

CHAPTER 113

Magistrates' COURTS LAW

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CHAPTER 113

MAGISTRATES' COURTS LAW

A Law for the establishment of Magistrates' Courts for Enugu State of Nigeria and for the appointment of Magistrates, justices of the Peace and other officers of court and for other purposes relating to the administration of justice,

(27th August, 1991)

PART I—PRELIMINARY

1. This Law may be cited as the Magistrates' Courts Law

Short title

2. In this Law —

interpretation

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

“Chief Judge” means Chief Judge of Enugu State of Nigeria

“committed for trial” includes every case of a person ordered to be tried on information, whether imprisoned or admitted to bail;

"court" means a Magistrate's Court established in a District under the provisions of this Law;

“defendant” includes every person served with any writ of summons, or process, or served with notice of or entitled to attend, as a defendant in any proceeding in a civil cause, and also any person charged under any process of the court with any crime or offence;

“District” means a Magisterial district constituted under the provisions of this Law;

“High Court” means High Court of Enugu State of Nigeria;

“Judge” means Judge of the High Court and includes the Chief Judge;

“Justice of the Peace” means a justice of the peace appointed under the provisions of this Law;

"Law officer" where used with reference to—

(a) criminal proceedings, means the Attorney -General

(b) civil proceedings, means the Attorney- General, the Solicitor

General, the Customary Courts Adviser, a Senior State Counsel or State Counsel;

“local custom” includes a rule Which in particular urea or among the members of a tribe or clan or class of persons, has, from long usage, obtained the force of law, and also local customary law;

"Magistrate” includes a Chief Magistrate and any justice of the Peace on whom any powers of a Magistrate have been conferred under section 12;

"Magistrate's Court" includes the court of a Chief Magistrate, and the court of a Justice of the Peace;

"matter" includes every proceeding in a court not in a cause, “plaintiff" includes every' person asking any relied (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the proceeding is by action, suit, petition, motion, summons or otherwise.

"State" means Enugu State of Nigeria

"suit" includes action, and means a civil proceeding commenced by writ of summons, or such other manner as may be prescribed by rule of court; "summary conviction offence" includes any offence punishable oil summary conviction before a court, and any cause of matter in respect of which a conn has power to make all order in the exercise of its summary jurisdiction;

"Supreme Court" means Supreme established by the Constitution of the Federal Republic of Nigeria.

(2) In this Law "customary law" means the customary law prevailing in the area of jurisdiction of a magistrate and the expressions “cause”, "matter", "suit", "action", "proceedings" and "application” shall include a cause, matter, suit, action, proceeding and application, under customary law.

PART II — ESTABLISHMENT OF MAGISTRATE COURT

Power to
divide
Enugu
State into
Magistrate
District

3. The Chief Judge may -

- (a) divide Enugu State or any portion thereof, into Magisterial Districts for the purpose of this Law;
- (b) constitute any part of Enugu State of Nigeria a Magisterial District for the purpose of this Law;
- (c) distinguish such District by such names or numbers as he may think proper; and
- (d) vary the limits of such Districts

Established
of
Magistrate's
Court in
each
District

4. In each District there shall be and there is hereby established a court to be called the Magistrate's Court

Presiding
Magistrate

5.(1) Subject to the provisions of this Law any Magistrate assigned to a District shall be the presiding Magistrate of the court of such District wherein he shall have and exercise all the jurisdiction and powers conferred upon him by his appointment.

(2) When the Chief Judge assigns two or more Magistrates to any District and when a Magistrate is directed to assist another Magistrate in his District under the provisions of subsection (2) of section 9, each Magistrate shall be a presiding Magistrate of the court of such District and each sitting separately shall have and exercise all the jurisdiction and powers conferred upon him by his appointment.

PART III — OFFICERS OF THE COURT

Appointme
nt and
qualificatio
n of
Magistrates

6.(1) The Judicial Service Commission shall appoint Magistrates who shall be styled —
Chief Magistrates, Grade I
Chief Magistrates. Grade II
Senior Magistrates; Grade I
Senior Magistrates; Grade II
Magistrates; Grade I

Magistrates; Grade II
Magistrates; Grade III

(2) No person shall be appointed to be a Chief Magistrate or a Magistrate unless he is qualified to practise as an advocate or legal practitioner in a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth for not less than seven years, in the case of a Chief Magistrate or three years in the case of a Magistrate:

Provided that in computing for the purpose of this section the period during which any person had been qualified to practise as an advocate or legal practitioner any period during which he has held judicial office after becoming so qualified or any period during which he has held like office of Registrar shall be included.

(3) Notwithstanding the provisions of subsection (2) of this section a person shall not be appointed a Magistrate Grade III unless he —

- (a) has served in —
 - (i) the public service as a public servant of a rank not below Grade Level 08, or
 - (ii) the police force as a police officer not below the rank of Assistant Superintendent of Police, or
 - (iii) the military service as an army officer, naval officer or air force officer of a rank not below Grade level 08, and has retired without blemish from such public service, police force or military service, as the case may be; or
- (b) holds a degree or diploma in law and at the time of appointment has successfully completed one year of service in the National Youth Service Corps; or
- (c) is qualified to practise as an advocate or legal practitioner in a court having unlimited jurisdiction in civil and criminal matters in Nigeria and at the time of appointment has successfully completed one year of service in the National Youth Service Corps.

(4) Any appointment made pursuant to subsection (3) of this section shall be on contract for such period and upon such terms and conditions as to remuneration or Otherwise as may be specified in the letter of appointment and for the avoidance of doubt it is hereby stated that

such appointment shall not carry with it any prospect of promotion to the post of Magistrate Grade II

Tribunal jurisdiction of magistrates	7. Every Magistrate shall have jurisdiction throughout the State but maybe assigned to any specified District or transferred from one District to another by the chief Judge.
(2) The Chief Judge may assign a Chief Magistrate to a specified District and in addition, to a group of Districts of which such specified District forms part.	
Magistrates ex officio Justice of the Peace	8. Every Magistrate shall be ex <i>officio</i> a Justice of the Peace for the State
	Duties of a Chief Magistrate
Duties of a Chief Magistrate	9. (1) In addition to any other duly conferred by this Law n shall be the duty of a Chief Magistrate who is assigned to a Group of Districts, to ensure as far as is practicable the even distribution of work and the expeditious disposal of all legal business pending in the Districts within his Group and to take such steps as may be necessary to relieve congestion in any court within such Group.
	(2) A Chief Magistrate who is assigned to a group of Districts shall, notwithstanding the provisions of subsection (1) of section 7, have power to direct when necessary a Magistrate in one district in his Group to assist another Magistrate in another District within his group and to direct to the best advantage the movements of any additional Magistrate within the group who is assigned to assist in the disposal of any arrears of cases.
Appointment and removal of Justice of the Peace	10. (1) The Attorney-General may appoint any person to be a Justice of the Peace in and for the State or in and for such part of the State as the Attorney-General may specify, and the Attorney-General may remove any person so appointed from the office of Justice of the Peace.
	(2) Every administrative officer shall be to <i>officio</i> a Justice of the Peace for the area of the State to which he is for the time being appointed as such officer.

Powers and
functions
of justice
of the
peace

11. Subject to the provisions of this Law or to any other written Law, every Justice of the Peace shall, subject to any exceptions which may be contained in his appointment within the area in and fur which he holds such office, have —

- (a) power to preserve the peace, to suppress riots and affrays and to disperse all disorderly and tumultuous assemblages, and for any of these purposes to call in the aid and assistance of police officers and others who shall severally be bound to obey all such lawful command;
- (b) all the powers, rights and duties of a Magistrate under this Law or any other written Law—
 - (i) to issue summonses and warrants for the purpose of compelling the attendance of accused persons or persons as witnesses before a court;
 - (ii) to issue writs or summons and summonses in civil causes or matters;
 - (iii) to remand to a Magistrate's Court persons who are accused, but not convicted of crime or admit them on bail.
 - (iv) to issue search warrants;
 - (v) to take solemn affirmations and statutory' declarations; and
 - (vi) to administer any oath which may be required to be taken before him in the exercise of any of the jurisdiction and power conferred upon him by law.

Governor
may confer
powers of
Magistrate
on Justice
of Peace

12. The Governor on the recommendation of the Attorney-General may by appointment confer upon any person being a Justice of the Peace such powers and jurisdiction of a Magistrate as he shall think fit and until the Governor revokes the appointment such person shall be deemed to be a Magistrate with such powers and jurisdiction.

Appointment of
registrar

13. The Judicial Service Commission may appoint a fit and proper person to be a Registrar of a Court

Control of
Registrar

14. A Registrar appointed to a court under the provisions of section 13 shall, subject to the general supervision and control of the Chief Judge, be under the immediate direction of the Magistrate presiding in the court to which he is appointed.

