resolved through the ADR mechanism.

7. (1) The court or judge shall, on the application of parties enroll the terms of settlement reached at the BMDC as consent judgment, such terms shall thereupon have the same force and effect as judgment. *Consent Judgment*
(2) Parties in a “walk in” ADR process may apply to an ADR judge by a Motion on Notice for an order to enroll the decision or terms of settlement at the BMDC as a consent judgement. *Walk in application for consent judgment*
8. The Chief Judge may by order under his hand and seal appoint and designate judges as ADR judges who shall have jurisdiction to handle sessions and other ADR related matters. *Chief Judge to designate ADR Judges*
9. The Chief Judge may designate one or more week(s) during the course of the legal year for the resolution of disputes at the Multi- Door Courthouse. This period shall be known as Settlement Week and the proceedings of the week shall be as directed by the Chief Judge in a Practice Direction. *Settlement Week*
10. The Chief Judge may set up a Sifter Committee to identify cases that may be effectively resolved during the settlement week or any time he deems fit. *Sifter Committee*

B - Arbitration

11. (a) In any case in which a matter is referred to one or more arbitrators under these Rules, the Court shall by an order under its seal referred to in the arbitrators the matters in dispute in the suit which they may be required to determined and fix a time for the delivery of the award and the time so fixed shall be stated in the order. *Arbitration*
(b) When the arbitrators are not able to complete the award within the period specified in the order for want of the necessary evidence or information or other good and sufficient cause, the Court may, from time to time, enlarge the period for delivering of the award, if it thinks fit.
(c) An award shall not be liable to be set aside only by the reason of its not having been completed within the period allowed by the Court, unless on proof that the delay in completing the award arose from misconduct of the arbitrators.
(d) Where in any case of reference to arbitration by an order of court, the arbitrator dies or refuses to act, the court shall appoint a new arbitrator in the place of the person dying, refusing or becoming incapable to act.
(e) The award shall contain a conclusive finding on all issues in the matter referred arbitration
(f) In any of the following cases, the court may remit the award or any of the matters referred to arbitration, for reconsideration by the arbitrator(s) upon such terms as it thinks proper:
i. Where the award has left undermined some of the matters referred to arbitration;
ii. Where the award has determined matters not referred to the arbitration;
iii. Where the award is so indefinite as to be incapable of execution;

iv. Where an objection to the legality of the award is apparent on the face of the award.

(g) No award shall be liable to be set aside except on the misconduct of the arbitrator and provided that the application for setting aside the award is made within 15 days after the publication thereof.

(h) If no application is made to set aside the award or to remit for reconsideration or where the court has refused any such application, either party may file the award in court and the award shall thereupon have the same force and effect for all purposes as a judgment.

(i) The Chief Judge may designate a judge as the arbitration judge whose court shall primarily be responsible for remitting and enforcement of award

C - Arbitration Proceedings

*Arbitration
Proceedings*

12. Except to subpoena a witness to attend under Section 23 of the Arbitration and Conciliation Act which shall be by motion ex-parte, every application in this rule to the court under the Act -

(a) To set aside an arbitration agreement under section 2 thereof;

(b) To appoint an arbitrator under section 7 (3) thereof;

(c) To stay proceedings under section 5 thereof;

(d) To remove an arbitrator or umpire under section 30 thereof;

(e) To direct an arbitrator or umpire to state the reasons for an award under section 26 thereof;

(f) To apply that a case on trial which is the subject of an arbitration agreement be referred to an arbitration under section 4 thereof;

(g) To set aside an award under section 29 thereof;

(h) For declaration that an award is not binding on a party to the award on the ground that it was made without jurisdiction or because the arbitrator misconducted himself or that the proceeding was arbitrary or that the award has been improperly procured under section 30 thereof;

(i) Generally to determine any question of law arising in the course of or concerning any arbitration agreement or proceedings referred to the court; shall be made by motion.

D - Enforcement of Arbitration Awards

Enforcement

13. (1) An application to enforce an award on an arbitration agreement in the same manner as a judgment or order may be made ex-parte, but the court hearing the application may order it to be made on notice.

(2) The supporting affidavit shall—

(a) Exhibit the arbitration agreement and the original award or in either case certified copies of each;

(b) State the name, as usual or last known place of abode or business of the applicant and the person against whom it is sought to enforce the award;

(c) State as the case may require either that the award has not been complied with or the extent to which it has not been complied with at the date of the

ORDER 20
Admissions

1. Any party to a proceeding may give notice by his pleading or otherwise in writing, that he admits the truth of the whole or facts of any part of the case.
2. (1) Either party may by notice in writing file and serve, not later than 7 days before the first pre-trial conference, require any other party to admit any document and the party so served shall not later than 4 days after service give notice of admission or non-admission of the document, failing which he shall be deemed to have admitted it unless the court otherwise orders. *Notice of admission of facts*

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

(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 five thousand naira, shall be paid by the party who has challenged it, unless at the trial or hearing the court shall certify that there were reasonable grounds for not admitting the authenticity of the document.
3. (1) Either party may not later than 7 days before the first pre-trial conference by notice in writing filed and served require any other party to admit any specific fact or facts mentioned in the notice, and the party so served shall not later than 4 days after service give notice of admission or non-admission of the fact or facts failing which he shall be deemed to have admitted it unless the court otherwise orders. *Notice to admit facts*

(2) Any admission made under 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 facts within 4 days after service of such notice or within such further time as maybe allowed by the court, the cost of proving such fact or facts which shall not be less than a sum of five thousand naira, shall be paid by the party so refusing or neglecting whatever the result of the proceedings, unless the court certifies that the refusal to admit was reasonable or unless the court at any time otherwise orders or directs.

- Judgment or Order upon admission of facts* 4. The court may, on application, at a pre-trial conference or at any other stage of the proceedings where admissions of facts have been made, either on the pleadings or otherwise, make such judgment as upon such admissions a party may be entitled to, without waiting for the determination of any other question between the parties.
- Cost of notice where documents unnecessary* 5. Where a notice to admit or produce comprises documents that are not necessary, the cost occasioned thereby which shall not be less than N5,000 (Five Thousand Naira) only, shall be borne by the party giving such notice.

ORDER 21
Default of pleading

- Claim for liquidated demand* 1. If the claim is only for a debt 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 judgment for the amount claimed with costs.
- Default of one or several defendants* 2. Where in any such action as in Rule 1 of this Order there are several defendants, if one of them makes default, the claimant may apply for final judgment against the defendant(s) making default and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.
- Damages and detention of goods* 3. If the claim be 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, make default as mentioned in Rule 1 of this order, the claimant may apply to the court for interlocutory judgment against the defendant(s) 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 court may order.
- Default of one or more defendants* 4. When in any such action as in Rule 3 of this Order there are several defendants, if one or more of them make default as mentioned in Rule 1 of this Order, the claimant may apply to the court for interlocutory judgment against the defendant(s) so making default and proceed with his action against the others. In such case the value and amount of damages against the defendant(s) making default shall be assessed at the trial of the action or issues therein against the other defendants, unless the court shall otherwise order.

5. Where the claim is for debt or liquidated demand and also for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any defendant makes default as mentioned in Rule 1 of this Order, the claimant may apply to the court for final judgment for the debt or liquidated demand, and may also apply for interlocutory judgment for the value of the goods and damages, or the damages only as the case may be, and proceed as mentioned in Rules 3 and 4. *Debt or damages and detention of goods or damages*
6. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 1, the claimant may apply for a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land with costs. *Recovery of land*
7. Where the claimant has endorsed a claim for mesne profits or arrears of rent in respect of the premises claimed, or any part of them, or damages for breach of contract, wrong or injury to the premises claimed upon a writ for recovery of land, if the defendant makes default as mentioned in Rule 1 of this Order, or if there be more than one defendant and one or more of the defendants make such default, the claimant may apply for final judgment against the defaulting defendant or defendants and proceed as mentioned in Rules 3 and 4. *Claims for mesne profit, arrears or damages*
8. (1) If 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 judgment, final or interlocutory, as the case may be, for the part unanswered. 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;
(2) Where there is a counterclaim, execution on any such judgment as above mentioned in respect of the claimant's claim shall not issue without leave of the court. *Where a defence is filed to part of claim only*
9. In all actions other than those in the preceding rules of this Order, if the defendant makes default in filling a defence, the claimant may apply to the court for judgment, and such judgment shall be given upon the statement of claim as the court shall consider the claimant to be entitled to. *Defendant in default*
10. Where in any such action as provided in Rule 9 of this Order, there are several defendants, if one of such defendants makes such default, the claimant may apply for judgment against the defendant, and proceed against the other defendants. *One of several defendants in default*
11. In any case in which issues arise in a proceeding other than between claimant and defendant, if any party to any such issue makes default in filling any pleadings, the opposing party may apply to the court for judgment, if any, on the pleadings he may appear to be entitled to, and the court may order *Default of third party*

judgment to be entered accordingly or may make such other order as may be necessary to do justice between the parties.

*Setting aside
default
judgment*

12. Any judgment by default whether under this Order or this Rule shall be final and remain valid and may only be set aside upon application to the court on grounds of fraud, non-service or lack of jurisdiction upon such terms as the court may think fit.

ORDER 22

Payment into and out of Court

*Payment into
and out of court*

1. (1) Where after service in any proceeding for debt or damages, a defendant envisages an intention to pay money into court in respect of the proceeding, he shall notify the chief Registrar who will thereupon direct him to pay the money into an interest yielding account in a commercial bank and he shall file the teller for such payment with the chief Registrar.
(2) Where a teller for payment is filed with the chief Registrar, he shall give notice of the payment to the claimant who may apply to the court for an order to withdraw the amount 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 chief Registrar of an intention to increase the amount of any sum paid into court.
(5) Where the money is paid into court in satisfaction of one or more causes of action, the notice shall specify the cause(s) of action for which payment is made and the sum paid for each such cause of action unless the court otherwise directs.
(6) The notice shall be as in Form 16 with such modifications or variations as circumstances may require. The claimant shall acknowledge in writing within 3 days the receipt of the notice. The notice may be modified, withdrawn or delivered in an amended form by leave of the court on such terms as may be just.
(7) Where money is paid into court with denial of liability, 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 the court be repaid to the defendant. Where the defendant succeeds on the claim, the whole amount paid into court shall be repaid to him on the order of the court.

Civil Form 16

*Claimant may
take out money*

2. (1) Where money is paid into court under Rule 1, the claimant within 14 days of the receipt of the notice of payment into court, or where more than one payment into the court has been made within 14 days of the receipt of the notice of the last payment, accept the whole sum or any one or more of the specific sum in satisfaction of the cause(s) of action to which the specified sum(s) relate by giving notice to the defendant as in Form 17 with such modifications or variations as circumstances may require. The claimant shall be entitled to receive payment of the accepted sum(s) in satisfaction of the claim.

Civil Form 17

- (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(s) 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(s) paid in respect of one or more specified cause(s) of action, and gives notice that he abandons the other causes of action, he may after 4 days of payment and unless the court otherwise orders, tax his costs incurred to the time of payment into court, and 48 hours after taxation may sign judgment for his taxed costs.
- (4) Where in an action for libel or slander, the claimant accepts money paid into court, either party may apply by summons to the court for leave to make a statement in open court in terms approved by the court.
3. If the whole money in court is not taken out under Rule 2, the money remaining in court shall not be paid out except in satisfaction of the claim or specified cause(s) of action for which it was paid under an order of the court which may be made at any time before, at or after trial. *Money remaining in court*
4. (1) Money may be paid into court under rule 1 of this order by one or more of several defendants sued jointly or in the alternative upon notice to the defendant(s). *Several defendants*
- (2) If the claimant within 14 days after receipt of notice of payment into court elects to accept the sums paid into court, he shall give notice as in Form 18 with such modifications or variations as circumstances may require to each defendant and all further proceedings in the action or on the specified cause(s) of action (as the case may be) shall abate. *Civil Form 18*
- (3) The money shall not be paid out except under an order of the court dealing with the whole cause(s) 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 14 days elect to accept the money 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 18 with such modifications or variations as circumstance may require. The claimant may tax his costs against the defendant who has made such payment in accordance with Rule 2 (3) of this order and the action shall abate against that defendant.
- (5) The claimant may continue with the action against any other defendant but the money paid into court shall be set off against any damages awarded to the claimant against the defendant or defendants against whom the action is continued.
5. A person made a defendant to a counterclaim may pay money into court in accordance with the foregoing rules, with necessary modification. *Counterclaim*
6. (1) In any proceeding in which money or damages is or are claimed by or on behalf of a person under legal disability suing either alone or in conjunction with other parties, no settlement, compromise, payment or acceptance of *Persons under legal disability*

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 the court.

(2) No money (which expression for the purposes of this rule includes damages) in any way recovered, adjudged, ordered, awarded or agreed to be paid in any such proceedings on the claims of any such person under legal disability whether by judgment, settlement, compromise, payment into court or otherwise, before, at or after the trial, shall be paid to the claimant, his guardian or his legal practitioner unless the court shall so direct.

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

Payment into and withdrawal of money from Court

7. Every application on notice for payment into or transfer out of court shall be made on notice.

ORDER 23 **Proceedings in Lieu of Demurrer**

Demurrer abolished

1. No demurrer shall be allowed.

Points of law may be raised by pleading

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

(2) Where in the opinion of a court or judge, the decision on the point of law substantially disposes of the whole action or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply in part, the court may then dismiss the action or make such other orders as may be just.

Striking out of pleadings

(3) A court or judge may order any pleadings to be struck out on the ground that it discloses no reasonable cause of action or answer, and where a pleading is shown to be frivolous or vexatious, the court or a judge may order the action to be stayed or dismissed, or judgment to be entered accordingly.

ORDER 24 **Withdrawal or Discontinuance**

Claimant may discontinue before defence

1. (1) The claimant may at any time before receipt of the defence or after the receipt, before taking any other proceeding in the action, by notice in writing duly filed and served, wholly discontinue his claim against all or any of the defendants or withdraw any part or parts of his claim. He shall pay the

defendant's costs of action, or if the action be not wholly discontinued, the costs occasioned by the matter withdrawn.

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

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

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

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

2. When a cause is ready for trial, it may be withdrawn by either claimant or the defendant upon producing to the Registrar a consent in writing signed by the parties and thereupon the court shall strike out the matter without the attendance of the parties or their legal practitioner. *Withdrawal by consent of parties*

ORDER 25 Amendment

1. A party may amend his originating process and pleadings at any time before the pre-trial conference and not more than twice during the trial but before the close of the case. *Amendment of originating process and pleadings*
2. Application to amend supported by an affidavit exhibiting the proposed amendment may be made to the court and may be allowed upon such terms as to costs or otherwise as may be just. *Application*
3. Where any originating process or a pleading is to be amended a list of any additional witness to be called with his written statement on oath and a copy of any document to be relied upon on such amendment shall be filed with the application. *Amendment of originating process*
4. If a party who has obtained an order to amend does not do so within the time limited for that purpose, or if no time is limited, then within 7 days from the date of the order, such party shall pay an additional fee of N100 (One hundred naira) for each day of default. *Failure to amend after Order*
5. Whenever any originating process or pleading is amended, a copy of the amended document shall be filed in the Registry and copies served on all the parties to the action. *Amended process*
6. Whenever any endorsement or pleading is amended, it shall be marked in the following manner: *Date of order and amendment to be displayed*

"Amended..... day of pursuant to Order of (name of Judge) dated the..... day of..... "

Clerical mistakes and accidental omissions

7. The court may at any time correct clerical mistakes in judgments or orders, or errors arising from any accidental slip or omission or upon an application, without an appeal being filed.

General power to amend

8. Subject to the provision of Rule 1 of this order, the court may at any time and on such terms as to cost or otherwise as may be just, amend any defect or error in any proceedings.

**ORDER 26
Settlement Out of Court**

Settlement out of court

When a matter comes before the court for the first time, the judge shall in circumstances where it is appropriate, grant to the parties, time, not more than 30 days within which parties may explore possibilities for settlement of the disputes.

**ORDER 27
Pre-Trial Conference and Scheduling**

Settlement and Trial of Issues

Settlement of issues at or before hearing

1. On conclusion of pleadings, the parties shall within 7 days submit in writing to the Registrar the material facts in controversy between them in the form of issues, which shall be noted by the court and set down for trial.

Non-compliance with Rule 1

2. Where a party fails to comply with Rule 1, the court may proceed to set down the matter for hearing upon the issues submitted by the other party.

Where parties differ on issues

3. Where parties differ on the issues the pretrial judge may settle the issues.

Court may give directions

4. Where neither Rule 1 or 2 is invoked by any of the parties, the court shall give notice to the parties to attend settlement of issues.

Settlement of issues without previous notice

5. Issues may be settled without any previous notice at any stage of the proceedings, at which all the parties are actually present or at the hearing.

Court may amend or frame additional issues

6. At any time before judgment, and where it appears necessary to the court, for the purpose of determining the real question or controversy between the parties, the court may amend the issues or frame additional issues on such terms as it deems fit.

Trial of Questions and Issues

7. The court may direct the parties to settle all documentary evidence which the parties intend to rely on at the trial. *Settlement of documents*
8. Where it appears to the court, that the decision of any question or issues arising in a matter when determined separately from the matter substantially disposes of the cause or matter or renders the trial of the matter unnecessary, it may dismiss the matter, or make such other order, or give such judgment as may be just. *Dismissal of actions, etc. after decision of preliminary issues*
9. The provisions of this Order shall be subject to these Rules and any written law in force in the Bauchi State, regarding trial of cases. *Provisions subject to other written laws*
10. (1) The claimant shall apply within 7 days after close of pleadings for the issuance of a pre-trial Conference Notice as in Form 19. *Pre-trial conference notice*
(2) Upon application by a claimant under sub-rule 1 above, the court shall cause to be issued to the parties and their legal practitioners (if any) a pre-trial Conference Notice as in Form 19 accompanied by a pre-trial information sheet as in Form 20 for the purpose set out below: *Civil Form 19 & 20*
 - (a) Disposal of matters which must or can be dealt with on interlocutory application;
 - (b) Giving such direction as to the future course of the action as appear best suited for just, expeditious and economical disposal;
 - (c) Promoting amicable settlement of the case or adoption of alternative dispute resolution.
 - (d) Fix trial dates.
- (3) If the claimant does not make the application in accordance with sub-rule 1 of this rule, the defendant(s) may do so or apply for an order to dismiss the action.
11. The court may, having regards to the circumstances of the case dispense with the Pre-Trial conference whenever it considers it expedient to do so. *Dispensing with pre-trial conference*
12. At the pre-trial conference, the court shall enter a scheduling order for:
 - (a) Joining other parties;
 - (b) Amending pleadings or any other processes;
 - (c) Filing motions;
 - (d) Further pre-trial conferences; and
 - (e) Any other matters appropriate in the circumstances of the case.*Scheduling and planning*
13. At the pre-trial conference, the court shall consider and take appropriate action on any of the following, or aspects of them, as may be necessary or desirable: *Agenda*
 - (a) Formulation and settlement of issues;
 - (b) Further and better particulars;
 - (c) Amendments;

- (d) The admission of facts, documents and other evidence by consent;
- (e) Control and scheduling of discovery, inspection and production of documents;
- (f) Narrowing the field of dispute between experts witnesses, by their participation at pre-trial conferences or in any other manner;
- (g) Hearing and determination of objections on point of law;

- (h) Giving orders or directions for separate trial of a claim, counterclaim, set-off, cross-claim or third-party claim or of any particular issue in the case;
- (i) Settlement of issues, enquires and accounts under Order 28;
- (j) Securing statement of special case of law or facts under Order 29;
- (k) Determining the form and substance of the pre-trial order; and
- (l) Such other matters as may facilitate the just and speedy disposal of the action.

Time table

14. The pre-trial conference or series of pre-trial conferences with respect to any case shall be completed within 14 days of its commencement, unless extended by the judge, and the parties and their legal practitioners shall co-operate with the court in working within the time table. As far as practicable, pre-trial conference shall be held from day to day or adjourned only for the purpose of compliance with pre-trial conference orders.

Report

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

Sanctions

16. If a party or his legal practitioner fails to attend the pre-trial conference or obey a scheduling or pre-trial order or is substantially unprepared to participate in the conference or fails to participate in good faith the court shall:
- (a) In the case of the claimant dismiss the claim;
 - (b) In the case of a defendant enter final judgment against him.
- Any judgment given under this rule may be set aside upon an application made within 7 days of the judgment or such other period as the pre-trial judge may allow not exceeding the pre-trial conference period. The application shall be accompanied by an undertaking to participate effectively in the pre-trial conference.

Management

17. The court shall direct the pre-trial conference with due regards to its purpose and agenda as provided under this Order, and shall require parties or their legal practitioners to co-operate with it effectively in dealing with the conference agenda.

Sanctions

18. If a party or legal practitioner fails to attend the Pre-Trial Conference or obey a Scheduling Order or is substantially unprepared to participate in the conference or fails to participate in good faith, the judge shall:

- (a) In the case of the claimant dismiss the claim
- (b) In the case of a defendant enter judgment against him where appropriate.