Transfer of
officers from
one court to
another

15. The Chief Judge may at any time transfer a Registrar or any other officer of any Magistrate's Court from that court to any other court

Duties of
Registrar

16. The duties of the Registrar shall be—

- (a) to attend at such sittings or the court as the Magistrate shall direct,
- (b) to fill up or cause to be filled up summonses, warrants, orders, documents, recognizances, writs of execution and other documents, and submit the same for the signature of the Magistrate;
- (c) to make or cause to be made copies of proceedings when required to do so by the Magistrate, and to record the judgments, convictions and orders of the court:
- (c) to receive or cause to be received all fees, fines and penalties and all other moneys paid or deposited in respect of proceedings in the court, and to keep or cause to be kept accounts of the same; and
- (d) to perform or cause to be performed such other duties connected with the court as may be assigned to him by the Magistrate.

PART IV—JURISDICTION

Original
jurisdiction
of a Chief
Magistrate
in Civil
causes or
matters

17. (1) Subject to the provisions of this Law, and to any other written law, a Chief Magistrate shall have and exercise jurisdiction in civil causes or matters—

- (a) in all personal suits, whether arising from contract or from tort, or from both, where the debt or damage claimed whether as balance claimed or otherwise, is not more than one million naira in the case of Chief Magistrate Grade I and seven hundred thousand naira in the case of Chief Magistrate Grade II
- (b) in all suits between landlord and tenant for possession of any lands or houses claimed under agreement or refused to be delivered up, where the annual value of rent does not exceed one million naira in the case of Chief Magistrate Grade I and seven hundred thousand naira in the case of Chief Magistrate Grade II
- (c) in all actions for the recovery of any penalty, rates, expenses, contributions or other like demand which is recoverable by virtue of any written law for the time being in force, if—
 - (i) it is not expressly provided by that or any other written law that the demand shall be recoverable only in some other court, and
 - (ii) the amount claimed in the action does not exceed one million naira in the case of Chief Magistrate Grade I and seven hundred thousand naira in the case of Chief Magistrate Grade II;

Provided that for the purpose of this paragraph the expression "penalty" shall not include a fine to which any person is liable on conviction:

- (d) to appoint guardians *ad litem* and to make orders and issue and give directions relating thereto;
- (e) to grant in any suit instituted in the court injunctions or order to stay waste or alienation or for the detention or preservation of any property the subject of such suit, or to restrain breaches of contracts or torts.
- (f) In an appeal from a decision of an Assessment Committee constituted under a written law relating to local government in the State;
- (g) in all causes and matters under customary law in which the amount of the debt, demand or damage does not exceed one million naira in the case of Chief Magistrate Grade I and seven hundred thousand naira in the case of Chief Magistrate Grade II.
- (h) to hear and determine matrimonial causes and matters between persons married under customary Law and in suits relating to custody of children and obligation of maintenance;

of certain classes of people under customary law;

(i) to hear and determine causes and mailers relating to established customary institutions and practices;

(j) to hear and determine any application, question or any cause or matter relating to succession to property under customary law or to the administration of estates, or grant of Letters of Administration, under customary law, in which the value of the property, or in the case of cash, the value thereof, does not exceed one million naira in the case of Chief Magistrate Grade I and seven hundred thousand naira in the case of Chief Magistrate Grade II

Provided that except insofar as the Governor may by order otherwise direct, a Chief Magistrate shall not exercise original jurisdiction in suits in which the validity of any devise, bequest or limitation under any will or settlement is or may be disputed.

(2) A Chief Magistrate or a Senior Magistrate Grade I or II shall within the area of his jurisdiction, have and exercise unlimited jurisdiction in suits or matters relating to title to or interest in any kind:

Provided that—

- (a) where the plaintiff has an action in a Chief or Senior Magistrate's Court under this subsection the defendant shall have a right at any time before hearing commences to apply *ex parte* to the Judge for the case to be transferred to the High Court having jurisdiction in that area, and the Judge may, to his own discretion, grant or refuse such application. When made, a copy of the application shall be sent by the applicant to the Registrar of the Chief or Senior Magistrates Court, as the case may be, and such application shall operate as a stay of the proceedings until the Judge has made his decision;
- (b) any costs or damages that such Chief Magistrate or Senior Magistrate Grade I or II may award in such suit shall not exceed the amount that he is empowered to award as debt or damages in civil causes or matters under subsection (1) or under section 18, as the case may be.

(3) A Magistrate Grade I or shall have and exercise jurisdiction in Suits relating to trespass to land;

Provided that if in the course of the proceedings a party properly raises an issue as to title to or interest in the land, or the import of evidence shows Unit title to or interest in the land is in issue, the Magistrate Grade I or II, as the case may be, shall thereupon stop further proceedings in the case, either of his own motion or on the application of a party to the proceedings, report the pendency of such action to a Judge, setting forth in writing the reason for stopping the proceedings and the Judge shall thereupon order the transfer of the suit to the High Court or to a Chief or Senior Magistrate's Court having jurisdiction in the area for hearing and determination.

(4) Upon receiving the report in subsection (3) the Judge shall make such order transferring the proceedings to a High Court having jurisdiction to the matter as he deems expedient in the interest of justice.

(5) In any action under subsection (3) if the Magistrate Grade I or II as the case may be fails or neglects to report as therein provided and proceeds to enter any judgment in the case, such judgment shall be null and void.

(6) Fees payable for the commencement of, or for an application in, a cause or matter in respect of which jurisdiction is conferred on a Chief Magistrate or a Senior Magistrate Grade I or II in subsection (2) shall be the same as those payable under the High Court (Civil Procedure) Rules for the commencement of, or for of an application in, a cause or matter of similar nature and value.

Civil
jurisdiction
magistrate

18. A Senior Magistrate Grade I or II and a Magistrate Grade I or II shall have and exercise jurisdiction in civil causes or matters similar in all respects to that set out in subsection (1) of section 17, save that such jurisdiction, in causes or matters where the subject-matter in dispute is capable of estimation of a money value, shall be Limited to causes or matters in which such subject-matter does not exceed in amount or value—

- (a) in the case of a Senior Magistrate Grade I five hundred thousand mini;
- (b) in the case of a Senior Magistrate Grade II four hundred thousand naira;
- (c) in the case of a Magistrate Grade I three hundred thousand naira, or in the case of Magistrate Grade II two hundred thousand naira

Provided that except insofar as the Governor may by order otherwise direct, a Senior Magistrate Grade I or II or a Magistrate Grade I or II shall not exercise jurisdiction in suits in which any will or settlement is or may be disputed.

19. Subject to the provisions of this Law and to any other written law, a Magistrate Grade II shall have and exercise jurisdiction in respect of the following causes and matters—

Jurisdiction
of
Magistrate
Grade iii

- (a) all personal suits, whether arising from contract or from tort, or from both where the debt or damage whether as balance claimed or otherwise, is not more than two hundred thousand naira;
- (b) inquests in accordance with any written Law ;
- (c) all matters relating to juveniles including the power to impose in respect of juvenile offenders such punishment as may be specified in any written law;
- (d) suits relating to the welfare and custody of children under customary law including the power to make orders, and issue and give directions relating thereto;
- (e) cases of contravention of any bye-laws of a local government in the State including the power to impose any punishment specified by such bye-laws for contravention thereof,
- (f) cases relating to traffic offences on the highway including the power to impose any punishment specified by law for such offences but the power to hear such cases and impose such punishment shall not extend to cases of reckless, negligent or dangerous driving on a highway which act Causes the death of a person.

20. Where in any action the debt or demand consists of balance not exceeding one million naira or seven hundred thousand naira or five hundred thousand naira, or four hundred thousand naira or three hundred thousand naira, or two hundred thousand naira, or two thousand naira as the case may be, after an admitted set off of any debt or demand claimed or

Jurisdiction of
Magistrate where
there is set-off

recoverable by the defendant from the plaintiff, a Chief Magistrate Grade I, or a Chief Magistrate Grade II, or a Senior Magistrate Grade I, or a Senior Magistrate Grade II, or a Magistrate Grade I, or a Magistrate Grade II, or a Magistrate Grade III as the case may be shall have jurisdiction and power to hear and determine such action within the limits of his personal jurisdiction and power.

21. Subject to the provision to this Law or other written law a Chief Magistrate shall have full jurisdiction in criminal causes for the summary trial and determination of criminal cases as follows—

Jurisdiction of
Chief
magistrates in
criminal causes
and matters

- (a) where any person is charged with committing an offence or with doing any act or with omitting to do any act required by law or the commission or omission of which is in any case punishable either by fine not exceeding one hundred thousand naira or imprisonment not exceeding fourteen years or by both, power to impose the punishment specified by law:

Provided that no Chief Magistrate shall be required to comply with the provisions of sections 192, 193, 194, and 195 of the Criminal Procedure Law when trying any offence under this paragraph;

- (b) (i) where any person is charged with committing an offence or with doing any act or omitting to do any act required by law, the commission or omission of which is stated by the enactment declaring such to be an offence and to be one punishable or triable or liable to be both dealt with on summary conviction or summarily or in a summary manner; power to award the maximum sentence of imprisonment and to order the payment by such enactment or both such imprisonment and such fine or penalty or forfeiture where by law both may be imposed:

- (ii) where any enactment provides that an order for the payment of money may be made on summary conviction or summarily or on a summary manner in respect of any act or omission; power to order the payment of the sum which may be ordered according to the provisions of the enactment providing for the making of the order,

- (c) where any person is charged with committing an offence or with doing any act or with omitting to do any act required by law; the commission or omission of which is an offence not stated to be punishable on summary conviction or triable summarily or in a summary manner, and it is stated by the enactment declaring

such to be an offence that is punishable either by a fine exceeding one hundred thousand naira or by imprisonment exceeding fourteen years or both, but taking into account the circumstances of the particular offence with which such person is charged and the character and antecedents of the accused himself the Chief Magistrate is of opinion that the charge then before the court appears to be one of such a nature that, if proved it would be adequately punished by any of the following punishments—

- (i) imprisonment for not more than fourteen years;
- (ii) a fine not exceeding fifty thousand naira, such fine to be enforced in default of payment by distress or by imprisonment for not more than five years
- (iii) in each of the above cases with or without any additional or alternative punishment in respect of offences for which such punishment may legally be inflicted;
- (iv) in the ease of a juvenile offender with or without whipping in respect of offences for which a whipping may legally be inflicted;
- (iv) any lesser penalty or order which a Chief Magistrate in the exercise of his summary jurisdiction may impose or make;

the Chief Magistrate shall within the limits of his jurisdiction have power to impose such punishment:

Provided that the person so charged, if the chief Magistrate decides to proceed in accordance with paragraph (c), shall be informed by the Chief Magistrate before any evidence is taken, of his right to be tried in the High Court and such person consents to be tried by the Chief Magistrate:

Provided further that if the Chief Magistrate shall not so inform the person charged the trial shall be null and void *ab initio* unless the person charged consents at any time before being called upon to make his defence to be tried by the Chief Magistrate, in which case the trial shall proceed as if the person charged had consented to being tried by the Chief Magistrate before the Chief Magistrate proceeded to hear evidence in the case,

22. Subject to the provisions of this Law or any other written law, a Senior Magistrate Grade I or II or a Magistrate Grade I or II shall within the extent of his powers have full jurisdiction in

Jurisdiction of
Chief
magistrates in
criminal causes
and matters

criminal causes for the summary trial and determination of criminal cases as follows—

- (a) where any person is charged with committing an offence or with doing any act or with omitting to do any act required by law, the commission or omission of which is in any case punishable either by fine not exceeding twenty thousand naira or imprisonment not exceeding twelve years or by both: power to impose the punishment specified by law:
- (b) (i) where any person is charged with committing an offence or with doing any act or omitting to do any act required by the enactment declaring such to be both an offence and to be one punishable or triable or liable to be dealt with on summary conviction or summarily or in a summary manner power to award the maximum sentence of imprisonment and to order the payment of the maximum fine or penalty or forfeiture provided by such enactment or both such imprisonment and such fine or penalty or forfeiture where by law both may be imposed;
 - (ii) where any enactment provides that an order for the payment of money may be made on summary conviction or summarily or to a summary manner in respect of any act or omission, power to order the payment of the sum which may be ordered according to the provision, of the enactment providing for the making of the order:
- (c) where any person is charged with committing an offence or with doing any act or omitting to do any act required by law, the commission or omission of which is an offence, not stated to be punishable on summary conviction or triable summarily, or in a summary manner, and it is stated by the enactment declaring such, to be an offence that is punishable either by a fine exceeding twenty thousand naira or by imprisonment exceeding twelve years or both, but taking into account the circumstances-of the particulars offence with which such person is charged and the character and antecedents of the accused himself the Magistrate is of opinion that the charge then before the court appears to be one such nature that, if proved, it would be adequately punished by any of the following punishments-
 - (i) imprisonment for not more than twelve - years;
 - (ii) a fine not exceeding twenty thousand naira such fine to be

enforced in default of payment by distress or by imprisonment for not more than two years;

(iii) in each of the above cases with or without any additional or alternative punishment in respect of the offences for which such punishment may legally be inflicted;

(iv) in the case of, a juvenile offender with or without a whipping in respect of which a whipping may legally be inflicted,

(v) any lesser penalty or order which a Magistrate in the exercise of his summary jurisdiction may impose or make;(he Magistrate shall within the limits of his jurisdiction have power to impose such punishment:

Provided that the person so charged, if the Magistrate decides to proceed in accordance with paragraph (c), shall he informed by the Magistrate before evidence is taken of his right to he tried in the High Court and such person consents to be tried by the Magistrate;

Provided further that if the Magistrate shall not so inform the person charged, the trial shall be null and void ab intio unless the person charged consents at any time before being called upon to make his defence to be tried by the Magistrate, in which case the trial shall proceed as if the person charge had consented to be tried by the Magistrate before the Magistrate proceeded to hear evidence in the case.

23. Notwithstanding anything contained in this Law, references in this Law to Magistrate shall include references to a Senior Magistrate Grade I Senior Magistrate Grade II, a Magistrate Grade I, a Magistrate Grade II and, where the context so admits, a Chief Magistrate, and a Magistrate Grade III

Reference
to
Magistrate

. 24 Where an offence is committed or any cause or matter arises, over which a Chief Magistrate has jurisdiction, in any ship, boat or canoe, such offence may be prosecuted and such cause or matter heard and determined either in the court of the District in which the ship, boat or canoe may the time when the offence was committed or the cause or matter arose, or in the court with District where the ship, boat or canoe may call after the commission of the offence or the arising of the cause or matter.

Criminal
Jurisdiction of
court in certain
cases

25. (1) Subject to any limits imposed upon his jurisdiction by this Part, a Magistrate shall

Civil
jurisdiction
of court in
certain
cases

have jurisdiction to hear and determine any suit for specific performance or any suit founded upon contract if the contract was made within the jurisdiction of the court though the breach occurred elsewhere or if the breach occurred within the jurisdiction though the contract was made elsewhere, or if the contract ought to have been performed within the jurisdiction or if the defendant or one of the defendants resides within the jurisdiction

(2) A Magistrate shall have jurisdiction to hear and determine civil cause or matter other than one referred to in subsection (1) in which —

- (a) The defendant or one of the defendants resides or carries on business within the jurisdiction: or
- (b) where the cause of action arose wholly or to part within the jurisdiction of the court, or
- (C) where the subject of the action is within the jurisdiction of the court

26. A judgment of the Supreme Court, or the court of Appeal or the High Court of any State of Nigeria oi a Magistrate's Court, customary court or native court, which is or may be established within any other State in Nigeria, in favour either a plaintiff or a defendant in any cause or mailer before a court may in respect of the same subject-matter by pleaded as a decence to any proceedings commented in Enugu State by the unsuccessful party.

Judgment of the Supreme Court of other State Courts may be pleaded

27. Subject to any limitations imposed upon his jurisdiction by his appointment or this Part, a Magistrate shall have jurisdiction to hear and determine any criminal cause notwithstanding—

Criminal jurisdiction of Magistrate where offence only partially committed within jurisdiction

- (a) that it is uncertain whether an offence committed in Nigeria was committed within the jurisdiction of the court or not; or
- (b) that an offence is committed in Nigeria partly within the jurisdiction of the court and partly outside such jurisdiction: or
- (c) that an offence committed in Nigeria is a continuing one and continues to be committed partly within the jurisdiction of the court and partly outside such jurisdiction; or
- (d) that an offence committed in Nigeria consists of several acts some of which are

committed within the jurisdiction of the court and some of which are committed outside such jurisdiction.

28. (1) The Governor may by order on the recommendation of the Chief Judge authorize an increased jurisdiction in civil or criminal matters, or in both, to be exercised by any Magistrate to such an extent as the Governor may on such recommendation specify. Such authority may be revoked by the Governor by order at any time.

Power of Governor to increase jurisdiction of Magistrate

(2) Any order by the Governor made under subsection (1) of this section authorizing an increased jurisdiction in civil matters shall specify the maximum amount which is to replace the amount mentioned in sections 17, 18, 19, and 20.

(3) An order by the Governor under subsection (1) of this section authorizing an increased jurisdiction in criminal matters shall specify the maximum fine and maximum period of imprisonment which is to replace the maximum sums and periods mentioned in section 22 and may authorize such increased jurisdiction in respect of a particular offence for which a person is or persons are then charged, or of specified offence under a particular Act or Law, or of offences under a specifically named Act or Law.

(4) Upon an order being made under this section the jurisdiction of the Magistrate under sections 17,18,19,20, or 22 as the case may be, shall be deemed to be increased by the substitution of the maximum amount or the maximum fine and period of imprisonment so specified at each of the places where a particular amount, fine or period of imprisonment is mentioned in the said sections.

29. Subject to the provisions of this Law, a Magistrate shall within the limits of his jurisdiction, hear and determine appeals from the decision of an Assessment Committee constituted under the provisions of the Local Government Law.

Appellate jurisdiction

30. Even Magistrate shall have power to administer oaths and solemn affirmations and declarations, to receive production of books and documents, and to make such decrees and orders and issue such process and exercise such powers, judicial and administrative, in relation to the administration of justice as shall from time to time be prescribed by rules of court or subject thereto, by any order of the Chief Judge.

General powers of Magistrate

31. (1) No act done by or under the authority of any Magistrate shall be void or impeachable by reason that such act was done or that any act, offence or matter in respect of or in relation to which such act was done occurred or was situated beyond the limits of the District of the jurisdiction of such Magistrate's Court.