ORDER 28
Discovery and Inspection

1. In any cause or matter any party may deliver written interrogatories for the examination of the opposing party or parties and such interrogatories when delivered shall have a note at the end of it stating which of the interrogatories each person is required to answer. Interrogatories shall be delivered within 7 days of the close of pleadings and shall form part of the agenda of pre-trial conference. *Discovery by interrogatories*
2. Interrogatories shall be as in Form 21 with such modifications or variations as circumstance may require. *Civil form 21*
3. Where a 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 unincorporated, 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. *Corporation or companies*
4. An objection to answering any one or more of several interrogatories on the ground that it is or they are scandalous or irrelevant may be taken in the affidavit in answer at the pre-trial conference. *Objection to interrogatories by answer*
5. Interrogatories shall be answered by affidavit to be filed within 7 days, or within such other times as the court may allow. Two copies of the affidavit in answer shall be delivered to the Registrar. *Filing of affidavit in answer*
6. An affidavit in answer to interrogatories shall be as in Form 22 with such modifications or variations as circumstances may require. *Form of affidavit in answer: Civil form 22*
7. Where any person interrogated omits to answer or answers insufficiently, the pre-trial judge shall on application issue an order requiring him to answer or answer further as the case may be. *Order to answer or answer further*
8. (1) A 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 a matter in question in the case. Request for discovery shall be served within 7 days of close of pleadings and shall form part of the agenda of pre-trial conference. *Application for discovery of Documents*

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

(3) The affidavit to be made by any person in answer to a request for discovery of documents shall specify which, if any, of the listed documents he objects to producing, stating the grounds of his objection, and it shall be in Form 23 with such modifications or variations as circumstances may require.

Processes filed after pre-trial conference

9. (1) Any process to be filed after the pre-trial conference shall be accompanied by copies of documents referred to.
(2) Where a process filed is not accompanied by a document referred to the court may on application strike out the process

Verification of business books

10. (1) Where any document required to be attached to any process or produced under this or any rule is a business book the court may upon application order a copy of the entry to be furnished and verified in an affidavit. Such affidavit shall be made by a person who keeps the book or under whose supervision the book is kept.
(2) Notwithstanding that a copy has been supplied the courts may order inspection of the book from which the copy was made.
(3) The court may upon application whether or not an affidavit of document has been ordered or filed, make an order requiring any party to state by affidavit whether any particular document or class of documents is or has at any time been in his possession, custody, power or control, when he parted with it and what has become of it.

Cost for disobedience

11. An order for interrogatories or discovery or inspection made against any party if served on his legal practitioner shall be sufficient service to grant an application for cost against a party for disobedience of the order.

Cost against legal practitioner

12. A legal practitioner upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding Rule, who neglects without reasonable excuse to give notice to his client, shall be liable to pay cost at the discretion of the court.

Using answer to interrogatory

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

Discovery against Sheriff

14. In any action against or by a sheriff in respect of any matter(s) connected with the execution of his office, the court may on application of a party, order that the affidavit to be made in answer to interrogatories or to any order for discovery shall be made by the officer concerned.

Order to apply to person under legal disability

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

ORDER 29
References to Referees and Accounts

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

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

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

4. (1) Subject to any order made by the court ordering the inquiry, evidence shall be taken at any inquiry before a referee, and the attendance of witnesses to give evidence before a referee may be enforced by the court in the 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. *Evidence*
(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 prison or to enforce any order by attachment or otherwise; but the court may, in respect of matters before a referee, make such order of attachment or commitment as he may consider necessary.

5. (1) The report made by a referee under a reference order shall be made to the court and notice served on the parties to the reference. *Reports made under reference order*
(2) A referee may by his report submit any question arising for the decision of the court or make a special statement of fact from which the court may draw such inferences as it deems fit.
(3) On the receipt of a referee's report, the court may:
 - (a) Adopt the report in whole or 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;
 - (e) Decide the question or issue originally referred to him on the evidence taken before him, with or without additional evidence.
(4) When the report of the referee has been made, an application to vary the report or remit the whole or any part of the question or issue originally

referred may be made at the hearing by the court for further consideration of the cause or matter, after giving not less than 4 days' notice and any other application based on the report may be made at the hearing.

(5) Where on a reference under this Order the court orders that the further consideration of the cause or matter in question shall be 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 provision of this rule shall have effect subject to any such directions.

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| <i>Taking of account</i> | 6. | The court may order or direct an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account, the books of account in which the accounts in questions have been kept shall be taken as prima facie evidence of the truth of their contents, with liberty to the interested parties to object. |
| <i>Verification of account</i> | 7. | Where any account is directed to be taken, the accounting party shall make out his account and verify it by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be attached to the affidavit as an exhibit and filed in the registry. |
| <i>Mode of vouching accounts</i> | 8. | The court may, upon the taking of any account 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 court. |
| <i>Surcharge</i> | 9. | Any party seeking to charge any accounting party beyond what he has by his account admitted to have received shall give notice to him, stating so far as he is able, the amount sought to be charged with particulars. |
| <i>Accounts and enquiry to be numbered</i> | 10. | Where by any judgment or order any account is 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 judgment or order shall be in Form 24 with such modification or variations as the circumstances may require. |
| <i>Civil Form 24</i> | | |
| <i>Just allowances</i> | 11. | In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose. |
| <i>Expediting proceedings in case of undue delay</i> | 12. | If it appears to the court that there is any undue delay in the prosecution of any proceedings, 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 with regard to expediting the proceedings, the conduct, or the stay and as to the costs of the proceedings as the circumstances of the case may require; and for these purposes any party may be directed to summon the persons whose attendance is required, and to conduct any proceeding and carry out any directions which may be given. |

ORDER 30
Special Case

1. At the pre-trial conference parties may concur in stating the questions of law arising in their case in the form of a special case for the opinion of the court. Every such special case shall be divided into paragraphs numbered consecutively and shall concisely state such facts and documents as may be necessary to enable the court to decide the questions. Upon the argument of such case the court and the parties may refer to all the contents of the documents and the court 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. *Special case by consent*
2. If at the pre-trial conference it appears to the court 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 court 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 court may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may be stayed. *Special case by order before trial*
3. Every special case agreed pursuant to Rule 1 shall be signed by the parties or their legal practitioners and shall be filed by the claimant or other party having conduct of the proceedings. *Special case to be signed*
4. An application to set down a special case in any cause or matter to which a person under legal disability is a party shall be supported by sufficient evidence that the statements contained in such case, so far as it affects the interest of such persons are legal. *Application to set down where a person under disability is a party*
5. (1) The parties to a special case may, if they think fit, enter into a written agreement (which shall not be subject to any stamp duty) that on the judgment of the court being given in the affirmative or negative on the questions of law 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 with or without costs as the case may be. (2) The judgment of the court may be entered for the sum agreed or ascertained, with or without cost, as the case may be, and execution may issue on such judgment, unless agreed or stayed on appeal. *Agreement as to payment of money and costs*
6. This Order shall apply to every special case stated in a cause or matter and any incidental proceedings. *Application of order*

**ORDER 31
Cause Lists**

- List of cases for hearing*

1. (1) The Registrar shall keep a list (Pre-Trial List) of actions directed to be set down for pre-trial conference under Order 25 Rule 3.
(2) The Registrar shall also keep a Weekly cause list of all other actions, which are ready for trial or hearing.
- Pre-trial and weekly cause list*

2. (1) The Registrar shall post Pre-trial and Weekly Cause List every Friday which shall set out the arrangement of causes before every judge sitting in court during the following week.
(2) Nothing in this rule shall preclude the Chief Judge from making special arrangements whenever necessary or convenient, for the disposal of causes and matter included in the list.
- Public cause list*

3. Where any Friday is a public holiday, the pre-Trial List and Weekly Cause List shall be posted on the day preceding the public holiday.
- Judge unable to sit*

4. On any day when the court shall be unable to sit in the court and deal with any cause or matter fixed for hearing, a minute, recording the parties present and the step taken by the Registrar, shall be entered on the court file.
- Posting cause list on notice boards*

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

**ORDER 32
Proceeding at Trial**

- Hearing notice for trial*

1. Upon completion of pleadings, either party may apply to the Registrar to set down the case for trial where trial date has not been fixed by the trial judge. The Registrar shall upon such application, cause hearing notices to be issued to all parties in this suit.
- Nonappearance of both parties*

2. When a cause on a weekly cause list has been called for hearing and neither party appears, the court shall unless he sees good reason to the contrary, strike the cause out.
- Default of appearance by defendant at trial*

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

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

5. (1) Where a cause is struck out under Rule 2 of this order either party may apply that the cause be relisted on such terms as the court may deem fit. Default judgment may be set aside on terms
(2) A judgment obtained where any party does not appear at the trial may be set aside by the court upon such terms as it deems fit.
(3) A party who fails to file an application to relist a cause struck out or to apply to set aside a judgment within 6 days after the order or judgment was delivered or such longer period as the court may allow shall at the time of filing the application, pay a fee of ₦200 (Two Hundred Naira) for each day of the default. Proof of payment shall be attached to the application for extension of time. Failure to apply to relist or set aside judgment timeously
6. The court may, if it thinks expedient in the interest of justice, postpone or adjourn a trial for such time and upon such terms, if any. Adjournment of trial
7. The Registrar or other officer present at any trial or hearing shall make a note of the time of commencement and termination of the trial and the duration on each day it goes on, for communication to the taxing officer, if required. Records of duration of trial and proceedings
8. The order of proceeding at the trial of a cause shall be as provided in the following rules. Order of proceeding
9. The party on whom the burden of proof lies, by the nature of the issues or questions between the parties, shall begin documentary evidence. Party to begin
10. Documentary evidence shall be put in and may be read or taken as read by consent. Documentary evidence
11. (1) A party who desires to call any witness not being a witness whose deposition on oath accompanied his pleading shall apply to the court for leave to call such witness. Additional witnesses
(2) An application for leave in sub-rule 1 above shall be accompanied by the deposition on oath on such witness.
12. (1) A party shall close his case when he has concluded his evidence. The claimant or defendant may make an oral application to have the case closed. Close of case of parties
(2) Notwithstanding the provisions of sub-rule 1 above, the court may *suo-motu* where he considers that either party fails to conclude his case within a reasonable time, close the case for the party.
13. (1) The Registrar shall take charge of every document or object put in as an exhibit during the trial of an action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in (or where more convenient the witness by whom the exhibit is proved) and with a number, so that all the exhibits put in by a party (or proved by a witness) are numbered in one consecutive series. Exhibit during trial
(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 records 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.

- Written address by party beginning* 14. When the party beginning has concluded his evidence, the court shall ascertain whether the other party intends to call evidence. Where the other party declines to call evidence, the party beginning, shall, within 21 days after close of evidence file a written address. Upon being served with the written address, the other party shall within 21 days file a final written address.
- Written address by the other party* 15. Where the other party calls evidence he shall within 21 days after the close of evidence file a written address.
- Written address of party beginning* 16. Upon being served with other party's written address the party beginning shall within 21 days file his own written address.
- Reply on points of law* 17. The party who files the first final written address shall have a right of reply on points of law only. The reply shall be filed within 7 days after service of the other party's final written address.
- Release of exhibit(s)* 18. (1) An exhibit shall not be released after the trial to the party who has put it in unless the period during which notice of appeal may be given has elapsed without such notice having been given, and then only if the trial judge (or in his absence another judge) grants leave to release such exhibit on being satisfied:
- (a) That the exhibit will be kept duly marked and labelled and will be produced, if required, at the hearing of an appeal (if any such appeal is lodged), or
 - (b) That the release of the exhibit will not in any way prejudice any other party.
- (2) After a notice of appeal has been filed, an exhibit produced at the trial shall not be released by the High Court unless leave to release such exhibit is granted by the Court of Appeal.
- Rejected exhibits* 19. (1) Where a document is tendered as an exhibit and is rejected by the court, it shall be marked "Rejected", and shall be retained together with the accepted exhibits.
- (2) All rejected exhibits shall be transmitted to the Appeal court in the event that a case where it is tendered goes on appeal.
- List of exhibits* 20. (1) Any party may apply for and on payment of the prescribed fee obtain an office copy of the list of exhibits.
- (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.

21. The court may, *suo motu* or on application strike out any proceedings not being prosecuted diligently. Non-diligent prosecution
22. A judge may in all cases disallow any question put in cross examination which appears to him to be vexatious and not relevant to any matter to be inquired into in the action.

ORDER 33
Filing of Written Address

1. This order shall apply to all applications and final addresses. Application
2. A written address shall be printed on white A4 size paper, set out in paragraphs, numbered serially and shall contain: Format for written address
- (a) The claim or application on which the address is based;
 - (b) A brief statement of the facts with reference to the exhibit(s) attached to the application or tendered at the trial;
 - (c) The issue arising from the evidence; and
 - (d) A succinct statement of argument on each issue incorporating the purpose of the authorities referred to with full citation of each authority.
3. All written addresses shall be concluded with a numbered summary of the points raised and the party's prayer. A list of all authorities referred to shall be submitted with the address. Where any unreported judgment is relied upon the certified true copy shall be submitted along with the written address. Summation of address
4. Oral argument of not more than ten minutes may be allowed for each party to emphasize and clarify the written address already filed. Where a party is absent, he shall be deemed to have adopted his written address. Oral argument
5. Each party shall file two copies of his written address in court and serve a copy on every party. Copies of written address

ORDER 34
Evidence Generally

1. (1) Subject to these rules and to any enactment relating to evidence any fact required to be proved at the trial of any action shall be proved by written deposition and oral examination of witnesses in open court. Proof of facts
- (2) Certified true copies of documents shall be tendered from the bar or by the party and or his witness where he is not represented by a legal practitioner. Certified copies of documents

(3) The oral examination of a witness during his evidence in chief shall be limited to adopting his written statement on oath and tendering in evidence all documents referred to in his statement.

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

2.
Particular facts

(1) The court may, before or at the trial of an action, order or direct that evidence of any particular fact be given 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 in any of the following ways:

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

3.
Limitation of
medical and
expert evidence

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

4.
Limitation on use
of documentary
evidence

Unless before or at trial, the court for special reasons orders otherwise or directs, no document, plan, photograph or model shall be receivable in evidence except it has been filed with the pleadings of the parties under these rules.

5.
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 the court made or given before or at the trial.

6.
*Certified copies
admissible in
evidence*

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

7.
*Examination of
witnesses
abroad*

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

Civil Form 25

- (a) The party obtaining such order shall file in the registry an undertaking as in form 25 which may be necessary to meet the circumstances of the particular case;
- (b) The undertaking shall be accompanied by-

- | | |
|--|---|
| <p>(i) A request as in Form 26, with such modifications or variations as may be directed in the order for its issue, with translation in the language of the country in which it is to be executed (if not English);</p> <p>(ii) A copy of the interrogatories (if any) to accompany the request(s), with a translation, if necessary;</p> <p>(iii) A copy of the cross-interrogatories (if any) with a translation, if necessary.</p> | <p>Civil Form 26</p> |
| <p>8. Where an order is made for the examination of a witness or witnesses before the Nigerian Diplomatic Agent in any foreign country with which a Convention in that behalf has been made, the order shall be as in Form 27. The Form may be modified or varied as may be necessary to meet the circumstances of the case.</p> | <p>Form of order for examination of witnesses abroad
Civil Form 27</p> |
| <p>9. The court 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: but 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.</p> | <p>Order for attendance of person to produce document</p> |
| <p>10. Any person willfully disobeying any order requiring his attendance for the purpose of being examined or producing any document shall be in contempt of court, and may be dealt with accordingly.</p> | <p>Disobedience to order for attendance</p> |
| <p>11. Any person required attending 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.</p> | <p>Expenses of persons ordered to attend</p> |
| <p>12. If any person summoned by <i>subpoena</i> to attend for examination refuses to attend or if having attended, refuses to be sworn or answer any lawful question he shall be in contempt of court and may be dealt with accordingly by the judge.</p> | <p>Contempt of court</p> |
| <p>13. When the examination of any witness before any examiner under Rule 7 has been conducted, the original deposition authenticated by the signature of the examiner, shall be transmitted by him to the registry and filed.</p> | <p>Examination of witnesses</p> |
| <p>14. Except where by this Order otherwise provided or directed by the court, 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 it may be offered, unless the court is satisfied that the deponent is dead or beyond the jurisdiction of the court or due to illness or other infirmity to attend the hearing or trial. In any case, the depositions certified under the hand of the person taking the examination shall be admissible in evidence, saving all just exceptions, without proof of the signature to such certificate.</p> | <p>Dispositions not to be given in evidence without consent of leave of a judge</p> |

- Oaths
15. Any officer of the court or other person directed to take the examination of any witness or person or any person nominated or appointed to take the examination of any witness or person pursuant to the provisions of any convention now made or which may be made with any foreign country, may administer oaths.
- Attendance of witness under subpoena
16. A party may by *subpoena ad testificandum* or *ducestecum* 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.
- Practice as to taking evidence at any stage of cause or matter
17. The practice with reference to the examination, cross examination and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any cause or matter at any stage.
- Special directions as to taking evidence
18. The practice of court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the court or other person in any cause or matter after the hearing or trial, shall be subject to any special directions, which may be given in any case.
- Evidence in proceedings subsequent to trial
19. Subject to the provision of section 34 of the Evidence Act, all evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.
- Form of praecipe of a subpoena Civil Form 28
20. Where it is intended to issue a subpoena, a praecipe for that purpose as in Form 28 containing the name or firm and the place of business or residence of the legal practitioner intending to issue it, and where such legal practitioner is only an agent, then the name or firm and place of business or residence of the principal legal practitioner, shall in all cases be delivered and filed at the registry. No *subpoena* shall be issued unless all court fees have been paid (including fee for service) and unless sufficient money on the prescribed scale is deposited to cover the first day's attendance.
- Form of subpoena Civil Form 29, 30 or 31
21. A subpoena shall be as in any of Forms 29, 30 or 31 with such variations as circumstances may require.
- Subpoena for attendance of witness in Chambers
22. Where a subpoena is required for the attendance of a witness for the purpose of proceedings in chambers, such subpoena shall issue from the registry as the court may direct.
- Correction of errors in subpoena
23. In the interval between the issue and service of any subpoena the legal practitioner issuing it may correct any error in the names of parties or witnesses, and may have the writ resealed upon leaving a corrected praecipe

of the subpoena marked with words "altered and resealed", with the signature, name and address of the legal practitioner.

24. A *subpoena* shall be served personally unless the court has ordered substituted service where a person persistently evades service. The provisions of Order 7 shall so far as possibly apply to service of a *subpoena*. Personal service of subpoena
25. Any *subpoena* shall remain in force from the date of issue until the trial of action or matter in which it is issued. Duration of subpoena
26. Any person who would under the circumstances alleged by him to exist become entitled upon the happening of any future event to any honour, title, dignity or office, or to any estate or interest in any property, real or personal the right or claim to which cannot be brought to trial by him before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim. Action to perpetuate testimony
27. A witness shall not be examined to perpetuate his testimony unless an action has been commenced for that purpose. Examination of witnesses to perpetuate testimony
28. No action to perpetuate the testimony of a witness shall be set down for trial. Action not to be set down for trial
29. Subject to the provision of the Evidence Act, a judge sitting at trial may admit evidence of a witness through video conference or any other electronic device capable of recording live (as if he is personally in attendance in court) a witness whenever the judge considers it expedient to do so particularly a protected witness. Evidence of protected witness

ORDER 35

The Undefended List

1. (1) Where an application in Form 1, as in the Appendix is made to issue a writ of summons in respect of a claim to recover a debt or liquidated money demand, supported by an affidavit stating the grounds on which the claim is based, and stating that in the deponent's belief there is no defence to it, the judge in chambers shall enter the suit for hearing in what shall be called the "Undefended List". The undefended list affidavit
- (2) A writ of summons for a suit in the undefended list shall contain the return date of the writ. Undefended list
2. A claimant shall deliver to a Registrar on the issue of the writ of summons, as many copies of the supporting affidavit, as there are parties against whom relief is sought, for service. Copy of affidavit to be served
3. (1) Where a party served with the writ delivers to Registrar, before 5 days to the day fixed for hearing, a notice in writing that he intends to defend the suit, Notice of intention to defend

together with an affidavit disclosing a defence on the merit, the court may give him leave to defend upon such terms as the court may think just.

(2) Where leave to defend is given under this Rule, the action shall be removed from the Undefended List and placed on the ordinary Cause List; and the Court may order pleadings, or proceed to hearing without further pleadings.

Judgment in undefended suit

4. Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by Rule 3(1) or is not given leave to defend by the court the suit shall be heard as an undefended suit and judgment given accordingly.

Oral evidence

5. A court may call for hearing or require oral evidence where it feels compelled at any stage of the proceedings under Rule 4.

ORDER 36 Affidavits

Affidavit evidence

1. Upon any motion, petition, summons or any other application, evidence may be given by affidavit, but the court may, *suo motu* or on application, order the attendance for cross-examination of the deponent and where, the order has been made and the person in question does not attend, his affidavit shall not be used as evidence except by special leave.

Title of affidavit

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

Use of defective affidavit

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

Special time for filing affidavits

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

Affidavit in support of ex-parte applications

5. Unless by leave of the court no order made *ex-parte* in court founded on any affidavit shall be of any force unless the affidavit on which the application was based was made before the order was applied for, or filed at the time of making the application.

Notice of intention to use affidavit

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

7. Every alteration in any account verified by affidavit shall be marked with the initials of the commissioner before whom the affidavit is sworn and such alterations shall not be made by erasure. *Alterations in accounts to be initialed*
8. Accounts, extracts from registers, particulars of creditors' debt, and other documents referred to by affidavit, shall not be annexed to the affidavit or referred to as annexed, but referred to as exhibits. *Exhibits*
9. Every certificate on an exhibit referred to in an affidavit signed by the commissioner before whom the affidavit is sworn shall be marked with the short title of the cause or matter. *Certificate of exhibit*
10. The provisions of sections 79 to 90 or the relevant provisions of the Evidence Act relating to affidavits shall be applicable under these rules. *Application of Evidence Act LFN CAP. 112*

ORDER 37
Fast Track Cases

1. (1) The Chief Judge shall designate such number of Fast Track Judges as he thinks fit, who may act as Motion Fast Track judges and/or Trial Fast Track judges. *Fast Track Judges*
2. A Fast Track judge may conduct pretrial conference or settlement of issues subject to Order 36 and in compliance with Order 28 as he considers expedient in the circumstances. *Pre-trial Conference*
3. (1) The Chief Judge shall appoint an officer as coordinator for the Fast Track Division. *Coordinator, Fast Track Division*
(2) The Coordinator shall:
 - (a) Process Fast Track cases;
 - (b) Monitor the performance of the Fast Track Division and submit weekly and monthly performance appraisal report to the Chief Judge;
 - (c) Make recommendations on how to improve the operation of the Fast Track Division;
 - (d) Publish the weekly Cause List every Friday or on an earlier day if Friday is a public holiday;
 - (e) Manage, coordinate and supervise the operation of the Fast Track Division; and
 - (f) Perform any other function that may be assigned to him by the Chief Judge.
4. Where any of the parties specifically requests to proceed by way of Fast Track as in Form 32, the Fast Track Court shall have jurisdiction to hear and determine that case and any other case requiring exceptional urgency including but not limited to the following: *Jurisdiction of Fast Track Division*
Form 32

- Civil Form 32
- (a) Banker/ customer disputes;
 - (b) Commerce and Industry;
 - (c) Landlord and tenant;
 - (d) Bauchi State or Local Government Council Revenue;
 - (e) Where any of the parties specifically requests to proceed by way of Fast Track as in Form 32.
 - (f) Provided that the monetary claim in paragraphs (a) and (b) above is not less than Fifty Million Naira; and
 - (g) Any other case which the Chief Judge may approve.
- Assignment of Cases 5. A Fast Track judge may not be assigned more than three cases a week.
- Procedure for filing of cases 6.
- (1) The claimant or counterclaimant shall present his originating process prepared by him or his legal practitioner accompanied by:
 - a. Statement of claim
 - b. List of witnesses to be called at the trial,
 - c. Written statement on oath of the witnesses
 - d. Copies of every document or exhibit to be relied on at the trial,
 - e. Certificate of pre-action counseling, and
 - f. A duly completed application form as in Form 33 obtained from the Division to place the cause or matter on the Fast Track Division
 - (2) The Coordinator shall upon receipt of the processes in (1) above issue an acknowledgement and forward the cause or matter to the Chief Judge for approval or otherwise as in Form 34 or 35.
 - (3) Where a matter is placed on the Fast Track, a filing fee of N100, 000(One Hundred Thousand naira) shall be paid by the Applicant.
- Civil form 33, 34, 35
- Accounts for fees Civil Form 36 7. The coordinator shall render monthly account of the monies received by the revenue officer for filing processes, forms or notices as in Form 36.
- Service of process 8.
- (1) The bailiff shall serve all processes or notices filed within 24 hours of filing and file a proof of service.
 - (2) Where a bailiff is unable to effect service, a certificate of non-service shall be filed.
 - (3) Any court official who receives or dispatches a file or process relating to a Fast Track case shall state the date and time of receipt or dispatch.
 - (4) Service of process may be effected on parties or counsel in the court.
 - (5) All proofs of service must be filed within 24 hours.
- Hearing dates 9. Trial shall be conducted on daily basis and parties are bound by hearing dates fixed in advance.

10. (1) A judge may not grant an application for an adjournment, unless it is for cogent and compelling reasons. *Adjournment*
(2) Where an application for adjournment is granted, the order shall not exceed three days from the date of the order.
(3) Where a matter is adjourned at the instance of a party, he shall pay cost of not less than ten thousand (₦10,000.00) naira per day for every day of the adjournment to each other party.
11. (1) Where a party or his counsel will be absent from court, the party or his counsel shall promptly inform the court. *Absence of counsel*
(2) Where a trial has commenced, the court will hold counsel responsible to his commitment to continuous trial. The court shall proceed, notwithstanding the absence of counsel, parties or witnesses.
12. The timetable for steps in Fast Track action is as follows: *Timetable for taking steps*
(a) Administrative action by the Chief Judge after filing of process, form or notice - within 24 hours;
(b) Service of process - within 3 days;
(c) Memorandum of appearance, defence and accompanying documents - within 7 days, and 30 days outside jurisdiction;
(d) Reply to defence - within 7 days;
(e) Pre-trial conference, motions and other applications - within 7 days of close of pleadings;
(f) Commencement to conclusion of trial - within 30 days;
(g) Filing and adoption of final addresses - within 14 days;
(h) Judgment - within 7 days; and
(i) Issuance of certified true copy of judgment - within 4 days.
13. (1) Where service has been duly effected and there is proof of service, an extension of the time provided under the timetable for taking steps, shall not be allowed, unless for cogent and compelling reasons. *Compliance with timetable*
(2) A Party who fails to comply with the period prescribed in the timetable shall not be heard on an interlocutory application, except on an application for extension of time.
14. (1) Where trial cannot commence on a date fixed for hearing due to the absence of the claimant, the case shall be struck-out. *Absence of parties*
(2) Where the trial cannot commence on a date fixed for trial due to the absence of the defendant, hearing shall continue and may be concluded without further notice to the defendant.
(3) Where a case is struck-out under paragraph (1) above, the claimant may apply to relist within 7 days.
(4) Where a case is relisted pursuant to sub rule (3) above, the claimant shall pay a cost as shall be determined by the court.
15. (1) Addresses, objections and applications, except those arising *extempore*, shall be in writing and served on the other party. *Form of addresses, Objections & Application*
(2) Final addresses shall be deemed adopted in the absence of parties.

Application of
Transcript

Civil Form 37

16. (1) The Registrar shall prepare record of proceedings within three days of the conclusion of sittings.
(2) Parties may apply for the record of proceedings upon payment of fees, to be issued within three days of the application as in Form 37.

ORDER 38
Non-Suit
Judgment, Entry of Judgment

Non-suit

1. Where satisfactory evidence is not given entitling the claimant or defendant to the judgment of the court, the judge may suo motu or on application, non-suit the claimant, but the parties' legal practitioner shall have the right to make submissions about the propriety or otherwise of making such order.

ORDER 39
Judgment, Entry of Judgment

Delivery of
Judgment

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

Date of judgment
pronounced in
court

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

Date of judgment
directed to be
entered

3. When any judgment is directed to be entered by an order made on application for judgment, the judgment shall, unless the court otherwise orders, be dated the day on which the order is made and take effect that date but the order may direct that the judgment shall not be entered until a given date, in which case it shall take effect from that date.

Judge may direct
time for payment
or performance
and interest

4. The court at the time of making any judgment or order or at any time afterwards, may direct the time within which the payment is to be made or other act is to be done, reckoned from the date of the judgment or order, or from some other point of time, as the court may deem fit and may order interest at a rate not less than 10% per annum to be paid upon any judgment.

Time to be
stated for doing
any act

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

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

6 In any cause or matter where the defendant has appeared by legal practitioner, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his legal practitioner or agent. *Judgment by consent where defendant appears by a Legal Practitioner*

7 Where the defendant has no legal practitioner, such order shall not be made unless the defendant gives his consent in person in the open court. *Judgment by consent where defendant has no legal practitioner*

ORDER 40

Drawing up of Orders

1. Every order shall bear the date on which it was made unless the court otherwise directs and shall take effect accordingly. *Date of order*

2. Where an order has been made not embodying any special terms, or special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave for - *Orders that may not be drawn up*

- (a) The issue of any writ other than a writ of attachment;
- (b) The amendment of any writ or pleading;
- (c) The filing of any 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 court otherwise directs; but the production of a note or memorandum of such order signed by a judge shall be sufficient authority for such enlargement of time, issue, amendment, filing or other act. A direction that the costs of such order shall be cost in any cause or matter shall not be deemed to be special direction within the meaning of this rule.

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

ORDER 41

Transfers and Consolidation

I - Transfers

1. Where the Chief Judge has in exercise of any power conferred on him by any relevant enactment, order 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 immediately be sent to the Registrar of the lower court who shall transmit to the High Court the documents referred to in the relevant law and other necessary documents and processes. *Order Transferring proceedings to High Court*

Bauchi State High Court (Civil Procedure) Rules 2022

- Payment of filing fees 2. (1) On receipt by the court of the relevant documents and processes, the Registrar shall notify the party who applied for the transfer or where the transfer was not made on the application of any party, the claimant, to attend at the registry and pay the fees for filing the documents. Such payments shall be without prejudice to the question of how the costs shall ultimately be borne.
(2) Such notification shall be effected by serving a notice personally on the party concerned, or where an address for service has been given by such party, at that address.
- Duties of Registrar 3. (1) Upon payment of the prescribed fees, the Registrar shall within 7 days:
(a) File the documents received from the lower court;
(b) Make an entry of the filing in the Cause Book; and
(c) Transmit the document 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.
- Direction 4. (1) The Chief Judge or such other judge appointed by him shall, not later than 14 days after receiving the documents referred to in Rule 3 of this order:
(a) Hear the parties or their legal practitioners;
(b) Take cognizance of the documents; and
(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.
- Party failing to attend 5. (1) If the claimant fails to attend in compliance with a notice given under sub-rule 2 of Rule 3 of this order, the court shall record his default and may, suo motu or on application, dismiss the action or matter. Upon an application by a defendant to dismiss the action or matter the court may either dismiss the action or matter or make such other orders on such terms as he deems just.
(2) If a defendant fails to attend in compliance with a notice given under sub-rule 2 of Rule 3, the claimant may apply to enter judgment with costs or obtain the order prayed for in the transferred proceedings against that defendant(s).
- Transfer where court has no jurisdiction 6. Where a court has no jurisdiction in a cause or matter the judge may by order transfer the cause or matter to a court with competent jurisdiction
- Construction 7. In the preceding rule of this Order, the references to the claimant and the defendant shall in relation to proceedings commenced otherwise than by writ, by construed as references to the applicant and the respondent.

II - Consolidation

8. (1) The court may on application consolidate several actions pending before it 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. Consolidation of actions
- (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 the court before whom one or more of the matters are pending.
- (3)(1) An Order to consolidate may be made where two or more actions are pending between:
- (a) The same claimant and the same defendant;
 - (b) The same claimant and different defendants;
 - (c) Different claimants and the same defendant, or
 - (d) Different claimants and different defendants;
- (2) Where the claimant brings action against different defendants, they will not be consolidated without the consent of all parties unless the issues to be tried are identical.
- (4) Where an order for consolidation has been made, it shall be drawn up at the expense of the party or parties who applied for consolidation and shall be recorded in the Cause Book.

ORDER 42

Interlocutory and other Orders

1. (1) Whereby in 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, the court may make an order for the preservation or interim custody of the subject- matter of the litigation or order that the amount in dispute be brought into court or otherwise secured. Preservation or Interim custody of subject matter of disputed contract
- (2) An application for an order under Rule 1 sub-rule 1 of this Order may be made by the claimant at any time after his right appears from the pleadings.
2. When an application is made before trial for an injunction or other order and at any time before or during the hearing, it appears to the court 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 merits on affidavit or other evidence for the purpose of the application, it shall make an order for such trial and such other order as the justice of the case may require. Early trial of cause
3. The court may on the application of any party make any order for the sale of any goods, wares or merchandise which may be of a perishable nature, or likely to injure from keeping, or which for any other just and sufficient reason may be desirable to sell at once by any person or persons named in such order in the manner and terms as the court may deem desirable. Order for sale of perishable goods

- Detention, preservation or inspection of property*
4. (1) The court may upon the application of any party to an action or matter and upon such terms as may be just, make any order for the detention, preservation or inspection of any property or thing, being the subject of such action or matter or as to which any question may arise therein and for all or any of the purpose authorize any person 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 authorize any samples to be taken or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.
- (2) Where an order for the inspection of any property or thing is made on an application under this rule (including an application made before any pleadings have been delivered in the action or matter) it appears that inspection was requested in writing by the application and was not given, then, unless the court is satisfied that the respondent did not unreasonably fail or refuse to permit the inspection, the court shall order the costs to be paid by the respondent in any event and except where the respondent is a "Poor Person", shall order the cost to be paid.
- (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.
- Inspection by Judge*
- Sale of property in possession of court*
5. (1) Where any property is in possession of the court before or after judgment and it has remained so for a period of 12 months, the court may suo motu make an order for the sale of that property and the proceeds to be paid into an interest yielding account in a commercial bank directed by the court for the benefit of the person that succeeds at the trial or on appeal.
- (2) The money paid after disposal of any goods or chattel shall be withdrawn from the bank by the successful party who shall present to the chief Registrar a certified true copy of the enrolment of the judgment.
- Recovery of property other than land subject to lien*
6. Where an action 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 court may at the pre-trial conference order that the party claiming to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money on which the lien or security is claimed and such further sum, if any, for interest and costs as the court may direct and that upon such payment into court being made, the property claimed be given up to the party claiming it.
- Allowance of income of property pendent lite*
7. Where any real or personal estate or property forms the subject of any proceedings and the court is satisfied that it will be more than sufficient to answer all the claims which ought to be provided for in such proceedings, the court may at any time after the commencement of the proceedings allow the parties interested 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 , up to such time as the court shall direct.

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

9. In every case in which an application is made for the appointment of a receiver by way of equitable execution, the court in determining whether such debt claimed by the applicant, the amount which may probably be obtained by the receiver and to the probable costs of his appointment and may if it deems fit, direct any inquiries on these or other matters before making the appointment. *Appointment of a Receiver by way of equitable execution*

10. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be approved by the court, duly to account for what he shall receive as such receiver, and to pay it as the court shall direct; and the person to be appointed shall, unless otherwise ordered to be allowed a proper salary or allowance. The security to be given shall be by guarantee or by undertaking as in Forms 38 and 39 with such variation as circumstances may require. The undertaking shall be filed in the registry and form part of the record of proceedings until it has been duly vacated. *Receiver's security and remuneration*

Civil forms 38 & 39

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

12. When a receiver is appointed with a direction that he shall pass accounts, the court 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. Any such receiver who neglects to leave and pass his accounts and pay the balances at the time fixed for the purpose, the court 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 25% per annum upon the balances so neglected to be paid by him during the time it appears to have remained in his custody. *Fixing days for receivers to leave and pass their accounts and pay in balances and neglect of payment*

13. Receivers' accounts shall be as in Form 40 with such variations as circumstances may require. *Form of receivers accounts
Civil Form 40*

- Civil Form 40 14. Every receiver shall deliver to the registrar his account, together with an affidavit verifying the same as in Form 41 with such variations as circumstances may require. An appointment shall be obtained by the claimant or person having the conduct of the action for the purpose of passing such
- Consequences of default by receiver 15. Where any receiver fails to leave any account, affidavit, pass such account, or 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 such directions as shall be proper may be given, including the discharge of any receiver and appointment of another and payment of costs.
- Passing of guardian's accounts 16. The accounts of guardians shall be passed and verified in the same manner as provided in this Order for receiver's accounts.

ORDER 43
Motions and other Applications

- Application and service 1. (1) Whereby in this Rules any application is authorized to be made to the court, it shall be made by motion which may be supported by affidavit and shall state the rule of court or enactment under which the application is brought.
(2) Every application shall be accompanied by a written address.
(3) Where the other party intends to oppose the application, he shall within 7 days of the service on him of such application, file his written address and may accompany it with a counter affidavit.
(4) The applicant may within 7 days of being served with the written address of the opposing party file and serve an address in reply on points of law with a reply affidavit.
- Restriction on Order nisi and order to show cause 2. No motion or application for an Order *nisi* or order to show cause shall be made in any action except where an application *ex-parte* is required or permitted under any enactment or rules.
- When notice on motion should be given 3. (1) No application for an injunction shall be made *ex-parte* unless the applicant files with it a motion on notice of the application.
(2) An order of injunction made upon an application *ex-parte* shall abate after 7 days.
(3) The court 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 the extension shall not be for a period exceeding 7 days from the day the extension is granted.
- Application in chambers 4. The court may deal with non-contentious applications in chambers and may deem the written addresses as having been adopted after two (2) days.

5. (1) Every motion on notice to set aside, remit or enforce an arbitral award shall state in general terms the grounds of the application and where any such motion is based on evidence by affidavit, a copy of the affidavit intended to be used shall be served with the notice of motion. *Motion relating to arbitral award*
(2) The party relying on an award, on applying for its enforcement, shall provide:
 - (a) The duly authenticated original award or a certified copy;
 - (b) The original arbitration agreement or a certified copy
(3) An award made by an arbitrator or at any lawfully recognized ADR institution may by leave of the court be enforced in the same manner as a judgment or order of court.
(4) An application to set aside or remit an award may be made within 3 months after such award was published.
6. Unless the court grants special leave to the contrary, there must be at least 2 clear days between the service of motion on notice and the day for hearing. *Special leave*
7. If on the hearing of a motion or other application the court shall be of the opinion that any person to whom notice has not been given ought to have had such notice, the court may either strike out the motion or application or adjourn the hearing in order that such notice may be given upon such terms, if any, as the court may deem it fit to impose. *Where notice not given*
8. The hearing of any motion or application may from time to time be adjourned upon such terms, as the court shall deem fit. An application for adjournment at the request of a party shall not be made more than two times. *Adjournment of hearing motion*
9. The claimant may file any application along with an originating process and may serve both on any defendant simultaneously. *Service of motion with originating process*
10. Where the relationship of legal practitioner and client exists or has existed, a summons may be issued by the client or his representative for the delivery of a cash account, the payment of moneys or the delivery of securities, and a judge may from time to time order the respondent to deliver to the applicant a list of the moneys or securities which he has in his custody or control on behalf of the applicant or to bring into court the whole or any part of the same, within such time as the judge may order. In the event of the respondent alleging that he has a claim for costs, the court may make such provision for the taxation and the payment or security or the protection of the respondent's lien (if any) as he may deem fit. *Account by Legal Practitioner*
11. If during the taxation of any bill of costs or the taking of any account between legal practitioner and client, it shall appear to the taxing officer may from time to time make an interim certificate as to the amount so payable by the legal practitioner. Upon the filling of such certificate, the court may order the moneys so certified to be forthwith paid to the client or brought into court. *Interim certificate*

ORDER 44
Application for Judicial Review

1. *Case appropriate for judicial review* (1) An application for:
- (a) An order of mandamus, prohibition or certiorari; or
 - (b) An injunction restraining a person from acting in any office in which he is not entitled to act shall be made by way of an application for judicial review in accordance with the provisions of this Order.
- (2) An application for a declaration or an injunction (not being an injunction in rule (1)(b) of this Rule) may be made by way of an application for judicial review and the court may grant the declaration or injunction if it deems it just and convenient, having regard to:
- (a) The nature of the matters which relief may be granted by way of an order of mandamus, prohibition or certiorari;
 - (b) The nature of the person and bodies against whom relief may be granted by way of such an order;
 - (c) All the circumstances of the case.
2. *Joinder of claims for relief* On an application for judicial review any relief mentioned in Rule 1 may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of, relates to or is connected with the same matter.
3. *Leave to apply for judicial review* (1) No application for judicial review shall be made unless the leave of the court has been obtained in accordance with this rule.
- (2) An application for leave shall be made ex-parte to the court and shall be supported by:
- (a) A statement setting out the name and description of the application, the reliefs and the grounds on which they are sought;
 - (b) An affidavit verifying the facts relied on; and
 - (c) A written address in support of application for leave.
- (3) The court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise on such terms, if any, as he deems fit.
- (4) The court shall not grant leave unless he considers that the application has a sufficient interest in the matter to which the application relates.
- (5) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the court may adjourn the application for leave until the appeal is determined or the time for appealing has elapsed.
- (6) Where leave to apply for judicial review is granted, then:
- (a) If the relief sought is an order of prohibition or certiorari and the court 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 court otherwise orders;
- (b) If any other relief is sought, the court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ;
 - (c) The court may impose such term as to cost and as to giving security as he deems fit.
4. An application for judicial review shall be brought within 3 months of the date of occurrence of the subject of the application.
5. (1) where leave has been granted and the court directs, the application may be made by motion or by originating summons.
(2) The notice of motion or summons shall be served on all persons directly affected and where it relates to any proceedings before the court and the object of the application is either to compel the court or its officer to do any act in relation to the proceedings, or to quash them or any order made. The notice or summons shall be served on the clerk or Registrar of the court and where any objection to the conduct of the court is to be made, on the court.
(3) Unless the court granting leave has otherwise directed, there shall be at least 7 days between the service of the notice of motion or summons and the day named for the hearing.
(4) A motion shall be entered for hearing within 14 days after the grant of leave.
(5) An affidavit giving the names, addresses, places and dates of service on all persons who have been served with the notice of motion or summons shall be filed before it is entered for hearing and if any person who ought to be served under this rule has not been served, the affidavit stating that fact and the reason for it shall be before the court at the hearing.
(6) If on the hearing of the motion or summons the court is of the opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the court may adjourn the hearing on such terms, if any, as it may direct in order that the notice or summons may be served on that person.
6. (1) Copies of the statement in support of an application for leave under rule 3 shall be served with the notice of motion or summons and subject to sub-rule 2, no grounds shall be relied upon or any relief sought at the hearing except the grounds and reliefs set out in the statement.
(2) The court may on the hearing of the motion or summons allow the applicant to amend his statement whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as he deems fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.
(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intentions and of any proposed amendment to every other party.