Acts of a Magistrate not affected by error as to venue

(2) If the defendant in any civil or criminal cause or matter wherein such objection might but for this section be in force shall at or before, but not after the time when he is required to state his answer or to plead in such cause or matter before the court, allege specifically any such objection, the Magistrate shall consider the same and if there is a *prime facie* proof of the objection the Magistrate shall report such cause or matter to a Judge of the High Court who shall make an order directing where the cause or matter shall be heard and determined, and such order shall not be subject to appeal.

32. (1) At any time during the hearing of a criminal case in a Magistrate's Court and before the decision of such Court has been pronounced the presiding Magistrate may, and when so required by the Attorney-general shall, state a special case on a point of law for the opinion of the High Court.

Cases stated during hearing of case

(2) In any criminal case in which no public officer is a party where the Attorney-General is of the opinion that any decision of a Magistrate is erroneous in law he may at any time within six months from the date of the decision require the Magistrate to state a case thereon for the opinion of the High Court.

(1) A case stated shall set out —

- (a) the charge, summons, information or complaint;
- (b) the facts found by the Magistrate's Court to be admitted or proved;
- (c) any submission of law made by or on behalf of the complainant during the trial or inquiry;
- (d) any submission of law made by or behalf of the accused during the trial or inquiry;
- (c) the Finding and, in the case of conviction, the sentence of the Magistrate's Court:
- (d) any question of law which the Attorney-General requires to be submitted for the opinion of the High Court

33. (1) A plaintiff may not split or divide any cause of action for the purpose of bringing two or more actions in any court.

Division and consolidation of suits

(2) Causes or matters pending in the same court may be consolidated by order of a Magistrate of his own motion or on the application of any party on notice whether or not such Magistrate be the Magistrate who finally adjudicates thereon:

Provided that causes or matters may not be consolidated if the effect of such consolidation is to bring the total of the consolidated actions or matters above the

jurisdiction of the Magistrate adjudicating.

(3) Where several actions or matters by different plaintiffs against the same defendant are pending in the same court, in respect of causes or matters arising out of the same breach of contract, wrong or other circumstances, the defendant may, on filing an undertaking to be bound so far as his liability to the several actions or matters is concerned, by the decision in such one of the actions or matters as may be selected by the court, apply to the court for an order to stay the actions or matters other than the one selected, until judgment is given in the settled action or matter and application under this subsection shall be made on notice to the plaintiffs who would be affected by any order made thereon,

34. (1) Subject to the provision of this Law, where a plaintiff has a cause of action for more than the amount of the jurisdiction of the Magistrate adjudicating, in which, if it were not for more than such jurisdiction, a court would have jurisdiction, the plaintiff may abandon the excess, and thereupon the court shall have jurisdiction to hear and determine the action, so, however, that the plaintiff shall not recover in the action an amount exceeding the amount of the jurisdiction of the Magistrate concerned.

Abandonment of part of claim to give jurisdiction

(2) Where a court has jurisdiction to hear and determine an action by virtue of this section, the judgment of the court in the action shall be full discharge of all demands in respect of the cause of action, and entry of the judgment shall be made accordingly

35. Any executor or administrator may sue and be sued in the court in like manner as if he were a party in his own right, and judgment and execution shall be as in the like case, would be given or issued in the High Court.

Executor may sue or be sued

36. Any person under the age of twenty-one years may bring any action in the court for any sum of money, not exceeding two hundred naira which may be due to him for wages or piece of work or for work as a domestic servant, in the same manner and in all respects as if he were of full age.

Action by infant for wages

37. (1) Where a plaintiff has a demand recoverable under this Law against two or more persons jointly liable, it shall be sufficient to serve any of those persons with

Procedure when persons jointly liable

process, and judgment may be obtained and execution issued against any person so served, notwithstanding that others jointly liable may not have been served or sued or may be within the jurisdiction of the court.

(2) Where judgment is obtained against any person as aforesaid and is satisfied by that person, he shall be entitled to recover in a court contribution from any other person jointly liable with him

(3) The provision of this section shall not be deemed to affect the civil right or liabilities between, joint tort-feasors.

38. Subject to the provisions of section 37 an infant may sue by his next friend and may defend by his guardian ad litem and a person of unsound mind, if so found by inquisition, may sue and defend by his committee, and if not so found, may sue by his next friend and may defend by his guardian ad litem on such terms as to liability for costs as the court shall deem just

Suits by
infants and
persons of
unsound
mind

PART V —LAW TO BE ADMINISTERED

39. Subject to the provisions of this Law or of any other written law in every civil cause or matter which shall be commenced in any court established by this Law, law and equity shall be administered concurrently.

Law and
Equity
concurrently
applied

40. The court, in the exercise of the jurisdiction vested in it by this Law, shall have power to grant and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or reliefs whatsoever, interlocutory or final, as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim or defence properly brought forward by them respectively, or which shall appear in such cause or matter, so that, as far as possible, all matters in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

All reliefs
may be
granted

41. In all matters in which there is any conflict or variance between the rules of equity and the rules of common law with reference to the same matter, the rules of equity shall prevail.

Equity
prevails
over law

42. In matters of practice all documents may be written on ordinary paper, notwithstanding any practice or direction as to the printing or engrossing on vellum, parchment or otherwise.

Papers in
use

43. (1) Subject to the provisions of this, Law or other written law, every Magistrate shall in civil causes and matters under customary law administer the customary law prevailing in the area of jurisdiction of the court, or binding between the parties. (2) In causes and matters not arising under customary law, a Magistrate shall observe and enforce the observance of even local custom and shall not deprive any person of the benefit of such local custom.

Application
of local
custom

(3) Such local custom shall be deemed applicable in any civil cause or matter where the parties thereto are Nigerians or persons of Nigerian descent, and also in any civil cause or matter between Nigerians or persons of Nigerian descent and persons who are not Nigerians or of Nigerian descent where it appears to the court that substantial injustice would be done to either party by a strict adherence to the rules of any law or laws other than local custom.

(4) No party shall be entitled to claim the benefit of any local custom if it appears either from express contract or from the nature of the transaction out of which any civil cause, matter or question may have arisen, that such party agreed or must be taken to have agreed that his obligations in connection with any such transaction should be regulated exclusively by some law or laws other than local custom, or that such transaction is one which is unknown to local custom.

(5) Nothing in this section shall be construed to authorize the application by a Magistrate of any law or custom or part hereof which is repugnant to natural justice, equity and good conscience or incompatible either directly or by necessary implication with any written law in force.

44. In civil causes or matters a Magistrate may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

Reconciliation in
civil causes or
matter

45. In criminal causes a Magistrate may promote reconciliation, and encourage and facilitate the settlement, in an amicable way, of proceedings

Reconciliation
in
criminal
matters

for common assaults or for any other offence not amounting to a felony and not aggravated in degree, on terms of payment or compensation or other terms approved by the court, and may thereupon order the proceedings to be struck out.

PART VI — SITTINGS AND DISTRIBUTION OF BUSINESS

46. Subject to the provisions of section 48 and section 51 of this Law all civil proceedings in any court established by this Law shall be instituted and commenced in the court of a Magistrate, having jurisdictions in the District within which —

Venue in
civil
proceedings

- (a) the defendant, or any one of the defendants, resides or carries on his trade or profession at the time of commencing the action; or
- (b) the cause of action or claim arose, wholly or in part; or
- (c) the subject-matter of the action arose.

47. Any Magistrate may, at any stage of the proceedings before final judgment, transfer any cause or matter before him to another Magistrate of competent jurisdiction assigned to the same District and such cause or matter shall be commenced de novo, inquired into, tried and disposed of by the Magistrate to whom it has been transferred as if it had been instituted before him;

Transfer
between
Magistrate
in the same
District

Provided that no cause or matter which has been specifically transferred by a Judge of the High Court for inquiry' or trial by a particular Magistrate shall be so transferred without leave of the Chief Judge.

48. (1) Where in respect of any civil proceedings pending before him, a Magistrate shall of the opinion that, for any reason, the same ought to be transferred to the court of a Magistrate assigned to another District or to the High Court, the Magistrate may, of his own motion or upon the application of any party to such proceedings, setting forth the reasons for his opinion in writing, report their pendency to a Judge.

Magistrate
may report
civil
proceedings for
transfer

(2) Upon receiving such report, the Judge shall make such order transferring the proceedings or otherwise as he deems to be expedient in the interest of justice

49. Subject to the provisions of section 50, a Magistrate may at any stage of the proceedings before final judgment by order direct that any cause or matter pending before him be transferred to a Customary Court having jurisdiction in such cause or matter.

Transfer to
Customary
Court

The Magistrate shall inform such Customary Court in writing of his reasons for making such order.

50. (1) A Magistrate shall not transfer to a Customary Court any cause or matter which has been transferred to his court by the High Court.

Restriction
on transfer

(2) A Magistrate shall not, save by leave of a Judge, retransfer to a Customary Court a cause or matter transferred to a Magistrate's Court under the Customary Courts Law.