Time within which to bring application Statements and affidavits

Mode of applying judicial review

Statements and affidavit

(4) Each party to the application shall supply to every other party a copy of every affidavit which he proposes to use at the hearing including, in the case of the applicant, the affidavit in support of the application for leave under Rule 3.

- Claim for damages*
7. On an application for judicial review the court may, subject to Rule 2, award damages to the applicant if:
- (a) He has included in the statement in support of his application for leave under Rule 3 a claim for damages arising from any matter to which the application relates; and
 - (b) The court is satisfied that if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.
- Interlocutory application*
8. Any interlocutory application in proceedings on an application for judicial review may be made to the court.
- Hearing of application for judicial review*
9. (1) On the hearing of any motion or summons under Rule 5, any person who desires to be heard on the motion or summons, and appears to the court to be a proper person to be heard, shall be heard notwithstanding that he has not been served with notice of the motion or the summons.
- (2) Where the reliefs sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has filed a copy of such verified by affidavit or account for his failure to do so to the satisfaction of the court hearing the motion or summons.
- (3) Where an order of certiorari is made in any such case as is referred to in sub-rule 2, the order shall, subject to sub-rule 4, direct that the proceedings shall be quashed immediately on their removal into court.
- (4) Where the relief sought is an order of certiorari and the court is satisfied that there are grounds for quashing the decision to which the application relates, the court 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 court.
- (5) Where the relief sought is a declaration, an injunction or damages and the court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the court may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ.
- Obedience to an order of mandamus*
10. No action or proceeding shall be brought or prosecuted against any person for anything done in obedience to an order of *mandamus*.
- Consolidation of application*
11. Where there is more than one application pending against several persons in the same matter and on the same grounds, the court may order the applications to be consolidated.

ORDER 45
Jurisdiction of Chief Registrar

1. In this Order, any reference to the chief Registrar means the chief Registrar of High Court and includes the deputy chief Registrar. *Chief Registrar*
2. The Chief Registrar may transact business and exercise authority and jurisdiction as may be transacted or exercised by a judge in the following matters: *Business to be conducted by Chief Registrar*
 - (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 the court has ordered that the account be taken by the chief Registrar;
 - (c) The taxation of bills of costs;
 - (d) Applications leading to the issue of the grant of probate or letters of administration of the estates of deceased persons in non-contentious or common from probate business.
3. If any matter appears to the chief Registrar proper for the decision of a judge, he may refer it to the Chief Judge or the court who referred the matter to the chief Registrar. The Chief Judge or the court may either dispose of the matter or refer it back to the chief Registrar with such directions as he may deem fit. *Chief Registrar may refer matter to the Chief Judge*
4. Any person affected by an order or decision of the chief Registrar in the exercise of the jurisdiction conferred upon him by this Order may appeal to a judge. Such appeal shall be by notice in writing to attend before the judge without a fresh summons within 5 days after the decision complained of or such further time as may be allowed by the judge. Unless otherwise ordered, there shall be at least 2 clear days between service of the notice of appeal and the day of hearing. An appeal from the decision of the chief Registrar shall not operate as a stay of proceedings unless so ordered by the judge. *Appeal from order of Chief Registrar*
5. 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. *Chief Registrar's list*
6. A legal practitioner may represent any party in any proceedings before the chief Registrar under the jurisdiction vested in him by this Order, *Legal Practitioner may represent Party*
7. Except as otherwise provided for in these rules, the directions to be given for or concerning any proceedings before the chief Registrar shall require no particular form, but the result of such proceedings shall be concisely stated in a certificate. *Certificate*
8. The certificate of the chief Registrar regarding accounts and inquires shall not, unless the circumstances of the case render it necessary, set out the judgment, order, any document, evidence or reasons but shall refer to the judgment, *Reference to judgment*

order, documents and evidence or particular paragraphs, so that it may appear on the face of it what the result stated in the certificate is founded on.

- Form and Contents of certificate Civil Form 42*
9. (1) In case of accounts and inquiries the certificate of the chief Registrar shall be as in Form 42 with such variations as the circumstances may require.
(2) The certificate shall state the result of the account and not set it out by way of schedule, but shall refer to the account verified by the affidavit filed and shall specify by the numbers attached to the items in the account which (if any) of such items have been disallowed or varied and shall state what additions (if any) have been made by way of surcharge or otherwise. 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 judgment or order and shall be referred to in the certificate. The account and transcripts (if any) referred to in certificates shall be filed.
- Content of certificate in cases of accounts and transcripts*
- When certificate becomes binding*
10. Every certificate with the accounts (if any) to be filed shall be transmitted by the chief Registrar to the registry for filing and shall be binding on all the parties to the proceedings unless discharged or varied upon an application made to the court before the expiration of 8 clear days after the filing of the certificate.
- Bill of costs*
11. When taxing a bill of costs the chief Registrar shall insert in red ink against every item disallowed, reduced or altered and the substance of the modification and at the bottom of the bill of costs he shall certify the net result of the taxation. The bill of costs shall be transmitted by the chief Registrar to the registry for filing and the provisions of Rule 10 of this Order shall apply to the certificate.
- Discharge or variation of certificate after lapse of any time*
12. The court may, if the special circumstances of the case require, upon an application direct a certificate to be discharged or varied at any time after it has become binding on the parties.

ORDER 46

Garnishee Proceedings

- Application*
1. (1) Where a person (in this Order referred to as “The Judgment Creditor”) has obtained a judgment or order for the payment by some other person (in this Order referred to as “The Judgment Debtor”) of the sum of money and any other person within the jurisdiction (in this Order referred to as “The Garnishee”) is indebted to the judgment debtor, the court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment debtor from the garnishee or as much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.
(2) An Order under this Rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter

and the mean time attaching such debt as is mentioned in sub rule (1) or so much thereof as may be specified in the Order and the costs of the garnishee proceedings.

(3) An order under this rule, shall not require a payment which would reduce below N1,000.00 the amount standing in the name of the judgment debtor in an account with a bank.

2. An application for an under rule (1), shall be made ex parte supported by an affidavit;
 - (a) stating the name and last known address of the judgment debtor;
 - (b) identifying the judgment or order to be enforced and stating the amount of the judgment or the amount unpaid under it at the time of the application;
 - (c) stating that to the best of the information or belief of the deponent, the garnishee is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information or grounds for his belief; and
 - (d) stating, where the garnishee is a bank having more than one place of business, the name and address of the branch at which the judgment debtor's account is believed to be held and the number of that account or if it be the case, that all or part of this information is not known to the deponent.
3. Unless the court otherwise directs, and Order under rule (1) to show cause shall be served:
 - (a) on the garnishee personally, at least 15 days before the appointed day before the consideration of the matter;
 - (b) on the judgment debtor, at least 7 days after the order has been served on the garnishee and at least 7 days before the day appointed for the further consideration of the matter.
4. (1) Where on the further consideration of the matter, the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the court may make an order absolute under rule (1), against the garnishee.
(2) An order absolute under rule (1) against the garnishee may be enforced in the same manner as any other order for the payment of money.
5. Where on the further consideration of the matter, the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the court may summarily determine the question in issue or other that any question necessary for determining the liability of the garnishee be tried, without the need for any consent by the parties.
6. Where in garnishee proceedings, it is brought to the notice of the court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has claims to have a charge upon it, the court

How application is made

Service of garnishee order

Garnishee absolute

Determination of issue by the court

Where a third person makes claim

may order that person to attend before the court and state the nature of his claim with particulars thereof.

*Compliance
as discharge
of liability*

7. Any payment made by a garnishee in compliance with an order absolute under this Order and any execution levied against him in pursuant of such order shall be a valid discharge of liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which the arose is reserved.

ORDER 47

Habeas corpus, Attachment for Contempt

I - HABEAS CORPUS

*Hebeas
corpus Ad
Subjiciendum*

1. Where a person is alleged to be wrongly detained, application may be made for an order that he be produced in court for the purpose of being released from detention.

*Application
for leave*

2. (1) No application under rule (1) shall be made unless leave has been granted in accordance with this rule.
(2) Application for such leave shall be made ex parte shall be made to the court and shall be supported by a statement stating out the name, and description of the applicant, the relief sought, and the grounds on which it is sought; it shall also be supported by an affidavit verifying the fact relied on.
(3) The affidavit verifying the facts relied on in making the application shall be made by the person detained; but where the person detained is unable owing to the detention to make the affidavit, the application shall be accompanied by an affidavit to the like effect made by some other persons, which shall also state that the person detained is unable to make the affidavit himself.
(4) The applicant shall file, in the court, the application for leave not later than the day preceding the date of hearing, and shall at the same time lodge in the court enough copies of the statement and affidavit for service on any party or parties as the court may order.
(5) The court or judge may, in granting leave, impose such terms as to giving security for cost as it thinks fit.
(6) The court or judge may: -
(a) make an order forthwith for the release of the person being detained the provision of paragraph (1) notwithstanding;
(b) direct that an originating summons be issued in form 2 of the fundamental rights (Enforcement) Rules, 2009; or
(c) adjourn the ex parte application so that notice thereof may be given to the person against whom the order for the person released is sought.

- (7) The summons or notice of motion shall be served on the person against whom the order for the release of the person detained is sought and on such other persons as the court or judge may direct, and, unless the court or the judge otherwise directs, there shall be at least five (5) clear days between the service of the summons or motion and the date named therein for the hearing of the application.
3. (1) Without prejudice to rule 2(6), the court or judge hearing the application may, in its or his discretion, order the person be produced in court. *Releasing person detained in court*
(2) An order under paragraph 6 of this rule shall be a sufficient warrant for any superintendent of a prison, police officer in charge of a police station, police officer in charge of the person detained or any other person responsible for his detention, for the production in court of the person detained.
(3) Where an order is made for the production of the person detained, the court or judge by whom the order is made shall give directions as to the court or judge before whom, and the date on which the order is returnable.
4. (1) Subject to paragraphs two (2) and three (3), and order for production of the person detained shall be served personally on the person to whom it is directed. *Service of order*
(2) If it is not possible to serve such an order personally, or it is directed to a police officer or prison superintendent or other public official, it shall be served by leaving it with any person or official working in the office of the police officer, or the prison or office of the superintendent or the office of the public official to whom the order is directed.
(3) If the order is made against more than one person, the order shall be served in a manner provided by the rule on the person first named on the order and copies shall be served on each of the other persons in the same manner.
(4) There shall be served with the order (in form 4 in the fundamental rights (Enforcement) Rules, 2009) stating the court or judge before whom, and the date on which, the person detained is to be brought.
5. (1) The return to an order for the release of a person detained shall be endorsed on or annex to the order and shall state all the causes or justifications of the detainer of the person detained. *Endorsement on return to the order for release*
(2) The return may be amended, or another return substituted therefor, by the leave of court or judge before whom the order is returnable.
6. When a return to the order has been made, the return shall first be read in open court and an oral application then made for discharging or remanding the person detained or amending or quashing the return, and where that person is brought upon in court in accordance with the order, his legal representative shall be heard first, then the legal representative for the state or for any other official or person detaining him. The legal representative for the person detained would then be heard in reply. *Procedure at hearing*

- Order to be cleared*
7. An order for the release of the person detained shall be made in clear and simple terms having regard to all circumstances.
- Bringing prisoners to give evidence, etc*
8. (1) An application for a writ of habeas corpus ad testificandum or habeas corpus ad respondendum shall be made on affidavit.
(2) An application for an order to bring up prisoner, otherwise than by writ of habeas corpus, to give evidence in any cause or matter, civil or criminal, before any court or tribunal shall be made on affidavit.
- Form of writ*
9. A writ of habeas corpus shall be as in form 94, 95, or 96 in the appendix whichever is appropriate

II – Attachment for Contempt

- Procedure for attachment*
10. (1) In cases where this rule applies, the procedure in applications for attachment for contempt of court shall so far as may be applicable apply to order for judicial review under Order 45.
(2) The notice of motion shall be personally served unless the judge dispenses with such service.
(3) This rule applies to cases where the contempt is committed:
- (a) In connection with proceedings to which this Order relates;
 - (b) In connection with criminal proceedings;
 - (c) Subject to the provisions of the Sheriff and Civil Process Act, any proceedings in the High Court, or where the contempt consists of disobedience to an order of the court;
 - (d) In connection with proceedings in an inferior court; but this rule shall not apply where the contempt is committed in facie curiae.
- Procedure on disobedience to court order*
11. When an order enforceable by committal has been made against a judgment debtor, and if the order is for delivery of goods without the option of paying their value or is in the nature of an injunction, the Registrar shall when the order is drawn up immediately endorse it as follows:

Notice of Consequence of Disobedience to Court Order.

To..... of.....
TAKE NOTICE that unless you obey the direction (s) contained in this order you will be guilty of contempt of court and will be liable to be committed to prison.
Dated this..... day of..... 20

.....
Registrar

- Response*
12. Upon service of the application for committal issued in a case to which Rule 10 of this Order applies, the Respondent shall before the return date stated in the application file a statement stating the reasons why an order for

attachment should not be issued. The statement shall be verified by an affidavit deposed to by the respondent.

13. Every order of attachment issued in a case to which Rule 10 of this Order applies shall be made returnable before the judge. If a return of non est inventus (not found) is made, a subsequent order or orders may be issued on the return of the previous order. *Return*

ORDER 48
Interpleader

1. Relief by way of Interpleader may be granted where the person seeking relief "the applicant" is under liability for any debt, money, goods, or chattels, for or on which he is, or expects to be sued by two or more parties " the claimants" making adverse claims. But where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the High Court, the provisions of Section 34 of the Sheriffs and Civil process Act and the rules made under it shall apply. *When relief by Interpleader is granted*
2. The applicant must satisfy the judge by affidavit or otherwise that he:
(a) Claims not interest in the subject matter in dispute other than for charges or costs;
(b) Does not collude with any of the claimants; and
(c) Is willing to pay or transfer the subject matter into court or to dispose of it as the judge may direct. *Matter to be proved by application*
3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have no common origin, but are adverse to and independent of one another. *Adverse title of claimants*
4. Where the applicant is a defendant, application for relief may be made at any time after service of the originating process. *When application to be made by a defendant*
5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims and to maintain or relinquish them. *Summons by applicant*
6. If the application is made by a defendant in an action the court may stay all further proceedings in the action. *Stay of action*
7. If the claimants appear in pursuance of the summons, the court 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 applicants is to be claimant or defendant. *Order upon summons*

- Questions of Law* 8. Where the question is a question of law and the facts are not in dispute, the court 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 court. If a special case is stated, Order 30 shall as far as applicably apply.
- Failure of claimant to appear, or neglect to obey summons* 9. If a claimant, having been duly served with a summons calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the summons or having appeared, neglects or refuses to comply with any order made after his appearance, the court may make an order declaring him and all persons claiming under him, forever barred against the applicant and persons claiming under him but the order shall not affect the rights of the claimants as between themselves.
- Costs* 10. The court may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just.

ORDER 49
Computation of Time

- Rules for computation of time* 1. Where by any law or order made by the court a time is appointed or limited for the doing of any act, the period shall be reckoned:
- (a) As excluding the day on which the order is made or on which the event occurs;
 - (b) Where the last day of the period is a holiday, the time shall continue until the end of the next day following which is not a public holiday;
 - (c) Where the act is required to be done within a period which does not exceed 6 days, holiday shall be left out of account in computing the period.
- Holiday* 2. In this order “holiday” means a day which is a Sunday or a public holiday.
- Time of service* 3. No pleading, summons, motions, orders, originating process, documents and other processes shall be served before 6.00a.m. or after 6.00p.m. Service effected after 6.00p.m. shall be deemed to have been effected the following day, but service effected after 6.00p.m. on Saturday shall be deemed to have been effected on the following Monday.
- Court may extend time* 4. The court may, as often as he deems fit and either before or after the expiration of the time appointed by these rules or by any judgment or order of the court, extend the time or adjourn for doing any act or taking any proceedings.
- Penalty for default* 5. Any party who defaults in performing an act within the time authorized by the court or under these rules, shall pay to the court an additional fee of N200.00 (Two hundred naira) for each day of such default at the time of compliance.

ORDER 50
Appeals from District and Sharia Courts

1. Except for interlocutory appeals which shall be brought within 15 days, every appeal shall be brought by notice of appeal lodged in the lower court within 30 days of the decision appealed from and served on all other parties affected by the appeal. *Time to bring notice of appeal*

2. (1) The notice of appeal shall set out in full 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 of appeal. *Contents of notice of appeal*
(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 an address within Bauchi State, where the lower court appealed from is situated, to which notices may be sent for the appellant by registered post.
(4) The notice of appeal shall be in Form 43, as in the Appendix and may be varied to suit the circumstances of the case but no variation of substance shall be made. *Civil Form 43*

3. (1) A Registrar of the lower court shall, within 3 months of decision appealed from, prepare as many certified copies of the proceedings required for the consideration of the appeal as there are parties on record. *Copies of proceedings*
(2) Except where the fees for preparing the certified copies are remitted, a deposit decided on by the Registrar as likely to cover the fees, shall be made by the appellant before the preparation of the copies.

4. (1) A Registrar of the lower court shall within 7 days of preparing the certified copies send them to the Registrar (appeals) of the High Court as the record of appeal, and the appeal shall be deemed to have been entered. *Time to transmit records of proceedings*
(2) The Registrar (appeals) shall within 7 days of receipt of the records of appeal forward it to the parties.

5. The Registrar of the court shall send to each party a notice of the date fixed for the hearing of the appeal. *Hearing notice*

6. The time prescribed in Rule 1, may be enlarged at any time by the court on such terms as it may deem fit, after notice is given to the respondent by the appellant of his application for enlargement of time. *Enlargement of time after service of notice of appeal*

7. 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 the court to strike out the appeal, and the court may strike out, or enlarge the time for sufficient reason shown. *Where time elapsed*

8. All civil appeals from lower courts shall be heard by at least one Judge of the court. *Constitution of court hearing appeal*

- Time and place of hearing* 9. The appeal shall come on for hearing at such time and at such place as the Registrar of the court shall notify the parties.
- Briefs of argument* 10. Unless the court gives leave to the contrary:
(a) All appeals from courts below shall be heard and determined on briefs of argument filed and exchanged between the parties;
(b) The appellant shall file an appellant's brief within 21 days of the receipt of the records of appeal from the court;
(c) The respondent shall file and serve a respondent's brief within 14 days of service on him of the appellant's brief;
(d) The appellant may file a reply brief which shall deal with any new issue raised in the respondent's brief, within 7 days of the receipt of the respondent's brief.
(e) Every brief shall clearly identify the issues distilled from the grounds of appeal on the basis of which parties desire the court to determine the appeal;
(f) Any issue which is not covered by any ground of appeal shall not be considered by the court in its judgment.
- Direction for departure* 11. A court may direct a departure from these Rules in respect of compilation of records from the lower court upon the application of any party to an appeal.
- Default of appearance by appellant* 12. (1) Where on the day of hearing or at an appointed day of the case, the appellant does not appear, the appeal may be struck out, unless the court thinks fit, for sufficient cause to order otherwise.
(2) Where a respondent appears, the judgment shall be with costs of the appeal against the appellant, unless the court expressly orders, but if the respondent does not appear, the costs of the appeal shall be at the discretion of the court.
- Default of appearance by respondent* 13. Where on the day of hearing and at any appointed day of the case, the appellant appears, the court shall, whether the respondent appears or not, proceed to the hearing or further hearing and determination of the appeal and shall give judgment according to the merits of the case but if it appears or is proved to the court that the appellant has not complied with the requirements precedent to the hearing of an appeal, the court may dismiss the appeal with or without costs of appeal against the appellant.
- Amendment of notice of appeal* 14. The court, may allow an amendment of the notice of appeal upon such terms and conditions as it may think fit.
- Affirmation of judgment* 15. (1) A respondent may give notice that he intends at the hearing to ask the court to affirm the judgment of the lower court on grounds other than those stated by that court.
(2) The notice shall be accompanied by a clear statement of the grounds on which the respondent intends to ask the court to affirm the judgment of the lower court.