51. (1) A Judge may, at any time or at any stage of the proceedings before final judgment, transfer any civil cause or matter pending before a Magistrate's Court to another Magistrate's Court or to the High Court and such cause or matter may be transferred either or in respect of any part thereof or proceeding to be taken thereon.

Power of
judge to
transfer

(2) The power of transfer conferred by subsection (1) of this section shall be exercised by means of an order under the hand of the Judge and the seal of the High Court, and may be so exercised in respect of any particular cause or matter or in respect of all such causes or matters generally as may be specified in the order and, in the latter case, may extend to future causes or matters as well as to such as may be before the court at the making of the order

(3) The Judge may at any time vary, add to or amend such order.

(4) The Judge may if it appears expedient telegraph in the first instance the contents of any such order made by him, and such telegram shall, until receipt of the said order, have the same validity and effect as if it were the said order.

52. Every order of transfer made under the provisions of section 51 shall operate as a Stay of proceedings in the court to which it may be addressed in any, cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and an attested copy of all entries in the books of the court relative thereto, shall be transmitted to the court to which the same shall be transferred and thenceforth all proceedings in the cause or matter shall be taken in such court as if the cause or matter had been commenced therein.

Effect of
order of
transfer

53. No order made under the provisions of section 47, 49, or 51 of this Law shall be

No appeal
from an
order of
transfer

subject to appeal.

PART VII— APPEALS

54. (1) Subject to section 53 and to other provisions of this Part, where in any cause or matter a final decision, judgment or order of a Magistrate in the exercise of original or appellate jurisdiction—

Right of
appeal in
civil cause
or matter

- (a) is given in respect of sum of one hundred naira and upwards; or
- (b) determines directly or indirectly a claim or question respecting money, goods or other property or any civil right or other matter of the amount or to the value of one hundred naira and upwards;

any person aggrieved may appeal therefrom as of right to the High Court.

(2) Subject to other provisions of this Part, where in any cause or matter—

(a) a final decision, judgment or order of a Magistrate in the exercise of original or appellate jurisdiction—

- (i) is given in respect of an amount less than one hundred naira; or
- (ii) determines directly or indirectly a claim or question respecting money, goods or other property or any civil right or other matter of the amount or to the value less than one hundred naira; or

(b) any decision, judgment or order other than a final one of a Magistrate in the exercise of original or appellate jurisdiction is given or made; or

(c) a decision as to the interpretation of any provisions of the Constitution of the Federal Republic of Nigeria is given or made by a Magistrate in the exercise of original or appellate jurisdiction;

any person aggrieved may, with leave of the High Court, appeal therefrom to the High Court.

(3) An appeal under this section shall not operate per se as a stay of execution or a stay of proceedings, but the Magistrate's Court or the High Court may order a stay either unconditionally or upon the performance of such conditions as may be imposed by rules of court made under the provisions of the High Court Law or of this Law

55. An appeal shall not lie directly from an order made ex parte but any person aggrieved by such order may apply to the court to vary or discharge it and an appeal will lie from

the decision on such application in like manner as an appeal from any other civil cause or matter.

56. Subject to the provisions of this Law, the practice and procedure in civil appeals from Magistrate's Court shall be in accordance with rules of court made under the provisions of the High Court Law.

Practice and
procedure
in civil
appeals

57. Appeal lies as of right to the High Court by the person aggrieved by any decision of a Magistrate in a criminal proceeding:

Right of
appeal in
criminal
crimes

Provided that in the case of refusal by the Magistrate to grant bail to a convicted person, the convicted person may apply to the High Court for bail by motion on notice.

58. (I) Any right of appeal from decisions of a Magistrate to the High Court conferred by this Law—

Exercise of
right of
appeal.

(a) shall be exercisable in the case of civil proceedings at the instance of a party thereto or, with the leave of the High Court, at the instance of any other person having an interest in the matter; and in the case of criminal proceeding at the instance of the accused person or of the Attorney-General or of the prosecutor as the case may be, or at the instance of such other persons or authorities as may be prescribed by any written law from time to time in force in the State; and

(b) shall be exercised in accordance with any laws and rules of court from time to time in force regulating the powers, practice and procedure of the High Court.

(2) "Decision" means for the purpose of this Part of this Law, any determination of a Magistrate and includes (without prejudice to the generality of the foregoing) a judgment, decree, order, conviction, sentence or recommendation.

59. (I) The High Court may call for and examine the record or any certified copy thereof of any criminal proceedings before any Magistrate's Court which is within the area of jurisdiction of the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any findings, sentence or order recorded or passed, and as to the regularity of any such proceedings of any such Magistrate's Court

Revisional
jurisdiction
of High
Court over
Magistrate
Courts

(2) Upon calling for the record of any criminal proceedings or at any time subsequent thereto the High Court may, in its discretion, order the release of any convicted person

upon bail pending the final decision of the High Court;

Provided that if the final decision of the High Court is that the convicted person shall undergo the sentence of imprisonment imposed by the Magistrate's Court or any part of it, the time he has spent on bail shall be excluded in computing the balance of that sentence.

(3) On receipt of the record or a certified copy thereof the High Court may —

(a) subject to any enactment fixing a minimum penalty, reduce a sentence or modify an order in such form as it thinks fit; or

(b) set aside a conviction and order the release of the person convicted if he is in custody or in the case of a fine which has been paid, order the fine to be refunded or if security has been required and given, order that the person concerned be freed from such security; or

(c) set aside the conviction and convict the accused of any offence of which he might have been convicted on the evidence, and sentence him accordingly; . or

(d) set aside the conviction and substitute a special finding to the effect that the accused was guilty of the act or omission charged, but was insane so as not to be responsible for his action at the time when he did the act or made the omission. and order the accused to be confined as a criminal lunatic in a lunatic asylum, prison, or other suitable place of safe custody and shall report the case for the order of the Commissioner for Justice;

(e) set aside conviction and order that the person convicted be retried by a court of competent jurisdiction; or

(f) order further evidence to be taken either general or on some particular point by the court which passed sentence or by any other court, and order in the meantime any person who shall have been convicted and imprisoned to be liberated on bail or on his own recognizance; or

(g) where the Magistrate's Court has failed to impose the minimum penalty required by the provisions of any law, or has failed to make an order which under the provisions of any Law it was the duty of such Court to make, order the Magistrate's Court to impose the minimum penalty or to make necessary order, or may itself impose the minimum penalty or make the necessary order; and

(h) make any order as justice may require, and give all necessary and consequential directions:

Provided that when a person convicted shall have appealed against such conviction, or when the Magistrate shall have reserved any point of law for the consideration of the

High Court and shall have stated a case thereon, the High Court shall not exercise the power by this section conferred until after the conclusion of the proceedings upon such appeal or stated case.

Provided further that the powers conferred upon the High Court by subsections (I) and (3) shall not be exercised after the expiration of six months from the termination of the criminal proceedings in the Magistrate's Court.

(4) No party shall have any right to be heard either personally or by legal practitioner before the High Court when exercising its powers under subsection (3), but the High Court may, If it thinks fit, hear any party either personally or by legal practitioner:

Provided that no order shall be made to the prejudice of any convicted person unless he has had the opportunity of being either personally or by legal practitioner.

(5)Where an appeal lies, or has lain, from any finding, conviction or order and no appeal has been brought, no motion or proceeding requesting the exercise of the powers of the High Court under this section at the instance of the party who has the right to appeal, or who has had that right, shall be entertained by the High Court.

(6) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

(7) All the powers conferred by this section upon the High Conn may be exercised by a single Judge,

(8) When the High Court has exercised any of the powers conferred by subsection (3), it shall certify its decisions or order to the Magistrate's Court concerned and the Magistrate's Court shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, shall amend its record in accordance therewith.

PART VIII — GENERAL PROVISIONS AS TO TRIAL AND PROCEDURE

60.(1) The Chief Judge may by order appoint the places within any District and the times at which a Magistrate shall sit for the trial of criminal and civil causes and matters and the disposal of any legal business pending,

Times and
places for
court
sessions

(2)All criminal causes shall as far as practicable and subject to the provisions of any written law be tried and determined in priority to other business.

61.Subject to the provisions of section 62, all Magistrates' Courts shall be open throughout the year except on Sundays and public holidays for transaction of legal business,

Court open at all times for general business

62.(1) A Magistrate may adjourn the court from day to day or to any convenient day.

Adjustment of the court

(2)If the Magistrate is not present at the time and place appointed for any sittings of the court, an officer of the court or any person authorized in that behalf by a Magistrate may adjourn the sitting until such time and to such place as may have been communicated to him by the Magistrate to be convenient and all persons bound to be present at the sitting so adjourned shall be equally bound to be present at such time and place.

(3) In the absence of any notification to the contrary, all such persons shall be bound to be present at the next succeeding time appointed as aforesaid or otherwise for the sitting of the court in the same place.

63.The jurisdiction vested in Magistrate's Court shall be exercised (as far as regards practice and procedure) in the manner provided by this Law and any other written law or by such rules and orders of court as may be made pursuant to this Law or any other written law.