- (3) Such notice and grounds shall be filed in court within 14 days of service on the respondent of the notice and grounds of appeal, and shall be served on the appellant or his legal practitioner.
16. (1) A respondent may file grounds of appeal against any part of the judgment of the lower court. *Time to file respondent's grounds of appeal*
(2) The grounds shall be filed by the respondent within 14 days of service on him of the appellant's notice and grounds of appeal, and shall be served on the appellant or his legal practitioner before the hearing.
17. (1) No objection on account of any defect in the form of stating any ground of appeal shall be allowed, unless the court is of opinion that the ground of appeal is so imperfectly or incorrectly stated such that it is insufficient to enable the respondent to enquire into the subject-matter or to prepare for the hearing. *Defect of grounds of appeal*
(2) Where a court is of opinion that an objection to any ground of appeal ought to prevail, it may, allow the ground of appeal to be amended upon such terms and conditions as it may think just.
18. (1) On an appeal from a decision of a lower court, no objection shall be taken or allowed to any proceeding in such court for a defect or error which might have been amended by that court, or to any complaints, 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 in such court. *Objection to notice of appeal*
(2) Where an error, defect, or variance mentioned in this Rule appears to the court at the hearing of any appeal to be such that the appellant has been thereby deceived or misled, it shall be lawful for the court either to refer the case back to the lower court with directions to re-hear and determine it or to reverse the decision appealed from, or to make such other order for disposal of the case as justice may require.
19. No objection shall be taken or allowed, on an appeal, to a notice of appeal which is in writing or to any recognizance entered into under this Order for the due prosecution of the appeal for any alleged error or defect, but if the error or defect appears to the court to be such that the respondent on the appeal has been thereby deceived or misled, it shall be lawful for the court to amend it, and, if it is expedient to do so, also to adjourn the further hearing of the appeal, the amendment and the adjournment, if any, being made on such terms as the court may think just. *Defects in notice of appeal or recognizance*
20. A court may, where it considers it necessary that evidence should be adduced, either: *Adducing evidence*
(a) order such evidence to be adduced before the court on a day to be fixed; or
(b) refer the case back to the lower court to take such evidence, and may in such case either direct the lower court to adjudicate afresh after taking such evidence and subject to such directions in law, as the court

may think fit to give after taking such evidence, to report specific findings of fact for the information of the court, and on any such reference the case shall, so far as may be practicable and necessary, be dealt with as if it were being heard in the first instance.

- Additional evidence
21. (1) Where additional evidence is to be taken by a lower court and specific findings of fact reported, it shall certify the evidence to the court which shall then proceed to dispose of the appeal.
(2) The appellant or his legal practitioner shall be present when the additional evidence is taken.
(3) Evidence taken in pursuance of rule 18 of this Order shall be taken as if it were taken at the trial before the lower court.
(4) When forwarding to a court any additional evidence taken by a lower court in pursuance of Rule 20, the lower court may express its evidence and may also, if it is the same court against whose decision the appeal has been made, state whether or not it would have come to a different decision had the additional evidence been brought forward at the trial.
- Fees First Schedule
22. The fees in the First Schedule shall be chargeable in civil appeals except 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 where it appears that there are substantial grounds of appeal.
- Allowances
23. Allowances may be made to witnesses in accordance with the provisions of the Schedule.
- Application for stay of execution
24. (1) On an application 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:
(a) That the appellant 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 judgment appealed from, or give security to the satisfaction of the court for the said sum;
(b) That the appellant shall deposit a sum equal to the amount of the costs allowed against him or give security to the satisfaction of the court for the said sum;
(c) that the appellant shall, where the decision or judgment appealed from relates to possession of land or houses, give security to the satisfaction of the court for the performance of the decision or judgment in the event of the appeal being dismissed;
(d) That the appellant's property shall be seized and attached pending the making of a deposit or the giving of security, including a deposit or security for expenses incidental to the seizure and attachment;
(e) That the appellant's property shall be 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 30 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 lodgment 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 not be made to the lower court but to the court.

(4) The application may be *ex parte* but the court may direct notice of it 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 an 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.

(6) A party dissatisfied with an order made by the lower court may apply to the court by motion with notice to the other party for a review of the order, and the court may then make such order as may seem just.

(7) An appeal shall not operate as a stay of execution under the decision or judgment appealed from except 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.

25. A 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 entered into or prosecuted. Cost

26. (1) A court may, in special circumstances, on an application on notice supported by an affidavit, order the appellant to deposit such sum or give such security as may seem fit for respondent's costs of appeal including the costs incidental to the application. Security for Respondent's costs of appeal

(2) The order shall limit the time (not exceeding 30 days) within which the deposit or security shall be made, and may direct that in default of its being made or given within the time so limited the appeal shall without further order stand dismissed.

(3) Where an appeal 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 in anticipation or may be assessed at any time by the court of its own motion or on application made *ex parte* or on notice, as the court may deem fit.

(4) Where an appeal is dismissed the appellant shall take no further step or proceeding except by leave of the court for reinstatement of the appeal, which may be granted on such terms as may deem fit upon application by motion on notice given within a month of such dismissal.

(5) Subject to the discretion of the court to grant costs where it seems proper on an application made under sub rule (1), costs shall 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 judgment or decision appealed from.

- Certification of judgment or order 27. (1) Where a case is decided on appeal the court shall certify its judgment or order to the lower court in which the decision appealed against was pronounced. (2) The lower court to which the court certifies its judgment or order shall then make such orders as are conformable to the judgment or order of the court, and if necessary, the records shall be amended accordingly.
- Enforcement of judgment 28. After the pronouncement of the judgment of the court, the lower court from which the appeal came shall have the same jurisdiction and power to enforce, any decision which may have been affirmed, modified, amended, or substituted by the court or any judgment which may have been pronounced by the court, in the same manner in all respects as if such decision or judgment had been pronounced by itself.
- Enforcement of order 29. Any order given or made by the court may be enforced by the court or by the lower courts as may be most expedient.
- Enlargement of time 30. A court may, if it thinks fit, enlarge any period of time prescribed by this Order.
- Interpretation 31. In this Order-
“the lower court” means District Court and Sharia Court
“Judgment” includes an Order or a Ruling.

ORDER 51

Appeals to the High Court from Decision of Auditors

- Appeal from decision of an auditor 1. This order shall apply to an appeal to the court from a decision of an auditor made under the provisions of any written law which confers the right to appeal to the High Court against any such decision.
- Mode of appeal 2. An appeal to the court from a decision of an auditor shall be by notice of motion.
- Evidence of appeal 3. The evidence upon the hearing of the appeal shall be by affidavit except otherwise directed by the court.
- Time to serve notice of motion 4. The notice of motion shall be served, before the expiration of 6 weeks after the date of the decision to which it relates, on the auditor in charge of the audit in which the decision has been made and also upon the area council or other body in relation to whose accounts or to the accounts of whose officer the decision was given, if that Area Council or other body is not the appellant.

3. The notice of motion shall state the grounds of appeal, and the date mentioned Contents of in the notice for the hearing of the appeal shall, not be less than 28 days after notice and date the service of the notice. *Contents of notice and date of hearing*
4. (1) An appellant shall within 7 days after service on the auditor of the notice of motion, file with the Registrar (appeals) a copy of such notice and a Time to file affidavit setting out the reasons stated by the auditor for his decision and the notice facts upon which the appellant intends to rely at the hearing and the motion shall be set down for hearing. *Time to file notice*
(2) Where a notice of motion is not set down accordingly, either the Area Council or other body or the auditor may apply to the court, upon notice to the appellant for an order discharging the notice of motion and for the costs of the application.
5. An appellant shall deliver immediately to the Local Government Council or other body and Time within to the auditor a copy of any affidavit filed under Rule 6 in support of the which to oppose motion and any person intending to oppose the motion shall, within 4 days motion before the hearing, deliver to the appellant a copy of an affidavit intended to be filed by him in opposition to the motion. *Time within which to oppose motion*
6. Where under Rule 4 of this Order, a notice of motion is served on an auditor Service on other than that auditor who gave the decision that other auditor may appear in Auditor other opposition, as if he were the auditor by whom the decision was given, and who gave the these provisions shall apply accordingly. *Service on Auditor other who gave the decision*

ORDER 52

Miscellaneous Provisions

I. Court Sittings and Vacation

- 1 Subject to the provisions of the Law, the court may, in its discretion, appoint any day or days and any place or places from time to time for the hearing of causes as circumstances may require. *Days of sitting and long vacation*
- 2 The sittings of the court for the hearing of causes shall ordinarily be public but subject to the provisions of the Constitution of the Federal Republic of Nigeria, the judge may for special reasons, hear any particular cause or matter in the presence of the parties only, their legal practitioners, if any, and the officers of court. *Public or private sittings of court*
- 3 The offices of the court shall be open at such times as the Chief Judge shall direct. *Operational time for offices of court*
- 4 Subject to the directions of the Chief Judge, sittings of the High Court for the despatch of civil matters will be held on every weekday, except:
(a) On any public holidays; *Days of sitting and annual vacation*

- (b) During the annual vacation, effective from the last week of July and ending on a date not more than 6 weeks later as the Chief Judge may declare by notification in the Gazette or any other means he deems appropriate.
- (c) On any day and for such periods as designated by the Chief Judge

- 5 *Urgent matters on vacation* (1) Notwithstanding the provisions of Rule 4, any cause or matter may be heard by the court (except on a Sunday or public holiday) where such cause or matter is urgent or the court, at the request of all the parties concerned, agrees to hear the cause or matter.
- Ex parte motion for urgent matters* (2) An application for an urgent hearing shall be made by motion ex-parte and the decision of the court on such an application shall be final.
- 6 *Time not to run for pleadings during annual vacation* The time for filing and service of pleadings shall not run during the annual vacation unless otherwise directed by the court.

II. General

- 7 *Default of payment of fines, etc* 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.
- 8 *Publication of notice* When the publication of any notice is required, it may be made by advertisement in the State Gazette, National Daily Newspaper, unless otherwise provided in any particular case by any rule of court or otherwise ordered by the court.
- 9 *Endorsement of documents for filing* A document shall not be filed unless it has endorsed on it the name, number of the cause, date of filing and whether filed by claimant or defendant; and on being filed such endorsement shall be initialed by the Registrar and recorded in the process register.
- 10 *How processes are 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 order or warrant from being addressed to a person by name or to a person named and to officers of court generally or to the Area Council Authority.
- 11 *No fees where proceedings by government department* No fee is to be taken in respect of any proceedings where such fee would be payable by any Government Department, but where any person is ordered to pay the costs of the State or of any Government Department in any case, whether criminal or civil, all fees which would have been payable but for the provision of this rule shall be taken as paid and shall be recoverable from such person.

- 12 The regulations regarding fees shall govern the payment and disposal of fees and the duties of court officers in that regard. *Regulations*
- 13 Where no provision is made by these rules or by any other written law, the court shall adopt a procedure in accordance with substantial justice. *Where there is no provision for fees*

ORDER 53
Arrest of Absconding Defendant

1. If in any action the defendant is about to leave Nigeria the claimant may, either at the institution of the suit or at any time until final judgment, apply by ex-parte motion to the court for an order on the defendant to show cause why security should not be taken for his appearance to answer and satisfy any judgment that may be passed against him in the suit. *Defendant leaving Nigeria*
2. (1) If the court after making such investigation as he may consider necessary is of the opinion that there is probable cause for believing that the defendant is about to leave Nigeria and that by reason, the execution of any judgment which may be made against him is likely to be obstructed or delayed, the court 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.
(2) The defendant shall be brought to court within 2 days of the execution of the warrant. *Warrant to arrest*
3. If the defendant fails to show cause, the court 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 judgment that may be passed against him in the suit or to give bail for the satisfaction of such judgment and the surety or sureties shall undertake in default of such appearance or satisfaction to pay any sum of money that may be adjudged against the defendant in the suit with cost. *Bail for appearance or satisfaction*
4. (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 court may accept such deposit and direct that the deposit be paid into an interest yielding account in a bank. *Deposit in lieu of bail*
(2) Where a defendant offers security other than money in lieu of bail for his appearance, sufficient to answer the claim against him, the court may accept such security and make such order as he may deem fit in the circumstance.
5. (1) If the defendant fails to furnish security or offer a sufficient deposit, the court may commit him into custody until the decision of the suit or if judgment has been given against the defendant until the execution of the judgment. *Committal in default*
(2) Under this Rule committal to custody shall not exceed a period of 6 months.

(3) The court 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.

*Cost of
subsistence of
person arrested*

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

ORDER 54
Proceedings in Forma Pauperis

Application

1. This Order shall apply to proceedings for which there is no statutory provision for Legal Aid.

*Who may sue or
defend in forma
pauperis*

2. The court may allow a person to sue or defend *in forma pauperis* if satisfied that his means do not permit him to employ a legal practitioner in the prosecution of his case and that he has reasonable grounds for suing or defending as the case may be.

*Conditions to be
fulfilled*

3. (1) A person seeking relief under this Order shall write an application to Chief Judge accompanied by an affidavit, signed and sworn to by the applicant himself, stating that by reason of poverty he is unable to afford the services of legal practitioner.
(2) If in the opinion of the Chief Judge the application has merit, 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 dispense with his service except with the leave of the Chief Judge.

Fees and costs

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

*Procedure to be
followed*

5. (1) The legal practitioner shall not, except by leave of the Chief Judge, take or agree to take any payment whatsoever from the applicant or any other person connected with the applicant or the action taken or defended.
(2) If the applicant pays or agrees to pay any money to any person whatsoever in connection with his application or the action taken or defended, the order appointing the legal practitioner shall be revoked.
(3) If the legal practitioner assigned to the applicant discovers that the applicant is of means beyond those stated in the affidavit, if any, he shall at once report the matter in writing to the Registrar.

6. (1) The Chief Judge may at any time revoke the order granting the application and the applicant shall not be entitled to the benefit of this order in any proceedings to which the application relates unless otherwise ordered.
(2) The applicant or the legal practitioner assigned to him shall not discontinue, settle or compromise the action without the leave of the court. Revocation of order of discontinuance
7. The court may order payment to be made to the legal practitioner out of any money recovered by the applicant or may charge in favour of the legal practitioner upon any property recovered by the applicant, such sum as in all the circumstances may deem fit. Payment to Legal Practitioner
8. Every order, notice or application on behalf of the applicant, except an application for the discharge of his legal practitioner, shall be signed by his legal practitioner, who shall take care that no application or notice is made or given without reasonable cause. Duty of Legal Practitioner
9. No person shall be permitted to appeal in forma pauperis except by leave of the trial or the appellate court; but if so permitted the provisions of this order shall apply mutatis mutandis to all proceedings on the appeal. Appeals

ORDER 55
Change of Legal Practitioner

1. Every legal practitioner who is engaged in any cause or matter is bound to conduct it on behalf of the claimant or defendant, by or for whom he is engaged until final judgment, unless allowed for any good reason to withdraw. Engagement of Legal Practitioner
2. An application for a change of legal practitioner or withdrawal may be made by the claimant, defendant or the legal practitioner as the case may be, not less than 3 clear days before the date fixed for hearing. Application for Change of Legal Practitioner or withdrawal
3. Where the application is made by a legal practitioner, it shall be served on all parties to the cause or matter and where applicable on the withdrawing legal practitioner if he is not the applicant. Application for Service
4. A legal practitioner who has withdrawn appearance for a party in a cause or matter may reappear for the same party with leave of court. Re-appearance of legal practitioner
5. Every legal practitioner engaged to conduct a case before the court shall be deemed to be an officer of the court for purposes of such case. Where it shall appear that any legal practitioner has by any act of negligence or deceit induced his client to enter into or continue any litigation or has been negligent or tardy in the conduct of the case, shall on failure of his client to succeed in the litigation be liable to indemnify the client in damages of loss incurred by him in the litigation. Liability of legal practitioner to indemnify client

ORDER 56

Costs

- Penalty for default of filing

1. (1) Where any party defaults in filing any court process other than a memorandum of appearance within the time prescribed under the provisions of these rules, such party shall pay the sum of ₦500 Naira Only for each day of default.

(2) Every application for enlargement of time shall be accompanied by proof of compliance with Rule 1 of this order.

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

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

(5) When the court finds it impracticable to determine summarily the amount of any costs which he has adjudged or ordered to be paid, all questions relating to it shall be referred by the court to a taxing officer for taxation.
- Court to direct security for costs

2. In any cause or matter in which security for costs is required, the security shall be of such amount, time, manner and form as the court shall direct.
- Security for costs by claimant temporarily within jurisdiction

3. A claimant ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction.
- Action founded on judgment or bill of exchange

4. In actions brought by persons resident out of the jurisdiction, when the claimant's claim is founded on a judgment, order, a bill of exchange or other negotiable instrument, the power to require the claimant to give security for costs shall be exercised at the court's discretion.
- Bond as security for costs

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

6. Subject to the provisions of any applicable law and these rules, the costs incidental to all proceedings in the high court, including the administration of estates and trusts, shall be at the discretion of the judge, and he shall have power to determine by whom and the costs to be paid.
- Costs out of fund or property

7. The court may order any costs to be paid out of any fund or property to which a suit or proceedings relates.
- Stay of proceedings till cost paid

8. Where the court orders costs to be paid or security to be given for costs by any party, the court may order all costs by or on behalf of that party in the same suit or proceeding connected with it, to be stayed until the costs are paid or

security given accordingly, but such order shall not supersede the use of any other lawful method of enforcing payment.

9. (1) Costs may be dealt with by the judge at any stage of the proceedings.
(2) Costs when ordered becomes payable within 7 days of the order. Failure to effect such payment attracts the sum of N100.00 daily and such daily penalty shall be paid into the court. However the court or the judge may further deny the defaulting party or his legal practitioner further audience in the proceedings. *Stage of proceedings at which costs to be dealt with*
10. In addition to any penalty payable for default under these rules, the costs occasioned by any application to extend the time fixed by the rules or any direction or order, for delivering or filing any document or doing any other act, including the costs of any order made on the application shall be borne by the party making the application unless the court otherwise directs. *When costs to follow the event*
11. The court in exercising his discretion as to costs shall take into account any offer or contribution made by any of the parties, payment into court and the amount of such payment. *Matters to be taken into account in exercising discretion*
12. (1) Where in any cause or matter anything is improperly or unnecessarily done or omitted to be done by or on behalf of a party, the court may direct that any costs arising from it shall not be allowed to him and that any costs occasioned by it to other parties shall be paid by him to them. *Costs arising from misconduct or neglect*
(2) Without prejudice to the generality of sub-rule 1 of this rule, the court shall for the purpose of that sub-rule have regard in particular to the following matters:
(a) The omission to do anything which if done would have been calculated to save costs;
(b) The doing of anything calculated to occasion or in a manner or at a time calculated to occasion unnecessary costs; and
(c) Any unnecessary delay in the proceedings.
(3) The court may instead of giving a direction under sub-rule 1 of this rule in relation to anything done or omission made, directs the taxing officer to enquire into it and if it appears that such a direction should have been given, to act as if the appropriate direction had been given.
13. (1) Subject to the following provisions of this rule, where in any proceedings costs are incurred improperly, without reasonable cause, by undue delay or by any other misconduct or default, the court, may make an order against any legal practitioner whom it considers to be responsible, whether personally or through a servant or agent : *Personal liability of Legal Practitioner for costs*
(a) Disallowing the costs between the legal practitioner and his client;
and

- (b) Directing the legal practitioner to pay to his client costs which the client has been ordered to pay to other parties; or
- (c) Directing the legal practitioner personally to indemnify such other parties against costs payable by them.

(2) The provisions of rule 13 sub-rule I shall apply where proceedings in court cannot conveniently proceed 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 document for the use of the court which ought to have been delivered or to be prepared with any evidence, account or generally to proceed.

(3) No order under this rule shall be made against a legal practitioner unless he has been given a reasonable opportunity to appear before the court to show cause why the order should not be made.

(4) The court may direct that notice of any proceedings or order against a legal practitioner under this rule shall be given to his client in such manner as may be specified in the direction.

(5) If, on the taxation of costs to be paid out of a fund, one-sixth or more of the amount of the bill for those costs is taxed off, the legal practitioner whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.

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| <i>Taxation of costs</i> | 14. | Every bill of costs, other than a bill delivered by a legal practitioner to his client which falls to be taxed under the Legal Practitioners Act, shall be referred to the Registrar for taxation and may be taxed by him or such other taxing officer as the Chief Judge may appoint. |
| <i>Notice to other party</i> | 15. | The party applying for taxation, shall file the bill and give notice to any other parties entitled to be heard on the taxation, and shall, if he has not already done so, supply them with a copy of the bill. |
| <i>Power of taxing officer</i> | 16. | A taxing officer shall have power to tax any cost the taxation of which is required by any law or directed by order of the court. |
| <i>Supplementary powers of taxing officers</i> | 17. | A taxing officer may, in the discharge of his functions on taxation of costs, take an account of any dealing in money made in connection with the payment of the costs being taxed, if the court; <ul style="list-style-type: none">(a) Require any party represented jointly with any other party in any proceedings before him to be separately represented;(b) Examine any witness in those proceedings;(c) Direct the production of any document which may be relevant in connection with those proceedings. |
| <i>Extension of time</i> | 18. | (1) A taxing officer may: |

- (a) Extend the period within which a party is required by these rules to begin proceedings for taxation or to do anything in connection with proceedings before him;
- (b) Where no period is specified by these rules or by the court for the doing of anything 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, unless the court otherwise directs, the taxing officer may on such terms as he deems fit extend the period so specified.
- (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.
19. Where a party entitled to be paid costs is also liable to pay costs, the taxing officer may;
- Power of taxing officer where party liable to be paid and to pay costs*
- (a) Tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or
- (b) Delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount, he is liable to pay.
20. (1) A party entitled to require any costs to be taxed shall begin proceedings for the taxation of those costs by filing in the registry a bill of costs and obtain a date and time for the taxation. Such party shall give at least 7 days notice to every other party of the date and time appointed for taxation proceedings and at the same time serve a copy of its bill of costs to the other party if he has not already done so.
- Mode of beginning proceedings for taxation*
- (2) A notice under sub-rule 1 of this rule need not be given to any party who has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.
21. (1) In any bill of costs the professional charge and the disbursements shall be entered in separate columns and every column shall be set out before the bill is left for taxation.
- Provisions as to bills of costs*
- (2) Before a bill of costs is left for taxation it shall be endorsed with:
- (a) The name or firm and business address of the legal practitioner whose bill it is; and
- (b) If the legal practitioner is the agent of another with the name or firm and business address of that other legal practitioner.
22. (1) If any party entitled to be heard in any taxation proceedings does not attend within a reasonable time after the time appointed for the taxation, the
- Provisions as to taxation*

taxing officer, if satisfied by affidavit or otherwise that the party had due notice of the time appointed, may proceed with the taxation.

(2) The taxing officer by whom any taxation proceedings are being conducted may, if he deems it necessary, adjourn those proceedings from time to time.

- Scale of costs 23. (1) Subject to Rule 20, and the following provisions of this rule, the scale of costs contained in schedule B of this Rule together with the notes and general provisions contained in that schedule, shall apply to the taxation of all costs incurred in relation to contentious business done after the commencement of these rules.
(2) Where the amount of a legal practitioner's remuneration in respect of non-contentious business connected with sales, purchases, leases, mortgages and other matters of conveyance or in respect of any other non-contentious business is regulated in the absence of agreement to the contrary, the amount of the costs to be allowed on taxation in respect of the like contentious in the scale shall be contained in the said appendix of these rules.
- Certificate of taxing officer 24. Upon the completion of the taxation of any bill of costs the taxing officer shall certify the result of his taxation including the costs.
- Fees on taxation 25. The fees payable on taxation shall be paid by the party on whose application the bill is taxed and shall be allowed as part of the bill.
- Application for review 26. Any party to any taxation proceedings who is dissatisfied with the taxation in whole or in part of any item by a taxing officer or with the amount allowed by a taxing officer on any item, may apply to the court for an order to review the taxation as to that item.
- Application by summons 27. (1) An application under the preceding rules shall be made by summons at any time within 14 days after the taxing officer's certificate.
(2) Unless the court 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 except, on the hearing of any such application the court 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 court 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 57

Application and Proceedings in Chambers

- Business to be disposed of in chambers* 1. The business which may be disposed of in chambers by a judge shall consist of the following matters, in addition to the matters under any other written law, that is to say;

- (a) Application –
- (i) To issue and serve a writ or other process out of the jurisdiction;
 - (ii) For substituted service of a writ or other process;
 - (iii) To have cases heard during vacations;
 - (iv) For enlargement of time;
 - (v) For a writ of attachment or for a garnishee order;
 - (vi) For payment or transfer to any person of any cash or securities standing to his credit in a cause or matter where there has been a judgment or order declaring the rights or where the title depends only upon proof of the identity of the birth, marriage or death of any person;
 - (vii) As to the guardianship and maintenance of advancement of infants;
 - (viii) Connected with the management of property; or
- (b) Any matter relating to the adoption of children; and
- (c) Such other matters of an interlocutory nature as the judge may think fit to dispose of in chambers.
2. The provisions of Order 42 with regards to interlocutory application by way of motion in court shall apply *mutates mutandis* to application to a judge in chambers *Procedure on application in chambers*
3. Notes shall be kept of all proceedings in 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 at every hearing. *Notes of proceeding in chambers*
4. Orders made in chambers shall, unless the court otherwise directs, be drawn up by the Registrar and signed by the judge. Such order shall be entered in the same manner as orders made in court. *Drawing up any entry of orders made in chambers*
5. Subject to the provisions of any enactment and of these rules, the costs of, and incidental to all proceeding in chambers shall be at the discretion of the court. *Cost*
6. (1) Where any party to proceeding in chambers does not intend to accept the decision of the court in chambers as final, he shall forthwith request to have the summons adjourned into court for argument. If such request is refused, the party may proceed by way of motion with notice in court to discharge, set aside or vary the order made or the judgment given in chambers. *Decision given in chambers how to set aside or varied*
- (2) The notice of motion shall be filed not later than 7 days after the drawing up of the order made in chambers unless the court grants an extension of time on good and sufficient reason being shown, and the motion shall be heard and determined by the judge who has dealt with the matter in chambers, unless this proves impossible or inconvenient owing to such judge's death or retirement or prolonged absence
- (3) This rule shall apply to decisions given by the court in chambers on appeal from the chief Registrar under rule 2 of order 45.

ORDER 58
Foreclosure and Redemption

Originating summons foreclosure

1. Any mortgagor or mortgagee, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out an originating summons, for such relief of the nature or kind following as may be specified in the summons, and as the circumstances of the case may require; that is
 - (a) Payment of moneys secured by the mortgage or charge;
 - (b) Sale;
 - (c) Foreclosure;
 - (d) Delivery of possession whether before or after foreclosure to the Mortgagee or person entitled to the charge by the mortgagor or person having the property subject to the charge, or by any other person in, or alleged to be in possession of the property;
 - (e) Redemption;
 - (f) Re-conveyance; and
 - (g) Delivery of possession by the mortgagee.

Civil Form 44, 45 & 46

2. Orders for payment and for possession shall be as in Forms 44, 45 and, 46 of these Rules with such variations as the circumstances of the case may require, and similar forms shall be used under corresponding circumstances in actions for similar relief commenced by writ.

Service and execution of judgment

3. The court may give any special directions concerning the execution of the judgment, or the service to persons not parties to the cause or matter as he deems fit.

Order 59
Summons to Proceed

Bringing in judgment, directing accounts or inquiries

1. Every judgment or order directing accounts or inquiries to be made shall be brought to the court by the party entitled to prosecute it within 10 days after such judgment or order shall have been entered or filed, and in default any other party to the cause or matter shall be at liberty to bring it, and such party shall prosecute such judgment or order unless the court shall otherwise direct.

Summons to proceed with accounts or inquiries: Directions

2. Upon a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries directed, and upon the return of such summons the court, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to:
 - (i) The manner in which each of the accounts and enquiries is to be prosecuted;
 - (ii) The evidence to be adduced in support;

- (iii) The parties who are to attend on the several accounts and enquiries; and
 - (iv) The time within which each proceeding is to be taken and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied by addition or otherwise, as may be found necessary.
3. Where by a judgment or order a deed is directed to be settled by a judge in a 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, within such time as the court shall deem fit, to the party entitled to object, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections within 8 days after the delivery of such copy, and the proceedings shall be adjourned until after the expiration of the period of 8 days. *Settling deed where parties differ*
4. Where, upon the hearing of the summons to proceed, it appears to the court that by reason of absence, or for any other sufficient cause, the service of notice of the judgment or order upon any party cannot be made, the court may if he shall deem fit, order any substituted service. *Where service of notice of judgment or order dispensed with*
5. If on the hearing of the summons to proceed all parties to the action have not been served with notice of the judgment or order, directions may be given for advertisement for creditors, and for leaving the accounts in chambers. Adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceedings is to be taken, except for the purpose of ascertaining the parties to be served, until all parties have been served and until directions shall have been given as to the parties who are to attend the proceedings. *Where parties have not been served with notice of judgment or order*
6. Copies, abstracts, extracts of or from accounts, deeds or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the court, and where so directed, copies shall be handed over to the other parties, but no copies shall be made of deeds or documents where the originals can be brought in unless the court shall otherwise direct. *Documents: Copies for use of Judge*
7. At the time any summons to proceed is obtained, an entry shall be made in the summons book, stating the date of summons, the name of the cause or matter, the party, briefly the purpose of the summons, and return date. *Entry in Summons Book*

ORDER 60

Summary proceedings for possession of landed Property occupied by squatters or without the owner's consent.

1. (1) This order shall not apply where the person in occupation of land is: *Application of this Order*
- (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 of the person who is entitled to possession.

Proceedings to be brought by originating summons

(2) Where a person claims possession of land which he alleges is occupied solely by a person not listed in sub-rule 1 above, proceedings may be brought by originating summons in accordance with the provisions of this Order

Acknowledgement of service required

Civil Form 47

Affidavit in support

2. The originating summons shall be as in Form 47 and no acknowledgement of service shall be required.
3. The claimant shall file in support of the originating summons an affidavit stating:
 - (a) His interest in the land;
 - (b) The circumstances in which the land has been occupied without 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.

Service

4. (1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit in support shall be served on him:
 - (a) Personally or in accordance with Order 7 Rule 1 sub-rule 2; or
 - (b) By leaving a copy of the summons and of the affidavit or sending them to him at the premises; or
 - (c) In such other manner as the court may direct.

(2) The summons shall, in addition to being served on the named defendants, if any, in accordance with sub-rule 1 of this rule be served, unless the court otherwise directs by:

- (a) Affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises; and
- (b) If practicable, inserting through the letter box at the premises, a copy of the summons and a copy of the affidavit enclosed in a sealed envelope addressed to "the occupiers".

(3) Every copy of an originating summons for service under sub-rule 1 or 2 of this rule shall be sealed with the seal of the court from which the summons was issued.

Application by occupier to be made a party

5. Without prejudice to rule 16 of order 13, 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. (1) An order for possession in proceedings under this order shall be as in Form 48 with such variations as circumstances may require. (2) The court may forthwith order a writ of possession to issue. (3) Nothing in this Order shall prevent the court 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 commenced by writ. *Order for possession Civil Form 48*
7. (1) No writ of possession to enforce an order for possession under this order shall be issued after the expiration of 3 months from the date of the order without the leave of the court. (2) The application for leave may be made ex parte unless the court otherwise directs. *Writ of possession*
8. (1) The court may, on such terms as he deems fit, set aside or vary any order made in proceedings under this Order (2) In this order "landed property" means land with or without building. *Setting aside of order*

ORDER 61

Stay of Execution or Proceedings pending Appeal

1. Where any application is made to the court for stay of execution or proceedings under any judgment or decision appealed against, such application shall be made by motion on notice supported by affidavit stating the grounds upon which a stay of execution or proceedings is sought. *Application for stay of execution*
2. An applicant for stay of execution of a judgment shall pay for the compilation of the records of appeal within 14 days from the date of filing a notice of appeal and where the cost of compilation of records is not paid, the respondent may apply to strike out the application or discharge the order if already granted. *Compilation of record*
3. (1) Application for stay of execution shall be regarded as an urgent matter and shall be heard within 28 days from the date of filing, and where it is not heard the respondent may apply by motion on notice for leave to execute the judgment. (2) Where the court has struck out an application for stay, no further application for stay of execution shall be made in the matter. *Court may grant or refuse order for stay*
4. Where any application is made to the court under this order, a formal order shall be drawn up embodying the terms of the decision of the judge and the date upon which the order is made. *Formal order to be drawn up*

ORDER 62
Probate and Administration

1- Grant of Probate or Administration in General

Petition to be made to probate registry

1. (1) Subject to the provisions of Rules 39 and 40 of this Order, where a person subject to the jurisdiction of the court dies, all petitions for the granting 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, shall be made to the probate Registrar of the court.
- (2) In such an application, the Chief Judge may request any court of the State, to take measures and make orders expedient for the interim preservation of the property of the deceased within the State, for the discovery or preservation of the Will of the deceased or for other purposes connected with the duties of the court under this Order and every court shall carry out any such request as far as practicable and report to the Chief Judge.
- (3) No grant of administration with the Will annexed shall issue within 7 days of the death of the deceased; and no grant of administration (not with the Will annexed) shall issue within 14 days of the death.
- (4) In furtherance of any provisions under these Rules, the probate Registrar shall administer such forms as he may deem appropriate.

Registrar to administer appropriate forms

Preservation of property

2. A court shall, where the circumstances of a case require, on the death of a deceased person, or as soon after as may be, appoint and authorize an officer of court, or some other fit person, to take possession of his property within jurisdiction, or put it under seal, and keep it until it can be dealt with according to law.

Unauthorized persons intermeddling with property

3. Where a person other than the person named executor or administrator, or an officer of the court or person authorized by the court, takes possession of and administers or deals with the property of a deceased person, he shall, besides other liabilities he may incur, be liable to fine not exceeding ₦5,000.00 as the court, having regard to the condition of the person so interfering with the property and the other circumstances of the case, may think fit to impose.

Production of testamentary papers

4. (1) A person having in his possession or under his control a paper or writing of a deceased, being or purporting to be testamentary, shall promptly deliver its original to the probate Registrar.
- (2) Where a person fails to deliver any paper or writing of any deceased person within 14 days after having knowledge of the death of the deceased, he shall be liable to a fine not exceeding ₦5,000.00 as a court having regard to the condition of the person so in default and the other circumstances of the case, thinks fit to impose.

Court may order production

5. Where it appears that a document of the deceased, being or purporting to be testamentary, is in the possession of, or under the control of any person, a court may in a summary way, whether a suit or proceeding respecting probate

or administration is pending or not, order him to produce the paper and bring it into court.

6. Where it appears that there are reasonable grounds for believing that a person has knowledge of any document being or purporting to be testamentary (although it is not shown that the document is in his possession or under his control), a court may in a summary way, whether a proceeding for probate or administration is pending or not, order that the person be examined on the document in court, or on interrogatories, that he attends for that purpose, and after examination that he produces the document, and bring it into court. Examination of papers
7. A court may on its own or on the application of a person claiming an interest under a Will, give notice to the executors (if any) named in it, to come and prove the Will, or to renounce probate, and they, or some or one of them, shall, within 14 days after notice, come in and prove or renounce accordingly. Notice to executor to come in and prove
8. Where a person named executor in the Will of a deceased takes possession and deals with any part of the deceased's property and does not apply for probate within one month after the death, or after the termination of any suit or dispute on probate or administration, he may, independently of any other liability, be charged with contempt of court, and shall be liable to such fine, not exceeding ₦5,000.00, as the court thinks fit to impose. Liability of executor neglecting to apply for probate
9. A court shall require evidence, in addition to that offered by the applicant, where additional evidence in that regard seems to the court necessary or desirable to be ascertained: Identity
 - (a) the identity of the deceased or of the applicant; or
 - (b) the relationship of the applicant to the deceased; or
 - (c) any person or persons in existence with a right equal or prior to that of the applicant to the grant of probate or administration sought by the applicant; or
 - (d) any other matter which may be considered by the court relevant to the question whether the applicant is the proper person to whom the grant should be made, but the court may refuse the grant unless the applicant produces any of the requirement in sub-rule 9(a – c) or as may be required by the court.
10. (1) Where it appears to a court that some person(s) other than the applicant may have at least an equal right with the applicant to the grant sought, the court may refuse the grant until due notice of the application has been given to such other person(s) and an opportunity given for such person(s) to be heard on the application prior right. Court may refuse grant until all persons interested are given due notice
11. An applicant for a grant of letters of administration shall file in the court a true declaration of all the personal property of the deceased and the value of it, but for the purpose of the fees payable on letters of administration, the value of the property on which the grant is made shall not include - Value of property

- (a) Any gratuity payable by the Government of the Federation of Nigeria, or the Government of a State or Bauchi State to the estate of any person formerly employed by either of such Governments or by a statutory corporation; or
- (b) Any sum of money payable to an estate from a Provident Fund, or Pension Fund established under the provisions of enactment.

Answers
required before
grant

12. (1) In no circumstance shall a court issue letters of administration until all inquiries which the court sees fit to make have been answered to its satisfaction.
(2) A court shall, however, afford reasonable facility for the obtaining of letters of administration as is consistent with due regard to the prevention of error and fraud.

Notice to
prohibit grant

13. A notice to prohibit a grant of administration may be filed in the court.
14. (1) A notice shall remain in force three months only from the day of filing, but it may be renewed from time to time.
(2) A notice shall not affect a grant made on the day on which the notice is filed.

Effect of notice

- (3) A person filing a notice shall be warned by a warning in writing delivered at the place mentioned in the notice as his address.
(4) Notices in the nature of citations shall be given as a court directs.

Form of suits

15. Suits for administration shall be instituted and carried on, subject to the same rules of procedure as suits for ordinary claims.

Testator may
deposit Will

16. A person may, in his lifetime, deposit for safe custody in the court at Bauchi State his own Will, under his own seal and that of the court.

Custody of Will
of which
probate is
granted

17. (1) Every original Will, of which probate or administration with Will annexed is granted, shall be filed and kept in the probate registry, to secure at once the due preservation and convenient inspection of it.
(2) A copy of every such Will and of the probate or administration shall be preserved in a book kept for the purpose in the registry.

Will not to be
given out
without order
of court

18. (1) An original Will shall not be delivered out for any purpose without the direction in writing of the court where the Will is filed.
(2) A certified transcript, under the seal of the court of the probate or administration with the Will annexed may be obtained from the court.

Examination of
Will as to its
execution

19. (1) On receiving an application for administration with Will annexed, the court shall inspect the Will, and if it appears to be signed by the testator or by some other person in his presence and by his direction, and to have been subscribed by two witnesses according to the enactments and shall not proceed further if the Will does not appear to be so signed and subscribed.
(2) Where a Will appears to be signed and subscribed, the court shall then refer to the attestation clause (if any) and consider whether the wording of it

states the Will to have been, in fact, executed in accordance with those enactments.

20. (1) Where there is no attestation clause or the attestation clause is insufficient, the court shall require an affidavit from at least one of the subscribing witnesses, if either of them is living, to prove that the Will was, in fact, executed in accordance with those enactments. *Proof of execution where attestation clause is defective*
(2) The affidavit shall be engrossed and form part of the probate, so that the probate may be a complete document on the face of it.
21. Where on a perusal of the affidavit, it appears that the Will was not, in fact, executed in accordance with those enactments, the court shall refuse probate. *Where Will not executed according to law*
22. Where both subscribing witnesses are dead or if from other circumstances such an affidavit cannot be obtained from either of them, resort to such an affidavit shall be made to other persons (if any) present at the execution of the Will but if no such affidavit can be obtained, proof shall be required of that fact and of the handwriting of the deceased and of the subscribing witnesses and also of any circumstances raising a presumption in favour of a due execution of the Will.
23. Where the testator was blind or illiterate, a court shall not grant administration with the Will annexed, unless the court 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. *Evidence on failure of attesting witnesses*
24. (1) A court, on being satisfied that a Will was duly executed, shall carefully inspect it to see whether there are any interlineations or alterations or erasures or obliterations appearing in it and requiring to be accounted for. *Will of blind or illiterate testator*
(2) Interlineations, alterations, erasures and obliterations shall be invalid unless they existed in the Will at the time of its execution or unless, if made afterwards, they have been executed and attested in the mode required by the enactments or unless they have been made valid by the re-execution of the Will or by the subsequent execution of some codicil. *Interlineations, erasures, obliterations*
(3) Where any interlineation, alteration, erasures or obliterations appear in the Will (unless duly executed or recited in or identified by the attestation clause), an affidavit in proof of an existence in the Will before its execution shall be filed.
(4) Where no satisfactory evidence is adduced about the time when an erasure or obliteration was made and the words erased or obliterated are not entirely effaced and can, on inspection of the Will be ascertained, they shall form part of the probate.
(5) Where any word has been erased which might have been of importance an affidavit shall be required.
25. (1) Where a Will contains a reference to a document of such a nature as to raise the question whether it ought or ought not to form a constituent part of *Documents referred to in a will or annexed or attached*

the Will, the court shall require the production of the document, with a view to ascertaining whether or not it is entitled to Probate and if it is not produced, a satisfactory account of its non-production shall be proved.

(2) A document shall not form part of a Will unless it was in existence at the time when the Will was executed.

(3) Where there are vestiges of sealing wax or wafers or other marks, on a Will, leading to the inference that some documents have been at some time annexed or attached to it, a satisfactory account of those documents shall be proved, or the production of the document shall be required, and if it is not produced, a satisfactory account of its non-production shall be proved.

Executor dying without proving or not appearing

26. Where a person appointed executor in a Will survives the testator but either dies without having taken probate or having been called on by the court to take probate does not appear, his right of executorship wholly ceases and without further renunciation, the representation to the testator and the administration of his property may go and be committed as if that person had not been appointed executor.

Making of will or copy sworn to

27. (1) A Will or a copy of it, to which an executor or an administrator with the Will annexed is sworn shall be marked by the executor or administrator and by the person before whom he is sworn.

Codicils

(2) The provisions on Wills shall apply equally to codicils.

Viva voce examination of persons making affidavit

28. (1) Where evidence is directed or allowed to be given by affidavit, a court may require the personal attendance of the deponent, if within the jurisdiction, before the court, to be examined *viva voce* on the matter of his affidavit.
(2) The examination may take place before an affidavit has been sworn or prepared, where a court think fit.

2. Grant of letter of Administration

Letter of Administration

29. (1) A court in granting letter of administration shall proceed as far possible, as in cases of probate.
(2) A court shall ascertain the time and place of the deceased's death and the value of the property to be covered by the letter of administration.

Administration bond

30. (1) A person to whom letter of administration is granted shall give a bond, with two or more responsible sureties, to the probate Registrar of the court, as a condition for duly collecting, getting in and administering the personal property of the deceased, such sureties shall be to the satisfaction of the probate Registrar.
(2) A court may, if it thinks fit, take one surety only.
(3) The bond shall be in a penalty of double the amount under which the personal estate of the deceased is sworn, unless the court in any case thinks it expedient to reduce the amount.
(4) A court may also in any case direct that more bonds than one shall be given, so as to limit the liability of a surety to such amount as the court thinks reasonable.