Practice and procedure

64.Where a Magistrate has issued any summons or warrant or otherwise taken or commenced any proceeding, cause or matter whether civil or criminal, under any authority however conferred, and subsequently ceases to act as such Magistrate, it shall be lawful for the person in whose hands such summons or warrant may be to execute or serve the same in the same manner as if the Magistrate who issued such summons or warrant had not ceased to act as such Magistrate and any successor of such Magistrate or any person acting for such Magistrate, may hear, determine, execute, enforce and carry to completion any proceeding, cause or matter so commenced as aforesaid save such Magistrate shall commence the trial of any such proceeding, cause or matter de novo.

Completion by magistrate valid

65.All summonses, warrants, orders, judgments, writs of execution, or other processes or proceedings, whether civil or criminal issued or taken by or by the authority of any Magistrate respecting any cause or matter within his jurisdiction shall have full force

Process magistrate valid

and effect, and may be served or executed anywhere within the State by a bailiff of the court or by any member of the police force to whom the same are directed or by any other member of the police force.

6b. (1) All summonses, warrants, orders, convictions, recognizances and other processes in criminal proceedings shall, subject to the provisions of section 11 of this Law, be signed by a Magistrate.

Issue of
process

(2) Every summons or other process in civil proceedings shall subject to the provisions of section 11 of this Law, be signed either by a Magistrate or by the Registrar of the Magistrate's Court.

67, A Magistrate may issue a warrant under his hand for bringing up any person confined as a prisoner under any sentence or order of confinement for trial, or otherwise, or under civil process to be examined as a witness in any cause pending or to be inquired of, in the court.

In which
cases
prisoners
may be
brought by
warrant to
give
evidence

Provided that such warrant shall not be granted unless the Magistrate shall have reasonable grounds for believing that the evidence of the prisoner is likely to prove material.

68. Every Magistrate is hereby authorized to administer all oaths which may require to be taken before him in the exercise of any of the jurisdiction and powers conferred upon him by this Law or any other written law.

Administrat
ion of oaths
in
proceedings

69. In any cause or matters court may on the application of either party, or of its own motion, make such order for the inspection by the court, the party or witnesses, of any movable or immovable property, the inspection of which may be material to the proper determination of the question in dispute, and give such direction respecting such inspection as to the court may seem fit.

inspection

70. Every Magistrate shall, when required by the High Court, cause to be executed any writ or order or process issuing from the High Court. and shall take security from any person named in a writ or order for his appearance in the High Court, and shall, in default of security being given or where the High Court so orders send the person to the place named in such writ.

Magistrate
have
process of
High Court
executed

71. Where a Magistrate is a party to any cause or matter or is unable, from personal interest or for any other sufficient reason, to adjudicate on any cause or matter, the

Procedure
when
magistrate
is
personally
interested in
case before
him

Chief Judge shall direct another Magistrate to act for the hearing and determination of such cause or matter, or may direct that any such cause or matter shall be heard and determined in a court of any other District

72. Subject to the provisions of any written law, all police officers are hereby authorized and required to obey the warrants, orders and directions of a Magistrate in the exercise of his criminal jurisdiction, and, so far as such obedience may be authorized and required by any written law in that behalf, in the exercise of his civil jurisdiction

Duty of constables to obey orders

73. The fees and costs set forth in the rules or court made under this Law may be demanded and received by the Registrars or other persons appointed to receive such fees and costs for and in respect of the several matters therein mentioned.

Fees and costs

74. All fees and costs payable under or by virtue of this Law shall in the first instance be paid by the party applying for the summons, warrants or other process or document in respect whereof the same are payable:

By whom fees payable

Provided that no fees or costs shall be payable in any case instituted by a public officer when acting in his official capacity or in any case where a Magistrate or a Justice of the Peace endorses on the document in respect of which the same is payable that no such fees or costs should be paid on account of the poverty of the party or for other sufficient reason; and in every such case such fees and costs shall, in the direction of the Magistrate be recoverable from the party against whom the decision is given,

75. The provisions of sections 73 and 74 shall apply to all moneys received by the Registrar or other person of the court, under this Law or any other written law whether the same the fees, costs, fines, forfeitures, penalties or moneys paid into court for any purpose or received or recovered under or by virtue of any process of execution or distress.

All money received in courts to be subject to foregoing provisions

76. (1) No Magistrate or Justice of the Peace shall be liable for any act done or thing said by him in the course of any proceedings before him, provided that at the time he, in good faith, believed himself to have jurisdiction in such proceedings,

Protection of judicial officers and persons executing warrants

(3) No person requires or bound to execute any warrant or order issued by a Magistrate or Justice of the Peace shall be liable for any damages in respect of the execution of such warrant or order unless it be proved that be executed either, in an

unlawful manner.

PART IX — REPRESENTATION OF THE STATE

77.(I) Subject to this section, in the case of a prosecution—

- (a) by or on behalf of the State; or
- (b) by a public officer in his official capacity;

Representat
ion of the
State
Governmen
ts and local
government
councils

the State or that public officer may be represented by —

- (i) a law officer
- (ii) a police officer, or
- (iii) a legal practitioner duly authorized in that behalf by the Attorney-General, or in revenue cases authorized by the Head of the Department concerned.

(2) In a civil cause or matter in which —

- (a) the State; or
- (b) a public officer in his official capacity is a party,
or in civil cause or matter affecting the revenue of the State, the State or that public officer may be represented by—
 - (i) a law officer, or
 - (ii) a legal practitioner duly authorized in that behalf by (he Attorney- General or the Head of the Department concerned .

(3)In case of ----

- (a) a prosecution by or on behalf of a local government council; or
- (b)a suit brought by against that council.

The council may be represented in court, at any stage of the proceedings, by

- (i) a legal practitioner. or
- (ii) an officer or employee of the council who shall satisfy the Magistrate that he has the authority to represent the council.

(4) Where the State is concerned in the right of the Government of the Federal Republic the reference in this section to—

- (a)Live Attorney-General; and
- (b)a Federal Law Officer.

shall he construed, as the case may be. as a reference to

- (i) the Attorney-General of the Federal Republic; and

(ii) a Federal law officer

PART X— TRANSITIONAL POWDERS

78.Wherever in any law or any document reference is made to a Magistrate's Court, such reference shall be read, in so far as the context will permit. to mean a reference to a Magistrate's Court established under the provisions of this Law and where in any such Law or document reference is made to any Magistrate. Registrar or other officer of a Magistrate's Court, such reference shall be read so far as the context will permit, to mean a Magistrate, Registrar or officer aforesaid of a Magistrate's Court, established under the provisions of this Law.

Reference in law to magistrate courts to be references to magistrate courts established under this law

PART XI—RULES OF COURT.

79.There shall be established for the purposes of this Law a Committee hereinafter called the Magistrates' Courts Rules Committee consisting of the Chief Judge, a Magistrate appointed by the Chief Judge, a law officer nominated by the Attorney-General and appointed by the Chief Judge and an advocate appointed by the Chief Judge.

Rules committee

(2)The term of office of any person who is a member of the Magistrates' Courts Rules Committee by virtue of appointment shall be such as may be specified in the appointment.

(3)No rule shall be valid except it has been made by the Chief Judge and not less than two other members of the Magistrates' Courts Rules Committee.

80.(1) The Magistrates' Courts Rules Committee may make rules for all or any of the following purposes—

Power of rules committee

- (a) regulating the practice and procedure of Magistrates' court in civil causes and matters including the division and consolidation of causes and matters and the abandonment of part of a claim to give the court jurisdiction;
- (b) regulating the forms to be used, and all matters connected therewith in such civil proceedings and civil appeals and the fees payable in respect of such proceedings and appeals.
- (c) the reference of civil proceedings in Magistrates' Courts to arbitration and all matters relating and incidental thereto, including the remuneration and fees of arbitrators and referees;
- (d) the form in which civil proceedings in Magistrates Courts and arbitrations arising out of such proceedings are to be recorded;
- (e) the preservation of records of civil proceedings and the destruction of such records;

- (f) the forms and books of account to be used in Magistrates' Courts and the keeping of the same;
- (g) the form of and times of forwarding returns of criminal cases decided in Magistrates' Courts to the Chief Judge or to a Judge of the High Court;
- (h) the costs, fees and amounts which may lawfully be demanded and received in respect of the services of process relating to civil proceedings in Magistrates' Courts;
- (i) the acceptance, retention and disposal of fees and costs, whether in civil or criminal proceedings, in Magistrates' Court;
- (j) the receipt of moneys paid into Magistrates' Court, and moneys received or recovered under or by virtue of any process, execution or distress;
- (k) the payment out of Magistrates' Courts of all moneys to persons entitled to receive the same;
- (l) the fees payable in respect of the inspection and copying of records of civil proceedings and documents and other matters relating to such records;
- (m) the fixing of scales of fees and cost recoverable in respect of the appearance and services of legal practitioners in civil proceedings in Magistrates' Courts and the taxation of the same,
- (n) the waiving and remission of fees payable by poor persons and the admission of persons to sue in forma pauperism;
- (o) the imposition of penalties on any person who fails to take any action required by a rule of court or who disobeys any rule of court;
- (p) generally, for the better carrying into effect of the purposes of this Law.

(2) Rules of Court made under this section shall apply to all proceedings by or against the State.