31. The probate Registrar may, on being satisfied that the condition of a bond has been broken, assign it to some person and that person may then sue on the bond in his own name, as if it had been originally given to him instead of the probate Registrar and may recover then, as trustee for persons interested, the full amount recoverable in respect of any breach of the bond. *Assignment of bond*
32. A person claiming to be a creditor or legatee, or the next of kin, or one of the next of kins, of a deceased, may apply for and obtain a summons from court requiring the executor or administrator, of the deceased to attend before the court and show cause why an order for the administration of the property of the deceased should not be made. *Administration summons*
33. (1) On proof of service of the summons or on appearance of the executor or administrator and on proof of all such other things as the court may direct, a court may, make an order for the administration of the property of the deceased. (2) A court may make or refuse the order, or give any special directions respecting the carriage or execution of it, and in the case of applications for the order by two or more different persons or classes of persons, may grant it to such, as the court thinks fit. (3) Where a court thinks fit, the carriage of the order may subsequently be given to such person and on terms. *Order for administration*
34. On making of an order, or at any time afterwards, a court may, if it thinks fit, make any other order which appear requisite to secure the proper collection, recovery for safe-keeping and disposal of the property or any part of it. *Orders relating to property*
35. In case of intestacy, where the special circumstances of the case appear to the court so to require, a court may, if it thinks fit, on the application of any person having interest in the estate of the deceased or of its own (motion), grant letters of administration to an officer of the court, to a consular officer or to a person in the service of the Government. *Administration may be granted to officer*
36. (1) The officer or person so appointed shall act under the direction of the court and shall be indemnified. (2) A court shall require and compel him to file in the court his accounts of his administration at intervals not exceeding three months. *Officer to act under direction of court*
37. Where a person died intestate as to his personal estate or leaving a Will affecting personal estate, but without having appointed an executor willing and competent to take probate, or where the executor, at the time of the death of that person, is resident out of the jurisdiction, a court, where it appears necessary or convenient may appoint some person to be the administrator of the personal estate of the deceased upon his giving security, if any, as a court shall direct, and every such administration may be limited as the court thinks fit. *Court may appoint person to be administrator*

- Remuneration of Administrator
38. (1) A court may direct that any administrator (with or without the Will annexed) shall receive out of the personal and real estate of the deceased such reasonable remuneration as the court thinks fit, not exceeding a fee of ₦10,000.00 and in addition, a sum not exceeding 5% on the amount of the realized property or when not converted into money, on the value of the property duly administered and accounted for by him.
- (2) Where a court is satisfied that by reason of exceptional circumstances the administration of the property has required an extraordinary amount of labour to be bestowed on it, the court may allow for that property a higher rate of remuneration.

3. Administration of Estate of Foreign Citizens

- Securing and collection of estate
39. (1) Where a foreign citizen dies within the jurisdiction without leaving within the jurisdiction a widow or next of kin, or, if such person dies within a Government institution or had his usual place of residence there, the Magistrate having jurisdiction within that institution, or if he does not die within a Government institution or had not his usual place of residence there, then the Secretary of the Local Government Council in charge of the institution in which he died, shall collect and secure all moneys and other property belonging to the deceased and shall then request the Permanent Secretary Ministry of Foreign Affairs to inform the nearest consular officer of that country of the death of the deceased and transmit to him a list of the money and property of the deceased.
- (2) Where sub rule (1) applies, the Local Government Council Secretary may appoint any Administrative Officer attached to his Local Government Council or with his consent, any Magistrate or any Administrative officer attached to any other Local Government Council may act in his place.

- Application by consular officer or person authorized by him to administer estate
40. An application may be made to a court by a consular officer or by any person authorized by him in writing and under the consular seal, for leave to administer the estate of the deceased and the court may make or vary such order as to security for payment of debts and the method of administration as the court shall think fit.

4. Administration Generally

- Accounts to be filed
41. (1) Every person to whom a grant of probate or letters of administration has or have been made and every administrator appointed by the court shall, if called upon by the court, file in court the account of his administration and shall thereafter file such further periodic accounts as the court may direct until the completion of the administration.
- (2) An executor or administrator who fails within any such period to file his accounts as specified shall be liable to such penalty not less than ₦1, 000.00 as a court may think fit to impose, and every such fine shall on non-payment be enforceable by distress, and failing sufficient distress, by imprisonment for a term not exceeding six months.
- (3) Where an account is filed in court under this Rule, a court shall scrutinize the account and if it appears to the court that by reason of improper or

unjustifiable entries or that the account is not a full and proper account, the court may give written notice to the person filing the account to remedy such defects within such time as the court may seem reasonable for the purpose, and on failure to remedy such defects within such time, the person who filed such defective account shall be taken to have failed to file an account within the meaning of this Rule, and proceedings may be taken against that person accordingly.

(4) A court may, on the motion of an interested party, or on its own, summon any executor or administrator failing to file account, to show cause why he should not be punished.

(5) A court may for good cause shown extend the time for such filing of accounts.

(6) An executor or administrator who has been granted an extension of time to file such accounts and who fails within such extended time to file such accounts, shall be liable to the penalty stated above and the procedure for bringing him before the court shall be invoked.

(7) It shall be the duty of the probate Registrar to bring to the notice of the court the fact that any executor or administrator has failed to file his accounts as required by this Rule.

(8) The accounts shall be open free of charge to the inspection of all persons satisfying the probate Registrar that they are interested in the administration.

(9) In this rule, the word

“accounts” includes an inventory, an account of the administration, the vouchers in hands of the executor or administrator, and an affidavit in verification.

42. The duties and powers of a court by Rules 5, 6, 7, 9, 10, 11, 12, 14, 17, 18, 19, 20, 21, 22, 28, 31, 38, 40, and 41 (1), (3), (5), (7) and (8), shall be undertaken by the probate Registrar on behalf of the court subject to any directions which the Chief Judge may give, but a court shall have power, either on its own or on the application of an interested person, to review any undertaken by the probate Registrar and on such review a court shall have power to cancel anything which may have been done by the probate Registrar or make such order as may be just in the circumstances. *Duties and powers to be performed and exercised by Probate Registrar*
43. A court may refuse to entertain an application under Rule 42, where it considers that there is an unreasonable delay by the applicant in making his application. *Court may refuse application*
44. The grant of letters of administration under this Order shall be signed by the Chief Judge or a judge designated by him. *Grant to be sign by Chief Judge or his designate*
45. (1) Where there are additional asset(s) not included in the Letters of Administration, an application for supplementary letters of administration could be made to the probate Registrar by the administrators of the grant or their legal representative. *Supplementary Letters of Administration or grant for additional assets*
(2) An application may be made to the probate Registrar by the executor of estate for the inclusion any property or asset not mentioned in the Will of the

testator or any additional asset discovered after probate was granted to be included in the estate of the testator.

(3) The provisions of Order 64 Rule 17 shall apply to sub rule (1) and (2) of this Order as it relates to the requirement for a true declaration and valuation of properties and assets affected by this rule.

ORDER 63

Register of Probate, Letters of Administration and Wills

*Register of wills,
letters of
administrations
and grants*

1. There shall be kept at the Probate Registry:

- (a) Register of wills
- (b) Register of letters of administration
- (c) Register of grant of probate

*Application to
conduct search
in the register of
wills*

2. Any person who seeks to conduct a search into the register of wills in order to ascertain whether a deceased died testate shall apply to the probate Registrar with a copy of a death certificate of the deceased. The probate Registrar may at his discretion request for further information or documents before approving the search.

ORDER 64

Probate (Non-Contentious) Procedure

1- General

*Application for
grant through
legal
practitioner*

1. (1) An applicant for a grant may apply through a legal practitioner at the probate registry.

(2) A legal practitioner through whom an application for a grant is made shall:

- (i) Append his seal to the application.
- (ii) Indicate his telephone number, email address and his business address within jurisdiction.

*Personal
application*

2. (1) An applicant for a grant may apply in person at the probate registry.

(2) A personal applicant may not apply through an agent, whether paid or unpaid and may not be represented by any person acting or appearing to act as his adviser.

(3) No personal application shall be received or proceeded with where –

- (a) It becomes necessary to bring the matter before the court on motion or by action;
- (b) An application has already been made by a legal practitioner on behalf of the applicant and has not been withdrawn; or
- (c) The Registrar directs otherwise.

- (4) After a Will has been deposited in the registry by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the Registrar so direct.
- (5) A personal applicant shall produce the death certificate of the deceased or such other evidence of the death as the Registrar may approve.
- (6) A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared in the registry or may himself prepare such papers and lodge them unsworn.
- (7) Except a Registrar directs, every oath, affidavit or guarantee required of a personal applicant shall be sworn or executed by all the deponents or sureties before an authorized officer of court.
3. (1) A Registrar shall not allow any grant to issue until all inquiries which he may deem fit to make have been answered to his satisfaction. *Duty of Registrar upon receiving*
- (2) A Registrar may require proof of identity of the deceased or of the applicant for the grant beyond that contained in the oath. *Application for grant*
- (3) No grant of probate or of administration with the Will attached shall issue within seven days of the death of the deceased.
4. (1) An application for a grant shall be supported by an affidavit sworn by the applicant, and by such other papers as a Registrar may require. *Oath in support of grant*
- (2) Unless otherwise directed by a Registrar, the oath shall state where the deceased died domiciled.
5. Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the affidavit the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name or as to any other reason that there may be for the inclusion of the other name in the grant. *Grant in additional name*
6. A Will in which an application for grant is made shall be marked by the signatures of the applicant and the person before whom the oath is sworn and shall be exhibited to an affidavit which may be required under this Order, as to the validity, terms condition or date of execution of the Will, but where a Registrar is satisfied that compliance with this Rule might result in the loss of a Will, he may allow a photocopy of it to be marked or exhibited in lieu of the original document. *Marking of Wills*
7. (1) Where the Registrar considers in a particular case a photocopy of the original Will would not be satisfactory for purposes of record, he may require an engrossment suitable for photoconv. *Engrossment for purpose of record*
- (2) Where a Will contains alterations which are not admissible to proof, there shall be lodged an engrossment of the Will in the form in which it is to be proved.
- (3) An 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) applies, it shall be made book-wise, on durable paper following continuously from page to page

(4) Where any pencil writing appears on a Will, there shall be lodged a copy of the Will or of the pages or sheets containing the pencil writing, in which there shall be underlined in red ink those portions which appear in pencil in the original.

*Evidence as to
due execution
of Will*

8. (1) Where a Will contains no attestation clause or the attestation clause is insufficient or where it appears to a Registrar that there is some doubt about the due execution of the Will, the Registrar 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 an affidavit cannot be obtained in accordance with sub rule (1), the Registrar may, if he thinks fit having regard to the desirability of protecting the interest of a person who may be affected by the Will, accept evidence on affidavit from any person he thinks fit to show that the signature on the Will is the handwriting of the deceased or of any other matter which may raise a presumption in favour of the due execution of a Will.

(3) Where a Registrar, after considering evidence –

- (a) Is satisfied that the Will was not duly executed, he shall refuse probate and shall mark the Will accordingly;
- (b) Is doubtful whether the Will was duly executed, he may refer the matter to the court on motion.

*Execution of Will
of blind or
illiterate testator*

9. Before admitting to proof, a Will which appears to have been signed by a blind or illiterate testator or by another person by direction of a testator, or which for any reason gives rise to doubt as to the testator having had knowledge of the contents of the Will at the time of its execution, the Registrar shall satisfy himself that the testator had such knowledge.

*Evidence as to
terms,
conditions and
date of Will*

10. (1) Where there appears in a Will any obliteration, interlineations, 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 Registrar shall require evidence to show whether the alteration was present at the time the will was executed and shall give directions as to the form in which the Will is to be proved, but this sub rule shall not apply to an alteration which appears to the Registrar to be of no practical importance.

(2) Where from a mark on a Will, it appears to a Registrar that some other document has been attached to the will or if a will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the Will, the Registrar may require the document to be produced and call for evidence regarding the attachment(s) or incorporation.

(3) Where there is doubt as to the date on which a Will was executed, a Registrar may require such evidence as he thinks necessary to establish the date.

11. Any appearance of attempted revocation of a Will by burning, tearing or other circumstance leading to a presumption of revocation by the testator, shall be accounted for to a Registrar's satisfaction. *Attempted revocation of Will*
12. A Registrar may require an affidavit from a person he thinks fit for purposes of satisfying himself as to any of the matters referred to in rules 15, 16 and 17, and where an affidavit is sworn to, by an attesting witness or other person present at the time of the execution of a Will, the deponent shall depose to the manner in which the Will was executed. *Affidavit as to due execution, terms, etc of will*
13. Where it appears to a Registrar that there is *prima facie* evidence that a Will is one to which section 9 of the Wills Act, 1837, or an equivalent enactment in force in the State, applies, the Will may be admitted to proof if a Registrar is satisfied that it was made by the testator in accordance with the provisions of that enactment. *Wills of persons on military service and seamen*
14. Where evidence as to the law of a country or state outside Bauchi State, is required on an application for a grant, the Registrar may accept an affidavit from a person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably qualified to give expert evidence of the law in question. *Evidence of foreign law*
15. (1) Where a deceased dies, the person(s) entitled to a grant of probate or administration with the Will annexed shall be determined in the following order of priority – *Order of priority for grant where deceased left a Will*
 - (a) The executor;
 - (b) Any residuary legatee or devisee holding in trust for any other persons;
 - (c) A residuary legatee or devisee for life;
 - (d) A residuary legatee or devisee whose legacy is vested in interest;
 - (e) The ultimate residuary legatee or devisee, including one entitled on the happening of a contingency or, where the residue is not wholly disposed of by the Will,
 - (i) A person entitled to share in the residue not disposed of by Will, or his personal representative;
 - (ii) A legatee or devisee entitled to a share in the estate disposed of;
 - (f) A specific legatee or devisee or creditor or subject to Rule 40 (3), a 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 in it, may have a beneficial interest in the event of an accretion to it;
 - (g) A specific legatee or devisee entitled on the happening of a contingency, or a person having no interest under the Will of the

deceased who would have been entitled to a grant if the deceased had died wholly intestate.

(2) Where the residue is not in terms wholly disposed of, the Registrar may, if satisfied that the testator has disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made (subject to Rule 49) 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 a residue not disposed of by the Will.

- Grant to attesting witnesses, etc*
16. Where a gift to a person fails because he is an attesting witness or the spouse of an attesting witness, that person shall not have a right to a grant as a beneficiary named in the Will, but shall have his right to a grant in any other capacity preserved.
- Value of property*
17. (1) An applicant for a grant of probate or letters of administration with the Will attached shall file in the court a true declaration of all the personal property of the deceased and its value.
(2) For purposes of the fees payable on probate and such letters of administration, the value of the property for which the grant is made shall be deemed not to include –
- (a) Gratuity payable by the Federal or Government of a State, or Bauchi State to the estate of a person formerly employed by it or a Statutory Corporation;
 - (b) A sum of money payable to an estate from a Provident Fund or Pension Fund established under any written law.
- Answers required before grant*
18. (1) A court shall not issue probate or letters of administration with the Will attached until all inquiries which the court sees necessary to institute have been answered to its satisfaction.
(2) A court shall, however, afford as great a facility for the obtaining of probate or such letters of administration consistent with the prevention of error and fraud.
- Notice to prohibit grant*
19. A notice to prohibit a grant of probate or administration with the Will attached may be filed in the court.
- Effect of notice*
20. (1) A notice shall remain in force three months only from the day of filing, but may be renewed from time to time and the notice shall not affect a grant made on a day the notice is filed.
(2) A person filing a notice shall be warned by warning in writing delivered at the place mentioned in the notice as his address.
(3) Notices in the nature of citations shall be given in such manner as the court directs.
- citation*
- Form of suits*
21. Suits respecting probate or administration shall be instituted and carried on subject to the same Rules of procedure regarding of ordinary claims.

22. (1) A person may, in his lifetime, deposit for safe custody in the court at Abuja his own Will, under his own seal and that of the court. *Testator may deposit Will*
(2) The person depositing the Will shall furnish the Probate Registrar with names/ addresses of not less than two persons who shall be notified for the opening of the Will.
23. (1) 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 the due preservation and convenient inspection of it. *Perseveration and inspection of Will in the Registry*
(2) A copy of every such Will and of the probate or administration shall be preserved in a book kept for the purpose in the Registry.
24. (1) An original Will shall not be delivered out for any purpose without the direction in writing of the court where the Will is filed. *Delivery of Will without order of court*
(2) A certified transcript, under the seal of court, of the probate or administration with the Will annexed may be obtained from the court.
- II - Probate or Administration with Will annexed***
25. (1) A person shall deposit a will at the Probate Registry with names of not less than two persons with their respective address, such persons shall be notified of the opening of the will. *Deposition and opening of Will*
(2) Upon the death of a testator any person may request for the opening of the will by an application to the Probate Registrar supported with a death certificate.
(3) The Probate Registrar shall notify the persons listed in (1) above and family members to the opening of the will on a date fixed for the opening.
(4) On the date fixed for the opening all parties listed shall be seated and the probate Registrar shall open and read the will and thereafter issue to each person a CTC of the will upon payment of a prescribed fee.
(5) Where any property is not mentioned in the Will of a deceased, the proven Executors shall apply for Letters of Administration in respect of the said property and such application shall be accompanied by the Probate.
26. (1) On receipt of an application for probate or for administration with Will annexed, a court shall inspect the Will and see whether it appears to be, signed by the testator or by some other person in his presence and by his direction, and subscribed by two witnesses according to the enactments, and shall not proceed further if the Will does not appear to be so signed and subscribed. *Inspection of Will as to its execution*
(2) Where a Will appears to be signed and subscribed, the court shall then refer to the attestation clause (if any) and consider whether the wording states the Will to have been, in fact, executed in accordance with those enactments.
27. (1) Where there is no attestation clause, or if the attestation clause is insufficient, the court shall require an affidavit from at least one of the subscribing witnesses, if either of them is living, to prove that the will was, in fact, executed in accordance with those enactments. *Proof of execution where attestation clause is defective*
(2) An affidavit shall be engrossed and form part of the probate, so that the probate may be a complete document on the face of it.

- Where Will not executed according to law* 28. Where, on perusal of an affidavit, it appears that a Will was not in fact, executed in accordance with those enactments, the court shall refuse probate.
- Death of subscribing witnesses* 29. Where both subscribing witnesses are dead or if from other circumstances an affidavit cannot be obtained from either of them, resort to an affidavit shall be had to other persons (if any) present at the execution of the Will but if no affidavit can be obtained, proof shall be required of that fact and of the handwriting of the deceased and of the subscribing witnesses and also of any circumstances raising a presumption in favour of the due execution of the Will.
- Will by blind or illiterate* 30. Where a testator was blind or illiterate, a court shall not grant probate of the Will, or administration with the Will annexed, unless the court is satisfied, by proof 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.
- Order of priority for grant of probate* 31. (1) Where all persons entitled to the estate of a deceased under a Will have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace in order of priority for a grant of probate, the assignor, or if there are two or more assignors, the assignors with the highest priority, in the absence of a proving executor.
(2) Where there are two or more assignees, probate may be granted with the consent of the others to any one or more (not exceeding four) of them.
(3) Where probate is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the Registry.
- Joinder of administrator* 32. (1) Where there is no proving executor, an application to, join with a person entitled to a grant of administration with the Will attached another person –
(a) In a lower degree shall, in default of renunciation by all persons entitled in priority to him; or
(b) Having no right to it, may, be made to a Registrar, supported by an affidavit of a person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Registrar may require.
(2) The following may without an application be joined with a person entitled to administration with the Will attached -
(i) Any kin of the deceased having no beneficial interest in the estate, on the renunciation of all persons entitled to join in the grant,
(ii) Unless a Registrar directs, a person nominated for that purpose, by the infant's guardian,
(iii) A trust corporation.
- Additional personal representatives* 33. (1) An application to add a personal representative shall be made to a Registrar and shall be supported by an affidavit by the applicant, with the

consent of the person proposed to be added as personal representative and such other evidence as the Registrar may require.

(2) On an application, the Registrar may direct that, a note shall be made on the original grant of the addition of a further personal representative, or he may impound or revoke the grant or make an order as the circumstances require.