MAGISTRATES COURTS RULES

made under section 80

Arrangement of Orders

Order

1. Title and Definition
3. Institution of Actions
4. Parties
5. Interlocutor applications

6. Injunctions, etc
7. Service of process
8. Default summonses
9. Confessing and entering up judgement
10. Procedure at hearing.
- II. Absconding defendant
11. Addresses
13. Evidence
14. Judgement
15. Costs
16. Setting aside of judgment and new trial
17. Transfer of causes of matters
18. Appeals from customary courts
19. Financial provisions
20. Fees of court and allowances to witnesses.
21. Miscellaneous

SCHEDULES

First Schedule - Forms

Second Schedule - Fees of court and allowances to witnesses.

Magistrate's Court

ORDER 1— TITLE AND INTERPRETATION

1. There Rules may be cited as Magistrates' Courts Rules

Short title

2. In these Rules—

Interpretation

“civil proceedings" means all civil actions triable by a Magistrate and all proceedings in relation the making of an order for the payment of any sum of money or for the doing or abstaining from doing any act or things not enforceable by fine or imprisonment in the first instance, “claim" means any debt, demand, or damage or relief claimed or any claim for the recovery of an chattel or thing sought to be recovered; "counter-claim" includes a claim by way of cross-action,

"judgment" includes the dismissal of a claim as well us any other adjudication. order, or decision of a Magistrate;

"Sheriff means Sheriff appointed under the Sheriffs and Civil Process Law and includes a deputy-sheriff and any person authorized by the sheriff or deputy-sheriff to execute process of a court;

"Solicitor" means any legal practitioner entitled to practise before the court and also the Attorney-General, the Solicitor-General, the Legal Draftsman or any State Counsel.

ORDER II —INSTITUTION OF ACTION

Civil proceedings to be summary.

I. All civil proceedings within the jurisdiction of a Magistrate's Court shall be heard and determined in a summary manner under the provisions of these rules

Plaint

2. (1) On the application of any person desirous of instituting civil proceedings and on payment of the prescribed fees, the Registrar of the court shall enter in a book to be kept for this purpose in his office and called the Civil Cause Book a statement in writing, hereinafter called a plaint, stating the names and last known places of abode of the parties and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it shall be entered, and the Registrar shall deliver to the applicant a plaint note.

(2) The court shall refuse to entertain a plaint where such paint, on the face of it, discloses no cause action, or in respect of a matter not within the

jurisdiction of the court, and the Registrar shall enter such refusal together with the grounds thereof in the Civil Cause Book .

(3) Any person aggrieved with a decision of the court under subsection (2) may appeal against such decision as if it were an order of the court

(2) The refusal to entertain a plaint under this section shall not by reason only of such refusal preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

(3) In the event of any plaint note being lost or destroyed a duplicate thereof may be issued from time to time upon proof by affidavit to the satisfaction of the court of the loss or destruction of the document.

Form 12,

3. Upon entering a plaint the court shall thereupon, subject to the provisions of rule 2 of this Order, issue a summons directed to the defendant, requiring him to appear at a certain time being not less than seven days from the date of the service of such summons, and at a certain place, before the court to answer to the plaint.

Issue of
summons
defendant
Form 13.

4. In case a summons issued for the commencement of a cause or matter is not served within a year from the date thereof, the same shall become void; but the court may, at any time before the expiration of the current period, from time to time renew the same for a further period and not exceeding six months at any one time.

Duration of
summons

5. No misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place is therein described so as to be commonly known;

Effect of
misnomer in
plaint or
summons

Provided that if any such misnomer or inaccurate description appears to the court at the hearing to be such that the defendant has been thereby deceived or misled, the court may make any necessary amendments, and, if it is expedient to do so, adjourn further hearing of the case, upon such terms as it may think fit.

Address for
service.

6. Where a plaintiff, taking out a summons either alone or jointly with any other person, is ordinarily resident out of the particular jurisdiction of the

court, or only temporarily therein he shall inform the court of an address within the district of the court where notices and other papers issuing from the court may be served upon him.

7. A plaintiff may unite in the same suit several causes of action, but the court, if it thinks that such causes of action or some of them cannot be conveniently tried together, may order separate trials. Joinder of causes of action.

ORDER III— PARTIES

1. (1) All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. Joinder of parties
(2) All persons may be joined as defendants against whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative.
(3) The court may, at any stage, strike out the names of any parties improperly or unnecessarily joined, and may, after due notice given to the parties affected, add the names of parties whose presence is essential to a just decision of the matter in dispute and on proof of such notice, the parties so served, whether they shall have appeared or not, shall be bound by the proceedings in the action
(4) Where a person has jointly with other persons a ground for instituting a suit, all those other persons ought ordinarily to be made parties to the suit.
(5) Where more persons than one have the same interest in one suit, one or more of such persons may, with the approval of the court, be authorized by the other persons interested to sue or defend in such suit, for the benefit of or on behalf of all parties so interested.

2. Any persons claiming or being liable as partners may sue or be sued in the name of their respective firms and any party to a suit may in such case apply to the court for a statement of the names of the persons who are partners in any such firms, and the court shall order such names to be given. partners

3. If the plaintiff sues, or any defendant is sued in any representative capacity, it shall be expressed on the summons. The court may order any of the persons represented to be made parties either in lieu of, or in addition to the previously existing parties. Representative capacity.

4. (1) Where after action brought any change or transmission of interest or liability occurs in relation to any party to the suit, or any party to the suit dies or (being a woman) marries, or the suit in any other way becomes defective or incapable of being carried on, any person interested may obtain from the court any order requisite for curing the defect, or enabling or compelling proper parties to carry on the proceedings.

Alteration of parties

(2) Any person served with such an order may, within time not exceeding fourteen days as the court in the order or otherwise directs, apply to the court to discharge the order.

ORDER IV—INTERLOCUTORY APPLICATIONS

1. (1) Interlocutory applications may be made orally to the Magistrate in whose court a cause or matter is pending

Interlocutory applications

Provided that the Magistrate shall have power—

- (a) to direct the application to be reduced to writing;
- (b) to direct notice thereof be given to any person affected thereby
- (c) to direct in what manner evidence relating to the application shall be given by the applicant or any person affected thereby.

(2) Where an application is not summarily disposed of, the Magistrate or Registrar shall appoint a day for the hearing thereof, and, where notice of the application is to be given to another person, such notice shall specify the date on which the application will be heard and the manner in which evidence relating thereto shall be given by the applicant or any person affected thereby,

(3) Any order made *ex parte* on an interlocutory application may be discharged or varied by the Magistrate at any time on application made by any person aggrieved thereby, after notice given to the party who obtained

the order.

injunctions

ORDER V — INJUNCTIONS, ETC.

1. In all cases in which it may appear necessary, the court may appoint a receiver or manager of any property in dispute in a suit, and if need be commit the same to his possession or custody and grant him power to manage or preserve and improve the same and collect the rents and profits thereof and apply or dispose of them as may seem fit and power to sell perishable goods.

(2) The court may authorize any person to enter upon or into any land or building in the possession of any party for the purposes of any appointment or order made as aforesaid.

(3) In making an injunction or order, under section 17(e) of the Law, the court may grant the same on such terms as to its duration the keeping of an amount, the giving or otherwise, as may seem just.

(4) Where application is made for a interlocutory injunction or order under section 17 (e) of the Law, the court may direct notice thereof to be given to any person affected thereby.

(5) Any such interlocutory injunction or order made *ex parte* shall be for a limited time only to be therein stated, and he served on the person affected thereby, but the court may extend the time if service has not been possible within such time.

(6) Where an interlocutory injunction or order is made *ex parte*, the same may be discharged or varied by the court at any time on application made by any person aggrieved thereby, after notice given to the party who obtained the injunction or order.

ORDER VI—SERVICE OF PROCESS

I. All summonses or other process of whatever description shall be sufficiently addressed for execution by being directed—

- (a) to the sheriff; or
- (b) to a person by name; or
- (c) to any public officer; or
- (d) to officers of the High Court or Magistrates' Courts; or
- (e) to a Local Government Council; or
- (f) to a Customary Court

Special bailiff

2. The court may in any case, for reason which seems to it sufficient, direct any summons to be served or process to be executed by a special bailiff, who for the time being shall have the privileges and liabilities of an officer of court. The expenses of such special bailiffs shall be defrayed by the party on whose application he is appointed, unless the court in any case sees reason to order otherwise.

3. (I) Subject to the provisions of the Law and of these rules, service of a summons shall be affected by delivering the summons together with a copy of the plaint annexed

thereto. -

Form 16.