34. (1) A grant may be made to a person entitled without notice to other persons entitled in the same extent. *Grants where two or more persons entitled in the same degree*
- (2) A dispute between persons entitled to a grant in the same degree shall be brought by application before the Registrar.
- (3) Where an application under this rule is brought before the Registrar, he shall not allow any grant to be sealed until the application is finally disposed of.
- (4) Except a Registrar directs, probate or administration with the Will attached, shall be granted to a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same degree and to a person not under disability in preference to an infant entitled in the same degree.
35. (1) Rules 15, 32, or 34, shall not operate to prevent making of a grant to a person to whom a grant may require to be made under any enactment. *Exceptions to rules as to priority*
- (2) The Rules mentioned in sub rule (1), shall not apply where the deceased died domiciled outside jurisdiction, but shall apply to a case in which Rule 37 apply.
36. Where the beneficial interest in the whole estate of a deceased is vested absolutely in one person who has renounced his right to a grant of administration with the Will attached and has consented to such administration being granted to a person(s) who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or more (not exceeding four) of such persons, but a surviving spouse shall not be regarded as a person in whom the estate has vested absolutely, unless he would be entitled to the whole of the estate, whatever its value may be. *Grants to person having spessuccessionis*
37. Where a deceased died domiciled outside jurisdiction, the Registrar may order that a grant be issued to - *Grant where deceased died domiciled outside Bauchi State*
- (a) A person entrusted with the administration of the estate by the court having jurisdiction at the place where the deceased died;
 - (b) A person entitled to administer the estate by the law of the place where the deceased died domiciled;
 - (c) Any other person as the Registrar may direct where paragraphs (a) and (b) do not apply;
 - (d) Any other person jointly with a person referred to in paragraphs (a) and (b), or at least 2 administrators where the Registrar directs, but where the Registrar does not make this Order –
 - (h) Probate or any Will which is admissible to proof may be granted where -

- (aa) The Will is in English or in the local vernacular, to the executor named therein;
- (bb) The Will describes the duties of a named person in terms sufficient to constitute him executor according to the tenor of the Will;
- (cc) Where the whole of the estate in the jurisdiction, consists of immovable property, a grant limited to it
- (dd) may be made in accordance with law applicable in Bauchi State.

38. (1) Where a person entitled to a grant resides outside jurisdiction, a grant may be made to his lawfully constituted attorney for his use and benefit, though limited, until that person obtains a grant, but where the person entitled is an executor, administration shall not be granted to his attorney without notice to other executors, if any.
- (2) Where a Registrar is satisfied by an affidavit that it is desirable for a grant to be made to the lawfully constituted attorney of a person entitled to a grant and resident within jurisdiction, he may direct that a grant be made to the attorney for the use and benefit of that person, though limited, until that person obtains a grant.

Grants to Attorneys

39. (1) Where a person to whom a grant ought to be made is an infant, a grant for his use and benefit until he attains the age of 18 years shall, subject to sub rules (3) and (5), be granted -
- (a) to both parents of the infant jointly or to any guardian appointed by a court of competent jurisdiction; or
 - (b) if there is no guardian able and willing to act and the infant has attained the age of sixteen years, to any next of kin nominated by the infant or where the infant is a married woman, to any such next of kin or to her husband if nominated by her.

Grants on behalf of infants

- (2) A person, nominated under sub rule (1)(b), may represent any other infant whose next of kin he is, being an infant below the age of sixteen years entitled in the same degree as the infant who made the nomination.
- (3) Administration for the use and benefit of the infant until he attains the age of eighteen years may be granted to any person assigned as guardian by order of a court in default of, or jointly with or to the exclusion of, a person mentioned in sub rule (1), and such an order may be made on an application by the intended guardian, who shall file an affidavit in support of the application and if required by the court, an affidavit of fitness sworn by a responsible person.
- (4) Where a grant is required to be made to not less than two persons and there is only one person competent and willing to take a grant under the preceding provisions of this rule, a grant, unless the Registrar directs, may be made to such person jointly with any other person nominated by him as a fit and proper person to take a grant.
- (5) Where an infant who is sole executor has no interest in the residuary estate of a deceased administration with the Will attached, for the use and

benefit of the infant child until he attains the age of eighteen years shall, unless the Registrar directs, be granted to the person entitled to the residuary estate.

40. (1) Where one of two, or more executors is an infant, probate may be granted to the other executor or executors not under disability, with power reserved for making a similar grant to the infant on his attaining the age of 18 years, *Grants where infant is co-executor*
- and administration for the use and benefit of the infant until he attains the age of eighteen years may be granted under Rule 39, if the executors who are not under disability renounce or on being cited to accept or refuse a grant, fail to make an effective application accordingly.
- (2) An infant executor's right to probate on attaining the age of eighteen years may not be renounced by any person on his behalf.
41. (1) Where a Registrar is satisfied that a person entitled to a grant is by reason of mental or physical incapacity incapable of managing his affairs, a grant for his use and benefit, limited during his incapacity or in such other way as the Registrar may direct, may be made - *Grants in case of mental or physical incapacity*
- (a) In the case of mental incapacity, to the person authorized by the court to apply for the grant; or
 - (b) Where no person is authorized or in the case of physical incapacity, if the person incapable is entitled –
 - (i) As executor and has no interest in the residuary estate of the deceased, to the person entitled to such residuary estate;
 - (ii) As an executor having an interest in residuary estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate or to such other person.
- (2) Except a Registrar directs, no grant shall be made under this rule unless all persons entitled in the same extent as the person incapable have been cleared off.
- (3) In the case of mental incapacity, notice of intended application for a grant under this rule shall, except the Registrar directs, be given to the person alleged to be so incapable.
42. (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. *Renunciation of probate and administration*
- (2) Except a Registrar directs, no person who has renounced a grant in one capacity may obtain a grant in some other capacity.
- (3) A renunciation of probate or administration may be retracted at any time on the Order of the Registrar, but only in exceptional circumstances, may leave be given to an executor to retract a renunciation of probate after a grant has been made to some other person entitled in a lower degree.

*Notice to
Bauchi State
of intended
application for
grant*

43. Where it appears that Bauchi State is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Attorney- General of Bauchi State and the Registrar may direct that no grant shall issue within a specified time after the notice has been given.

*Guarantee as a
condition*

44. (1) A Registrar shall not require a guarantee as a condition of making a grant except where it is proposed to make it –

- (a) Under Rule 15(i)(4), to a creditor or the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;
- (b) Under Rule 36, to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate, be entitled to his estate;
- (c) Under Rule 38, to the attorney of a person entitled to a grant;
- (d) Under Rule 39, for the use and benefit of a minor;
- (e) under Rule 41, for the use and benefit of a person who is by reason of mental or physical incapacity incapable of managing his affairs;
- (f) To an applicant who appears to the Registrar to be resident elsewhere than in the Bauchi State; or
- (g) Where the Registrar considers that there are special circumstances making it desirable to require a guarantee.

(2) Despite a proposal to make a grant as above, a guarantee shall not be required, except in special circumstances, on an application for administration where the applicant or one of the applicants is the Administrator- General or a trust corporation.

Civil Form 49

(3) Every guarantee entered into by a surety for the purposes of this order, shall be as in Form 49, as in the Appendix.

(4) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an authorized officer, commissioner for oaths or other person authorized by law to administer an oath.

(5) Except a Registrar directs -

- (a) If it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not

exceed ₦1,000.00 or a corporation is a proposed surety and in these cases one will suffice;

- (b) No person shall be accepted as a surety unless he is resident in Bauchi State;
- (c) No officer of the judiciary shall become a surety;
- (d) The limit of the liability of the surety or sureties under a guarantee shall be the gross amount of the estate as sworn on the application for the grant;
- (e) Every surety, other than a corporation, shall justify.

(6) Where a proposed surety is a corporation, there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed a guarantee as prescribed by its constitution, containing sufficient information as to the financial position of the corporation to satisfy the Registrar 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.

45. (1) An application for the resealing of probate or administration with the Will attached granted by the court of a place not within Bauchi State, shall be made by the person to whom the grant was made or by any person authorized in writing to apply on his behalf. *Resealing*
- (2) On any such application-
- (a) An Inland Revenue affidavit shall be lodged as if the application were one for a grant in Bauchi State;
 - (b) The application shall be advertised in such manner as a Registrar may direct and shall be supported by an oath sworn by the person making the application.
- (3) On an application for the resealing of such a grant -
- (a) A Registrar shall not require sureties except where it appears to him that the grant is made to a person or for a purpose mentioned in Rule 44(1) (a) to (f), or except where he considers that there are special circumstances making it desirable to require sureties;
 - (b) Rules 8(4), and 44(2), (4), (5) and (6), shall apply with any necessary modifications; and
 - (c) A guarantee entered into by a surety shall be as in Form 50, as in the Appendix. *Civil Form 50*
- (4) Except by leave of a Registrar, no grant shall be resealed unless it was made to such a person mentioned in Rule 37 (a) or (b), or to a person to whom a grant could be made under that rule.
- (5) No limited or temporary grant shall be resealed except by leave of the Registrar.
- (6) A grant lodged for resealing shall include a copy of any Will to which the grant relates or shall be accompanied by a copy of it certified as correct by or under the authority of the court by which the grant was made.
- (7) A Registrar shall send notice of the resealing to the court which made the grant.
- (8) Where notice is received in the Registry from outside Bauchi State, of the resealing of a grant made in Bauchi State, notice of any amendment or revocation of the grant shall be sent to the court by which it was resealed.
46. Where a Registrar is satisfied that a grant should be amended or revoked, he may make an order accordingly, but in special circumstances, no grant shall *Amendment and revocation of grant*

be amended or revoked under this Rule except on the application or with the consent of the person to whom the grant was made.

47. (1) A person who wishes to ensure that no grant is sealed without notice to himself may enter a *caveat* in the Registry.

Entry of caveat

(2) A person who wishes to enter a caveat (caveator), may complete Form 52, as in the Appendix, in the appropriate book at the Registry and obtain an acknowledgement of entry from the proper officer, or by sending through the post at his own risk, a notice as in Form 51 to the Registry in which he wishes the caveat to be entered.

Civil Form 51, & 52

(3) Where a caveat is entered by a legal practitioner on the caveator's behalf, the name of the caveator shall be stated as in Form 52.

(4) A caveat shall remain in force for 6 months from the date on which it is entered and shall then cease to have effect, without limitation to the entry of a further caveat or caveats.

(5) A Registrar shall maintain an index of caveats entered in the registry and on receiving an application for a grant in the Registry he shall cause the index to be searched and shall notify the applicant in the event of a caveat having been entered against the sealing of a grant for which application has been made.

(6) A Registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat respecting it, but no caveat shall operate to prevent the sealing of a grant on the day on which the caveat is entered.

Civil Form 53

(7) A caveator may be warned by the issue from the registry of Form 53, as in the Appendix, at the instance of a person interested, the person warning which shall state his interest and if he claims under a Will, the date of the Will and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased and every warning or a copy of it shall be served on the caveator.

(8) A caveator 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 then cease to have effect, and if he has been warned, the caveator shall promptly give notice of withdrawal of the caveat to the person warning.

(9) A caveator who has an interest contrary to that of the person warning, may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time after if no affidavit has been filed under sub rule (11), enter an appearance in the registry by filing Form 54, as in the Appendix, and making an entry in the appropriate book and promptly serve on the person warning, a copy of Form 54, sealed with the seal of the registry.

Civil Form 54

(10) A caveator who has no interest contrary to that of the person warning, but wishing to show cause against the sealing of a grant to that person, may, within 8 days of service of the warning upon him inclusive of the day of such service, or at any time after if no affidavit has been filed under sub rule (11), issue and serve a summons for directions, which shall be returnable before the Registrar.

(11) Where a time limited for appearance has expired and the caveator has not entered an appearance, the person warning may file in the registry an affidavit showing that the warning was duly served and that he has not

received a summons for directions under sub rule (10), and then the caveat shall cease to have effect.

(12) On the commencement of a probate action, the Probate Registrar shall, for each caveat then in force (other than a caveat entered by the claimant), give to the caveator notice of the commencement of the action, and on subsequent entry of a caveat at any time when the action is pending, shall likewise notify the caveator of the existence of the action.

(13) Except a Registrar directs –

- (a) A caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to sub rule (8), remain in force until an application for a grant is made by the person shown to be entitled to it by the decision of the court in such proceedings and on such application, a caveat entered by a party who had notice of the proceedings shall cease to have effect;
- (b) Any caveat on which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;
- (c) The commencement of a probate action shall, whether or not any caveat has been entered, operate to prevent the sealing of a grant until application for a grant is made by the person shown to be entitled to it, by the decision of the court in such action and on such application any caveat entered by a party who had notice of the action, or by a caveator who was given notice under sub rule (12), shall cease to have effect.

(14) Except with the leave of a Registrar, no further caveat may be entered by or on behalf of any caveator whose caveat has ceased to have effect under sub rule (11) or (13).

48. (1) A citation shall be settled by the Registrar before it is issued.

(2) An averment in a citation, and such other information as a Registrar may require, shall be verified by an affidavit sworn to, by the person issuing the citation (the citor) or if there are two or more citors, by one of them, but the Registrar may, in special circumstances, accept an affidavit sworn by the citor's legal practitioner.

(3) The citor shall enter a caveat before issuing a citation.

(4) Every citation shall be served personally on the person cited unless the Registrar, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

(5) A 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 Registrar is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within 8 days of service of the citation upon him inclusive of the day of such service or at any other time if no application has been made by the citor under Rule 55 (5) and Rule 56 (2), enter an appearance in the Registry by filing Form 54, as in the Appendix

Citation

Civil Form 54

and making an entry in the appropriate book, and shall promptly serve on the citor a copy of Form 54 sealed with the seal of the Registry.

Citation to
accept or
refuse to take a
grant

49. (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 it.
- (2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or the executors of the last survivor of deceased executors who have proved.
- (3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased, but no citation to take a grant shall issue while proceedings as to the validity of the will are pending.
- (4) A person cited who is willing to accept or take a grant may apply *ex parte* to a Registrar for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant himself.
- (5) Where a time limited for appearance has expired and the person cited has not entered an appearance, the citor may in the case of a citation under –
- (a) Sub rule (1), apply to the Registrar for an order for a grant to himself;
 - (b) Sub rule (2), apply to the Registrar for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;
 - (c) Sub rule (3), apply to the Registrar by summons (which shall be served on the person cited) for an order requiring that person to take a grant within a specified time or for a grant to himself or some other persons specified in the summons.
- (6) An application under sub rule (5) shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.
- (7) Where a person cited has entered an appearance but has not applied for a grant under sub rule (4) or has failed to prosecute his application with reasonable diligence, the citor may in the case of a citation under -
- (a) Sub rule (1), apply by summons to a Registrar for an order for a grant to himself;
 - (b) Sub rule (2), apply by summons to a Registrar for an order striking out the appearance and for the endorsement on the grant of such a note mentioned in sub rule (5) (b);

- (c) Sub rule (3), apply by summons to a Registrar 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.
50. (1) A citation to propound a Will shall be directed to the executors named in the Will and to all persons interested in it, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons. *Citation to propound a Will*
- (2) Where a time limited for appearance has expired, the citor may, in the case -
- (a) Where a person cited has not entered an appearance, apply to a Registrar for an Order for a grant as if the Will were invalid;
- (b) Of a citation under Rule 49 (2), apply by summons to a Registrar for an Order striking out the appearance and for the endorsement on the grant of a note mentioned in rule 49 (5);
- (c) Of a citation under Rule 49 (3), apply by summons to a Registrar 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 persons cited in each case.
51. All caveats, citations, warnings and appearances shall contain an address for service within jurisdiction. *Address for service*
52. (1) An application for an order requiring a person to bring in a Will or to attend for examination may, unless a probate action has been commenced, be made to the court by summons, which shall be served on such person. *Application for order to bring in a Will or attend for examination*
- (2) An application to a Registrar for the issue of a subpoena to bring in a Will, shall be supported by an affidavit setting out the grounds of 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.
53. An application for an order for a grant limited to part of an estate may be made to a Registrar and shall be supported by an affidavit stating – *Limited grant*
- (a) Whether the application concerns the real estate only or any part of it, or real estate together with personal estate or of a trust estate only;
- (b) Whether the estate of the deceased is known to be insolvent;
- (c) That the persons entitled to a grant of the whole estate in priority to the applicant have been cleared off.

- Grant of administration ad colligenda bona* 54. An application for an order for grant of administration *ad colligenda bona* may be made to a Registrar and shall be supported by an affidavit setting out the grounds of the application.
- Application for leave to swear to death* 55. An application for leave to swear to the death of a person in whose estate a grant is sought may be made to a Registrar and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance effected on the life of the presumed deceased.
- Grant for codicils and copies of Wills* 56. (1) An application for an order admitting to proof a codicil or a Will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original Will is not available, may be made to a Registrar, but where a Will is not available owing to its being retained in the custody of a foreign court or official, a duly authenticated copy of the Will may be admitted to proof without an Order.
(2) The application in sub rule (1) shall be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to -
(a) The due execution of the Will;
(b) Its existence after the death of the testator; and
(c) The accuracy of the copy or other evidence of the contents of the Will, together with any contents in writing to the application given by any person not under disability who would be affected by the grant.
- Grant durante ad absentia* 57. An application for an order for a grant of special administration where a personal representative is residing outside Bauchi State, shall be made to a court on motion.
- Notice of election by surviving spouse to redeem life interest Civil Form 55* 58. (1) Where a surviving spouse who is the sole personal representative of a deceased is entitled to a life interest in a part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to a Registrar by filing a notice in Form 55, as in the Appendix, in the registry.
(2) A notice filed under this Rule shall be noted on the grant and the Record and shall be open to inspection.
- Issue of copies of Will and other documents* 59. (1) Where copies are required of original Wills or other documents deposited under the provisions of a written law, such copies may be under the seal of Registry and issued as office copies and where such office copies are not available, copies certified under the hand of a Registrar to be true copies, shall be issued only if it is required that the seal of the court be affixed to it.
(2) Copies, not being Photocopies, of original Wills or other documents deposited, shall be examined against the documents of which they purport to be copies, if required by the person demanding the copy and in such case

the copy shall be certified under the hand of a Registrar to be a true copy and may, in addition, be under seal of court.

60. (1) A bill of costs other than a bill delivered by a legal practitioner to his client which falls to be taxed under the Legal Practitioners Act, shall be referred to a Registrar for taxation and may be taxed by him or such other taxing officer as the Chief Judge may appoint. *Taxation of costs Cap. 207*
(2) A party applying for taxation shall file the bill and give notice to any other parties entitled to be heard on the taxation and shall at the same time, if he has not already done so, supply them with a copy of the bill.
(3) Where a party entitled to be heard on the taxation does not attend within a reasonable time after the time appointed, the taxing officer may proceed to tax the bill upon being satisfied that such party had due notice of the time appointed.
(4) 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.
61. A Registrar may require any application to be made by motion or by summons. *Method of making application*
62. All powers exercisable under this Order by a Judge in chambers may be exercised by a Registrar. *Exercise of powers of a Registrar*
63. (1) A person aggrieved by a decision or requirement of a Registrar may appeal by summons to a judge. *Appeals from Registrar*
(2) Where in an appeal under sub rule (1), any person besides the appellant appeared or was represented before a Registrar from whose decision or requirement the appeal is brought, the summons shall be issued within 7 days for hearing on the first available day and shall be served on every such person concerned.
64. (1) A judge or Registrar may direct that a notice of motion or summons for the service of which no other provision is made in this Order shall be served on such person or persons. *Service of notice of motion and summons*
(2) Whereby the provision of this Order or by a direction given under sub rule (1), a notice of motion or summons is required to be served on a person, it shall be served not less than 5 days before the hearing of the motion or summons.
65. Except a Registrar directs otherwise or this Order provides, a notice or other document required to be given or served on a person may be given or served by leaving it at or by sending it by prepaid registered post to, that person's address for service or if he has no address for service, his last known address. *Notice*
66. An affidavit used in non-contentious probate business shall satisfy the requirements of Order 35. *Affidavit*

- Time* 67. Order 49 shall apply to the computation, enlargement and abridgement of time under this Order.
- Application to pending proceedings* 68. Subject to a direction given by a court, this Order shall apply to a proceeding which is pending on the date on which these Rules come into operation as well as to any proceeding commenced on or after that date, but where the deceased died before the commencement of these Rules, the right to a grant shall, subject to the provisions of any enactment, be determined by the principles and rules in accordance with which the court would have acted at the date of the death.
- Contentions probate form of suit* 69. Suits for probate shall be instituted and carried on, subject to the same Rules of procedure on ordinary civil claims.
- Interpretation Cap. 192* 70. (1) The Interpretation Act shall apply to the interpretation of this Order.
(2) In this Order -
“Authorized officer” means an officer of a Registry authorized by law to administer an oath or to take an affidavit required for any purpose connected with his duties;
“Gross value” in relation to an estate means the value of the estate without deduction for debts, encumbrances, funeral expenses or estate duty;
“oath” means the oath required by this Order to be sworn by every applicant for grant;
“Personal applicant” means a person other than a trust corporation who seeks to obtain a grant without employing a legal practitioner and
“Personal application” has a corresponding meaning;
“Registrar” means the Probate Registrar, being the Chief Registrar;
“registry” or “probate registry” means the probate registry at the High court of the Federal Capital Territory, Abuja.
“Will” includes a codicil and any testamentary document or copy or reconstruction of it.
(3) A reference in this Order to a Rule or enactment shall be construed as amended, extended or applied by any other Rule or enactment.

ORDER 65

Fees and allowances

Fees and allowances

1. Subject to the provisions of any written law and of the preceding Orders –
 - a. The fees set-out in the First, Second, Third, Fourth and Fifth Schedules are payable by a person commencing the respective proceedings or desiring the respective service specified in those Schedules;
 - b. The allowances set-out in Part II of the First schedule are payable to the various categories of witnesses mentioned in it, by a person at whose instance they testify, but a witness who testifies at the instance of the Court
2. The Regulations set-out in the Fifth Schedule shall be observed by all officers of Court concerned with the rendering of services, and/or collection of fees payable, under the provisions of the preceding Orders.