- (a) if on an individual to him personally;
- (b) if on a firm or corporation—
 - (i) to one of the partners;
 - (ii) to a director, or
 - (iii) to the secretary; or
 - (iv) to the chief agent within the jurisdiction, or
 - (v) by leaving the same at the principal place of business in the State of the firm or corporation; or
 - (vi) to any one having at the time of service, control of the business of the firm or corporation.
- (c) if on a local government council then in accordance with the provisions of the Local Government Law,

(1) Where service has been affected by leaving a summons to be served at an address given by the plaintiff and the court is doubtful that the defendant has actual knowledge of such summons, the court may require the plaintiff to satisfy it that the summons has in fact come to the knowledge of the defendants,

Substituted Service

(3) The provisions of this rule shall, with the necessary modifications as to document, apply to any process of whatever description,

4. Where it appears to the court, either with or without an attempt at service in accordance with the provisions of rule 3 of this Order, that for any reason such service in respect of any process whatsoever cannot conveniently be effected the court, after being satisfied by affidavit that it is necessary so to do, may order that service be effected—

Form 15, 16
and 17

- (a) by delivery thereof to some person being an agent of the person to be served, or to some other person on it being proved that there is reasonable probability that the document would in the ordinary course, through the agent or other person, come to the knowledge of the person to be served; or
- (b) by advertisement in the *State Gazette*, or in some newspaper circulating within the jurisdiction; or
- (c) by notice put up at the court house or some other place of public resort of the district wherein the proceedings in respect of which the service is made have been instituted, or at the usual or last known place abode or business, of the person to be served; or
- (d) by affixing the document to the usual or last known place of abode or business of the person to be served; or
- (e) in such other manner as the court may direct, and upon compliance with such order such service shall be

deemed to be good and sufficient service of the said document upon the person to be served.

5. When a party to be served is in the service of the Government, the court may transmit a duplicate of the document to be served to the head officer of the Ministry or non-Ministerial department in which such party is employed, for the purpose of sbeing served on him, if it shall appear to the court that it may be most conveniently so served, and such head officer shall cause the same to be served on the proper party accordingly.

When service may be effected

6. (1) No summons for service on a defendant out of the district of the court issuing the summons shall issue without the leave of the particular court.

Service out of jurisdiction,

(2) The application for such leave to issue shall be by application in chambers and where such application is granted an entry to that effect shall be made by the Registrar in the Civil Cause Book.

(3)

7. (1) When an application for service out of the district of the court issuing the summons has been granted the court granting such application shall cause a copy of the plaint and the summons and a copy thereof directed to the defendant to be sent for service to a court within the district in which service is to be effected.

Mode of service out of the jurisdiction

(2) When any order as to any particular form of service has been made, a copy of such order shall be sent with the summons.

(3) The court effecting service shall endorse the summons for service and such summons shall be served accordingly and shall return the copy to the issuing, court duly endorsed in accordance with the provisions of rule 11 of this Order and countersigned by the Magistrate.

Service on government officers

8. An order for service may be varied from time to time with respect to the mode of service directed by the order.

9. Service shall not be made on a Sunday nor a public holiday, nor before 6a.m and not after 6p.m. on any other day unless the court directs otherwise by order endorsed on the document to be served.

Varying order of service

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

Record and evidence of service

11. (1) Where any summons or other process issued from a court is served by the sheriff or such other person as is appointed by the court, the service may be proved by endorsement on a copy of the summons or process under the hand of the person showing the fact and the mode of service and where service has been effected under the provisions of rule 7 of this Order

proof of service forms 14,18 and 19

In Action for debt plaintiff may require defendant to give notice of intention to defend on pain Of judgment by default. Forms 2(121.22 and 23, First Schedule

countersigned by the Magistrate of the court effecting service.

(2) Any such person effecting service who wilfully endorse any false statement on a copy of a summons or other process shall be guilty of a misdemeanor, and, on conviction thereof, shall be removed from his office or employment and shall be liable on summary conviction to imprisonment for two years or to a fine of two hundred naira, or to both such imprisonment and fine

ORDER VII—DEFAULT SUMMONS

1. (1) In any action for a debt or liquidated money demand the plaintiff may, at his option, cause to be issued a summons in the ordinary form or, upon filing any affidavit to the effect set forth in Form 20 in the First Schedule and subject to the provisions of paragraph (3) a summons in the form or to the effect given in Form 21 in the First Schedule, and if such last mentioned summons be issued it shall, unless otherwise ordered by the court, be personally served on the defendant and if the defendant shall not within sixteen days after the service of the summons, inclusive of the day of service, give notice in writing, signed by himself or his solicitor to the Registrar of the court from which the summons issued, of his intention to defend, the plaintiff may, after sixteen days and within two months from the day of service, upon proof of its service or of an order for leave to proceed as if personal service had been effected, have judgment entered up against the defendant for the amount of his claim and costs.

(2) The order upon such judgment shall be for payment forthwith or at such time or times and by such instalments, if any, as the plaintiff or his solicitor shall in writing have consented to take at the time of the entry of the plaint or of the judgment.

(3). A summons in the form or to the effect given in Form 21 in the First Schedule shall not be issued, without leave of the Magistrate, where the amount claimed exceeds forty naira, unless the action is for the price, value or hire of goods which, or some part of which were sold and delivered or let on hire to the defendant to be used or dealt with in the way of his trade or profession or calling.

2. Where the defendant shall have given notice of defence the Registrar of the court shall, immediately upon the receipt of such notice on the plaintiff or his solicitor, stating therein that the defendant has given notice of his intention to defend and shall send to both plaintiff and defendant notice of the day upon which the court shall have fixed that the hearing shall take place, at least six clear days before the day so fixed.
3. Where the defendant shall have given notice of defence the Magistrate shall, upon an affidavit disclosing a legal defence or defence upon the merit and satisfactorily explaining the defendant's neglect, allow the defendant to defend upon such terms as he may think just.

ORDER VIII—CONFESSING AND ENTERING UP

1. Any person against whom a plaint shall be entered in any court may, if he thinks fit, whether he be summoned upon such plaint or not, in the presence of any Registrar or solicitor sign a statement confessing and admitting the amount of the claim, or part of the amount of the claim, for which such plaint shall have been entered: and it shall be the duty of the Registrar of the court in which the plaint was entered, as soon as conveniently may be after receiving such statement, to send notice thereof to the plaintiff by post, or by causing the same to be delivered at the address furnished in the plaint or at his usual place of abode or business, and thereupon it shall not be necessary for the said plaintiff to prove the claim as confessed and admitted as aforesaid; but the court, at next sitting thereof, whether the parties attend or either of them attends such court or not, shall, upon proof by affidavit or otherwise of the signature of the party, if such statement was not made in the presence of the Registrar, enter up judgment for the claim so confessed and admitted.

2. If the person against whom a plaint shall be entered in a court can agree with the person on whose behalf such plaint shall have been entered upon the amount of the claim in respect of which such plaint shall have been entered, and upon the terms and conditions upon which the same shall be paid and satisfied, such persons respectively may, in the presence of the Registrar of the court in which such plaint shall have been entered, sign a statement of the amount of the claim so agreed upon between such persons respectively, and of the terms and conditions upon which the same shall be paid or satisfied, and the court shall at its next sitting enter up judgment for the plaintiff for the amount of the claim so agreed on, and upon the terms and conditions mentioned in such statement, and such judgment shall to all intents and purpose be the same and have the same effect, and shall be enforced and enforceable in the same manner as if it had been a judgment of the Magistrate of the said court.

Payment into court by defendant and notice to plaintiff.

3. (1) The defendant may at any time before the hearing, file a consent in writing for judgment or he may pay into court such sum of money as he may think a full satisfaction for the claim of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment.

Form 24.

(2) Notice of such payment shall without delay be communicated by the Registrar to the plaintiff either personally or in accordance with the provisions of Order VI Rule 3.

(3).The money so paid shall without delay be paid by the Registrar to the plaintiff; but if the plaintiff elects to proceed and recover no further sum in the action than has been so paid into court, he shall pay to the defendant the costs incurred by him in the action after such payment into court, together with compensation, not exceeding ten naira if the Magistrate thinks fit; and in order shall thereupon be made by the Magistrate for he payment of such costs, or costs and compensation, by the plaintiff, to be recovered as in the case of judgment against him.

ORDER IX —PROCEDURE AT HEARING

Public of private titling of the court

Enlargement or
abridgment of
time.

1. The sitting of the court for the hearing of causes shall ordinarily be public; but the court may, for special reasons, hear any particular cause or matter in the presence only of the parties, the solicitors representing them, if any, and the officers of court.

2. In any proceedings in a court any of the following persons may address the court,

Adjournment of
court
namely—

- (a) any party to the proceeding; or
- (b) a solicitor retained by or on behalf of any party; or
- (c) any other person allowed by law or by leave of the court to appear instead of any party.

Confession of
debts or debts of
defendant
and
judgment

3. (1) The parties may not by consent enlarge or abridge any of the time fixed by the rules for taking step, or filing any document, or giving any notice.

(2) The court may as, often as it thinks fit, and either before or after the expiration of the time appointed by any judgment, order, or rules, extend or adjourn the time for doing any act or taking any proceedings.

4. A Magistrate may, from time to time, adjourn any civil proceedings held by him and shall note such adjournment in the book or draw up a formal order.

5. (1) A Magistrate may at all times before judgment amend all defects and errors in any proceeding in the court, whether the defect or error is that of the party applying to amend or not, and if duly applied for, may make all such amendments as may be necessary for the purpose of determining the real question in issue between the parties.

(2) All such amendments may be made with or without costs Magistrate may think just.

Court may appoint guardians and litem to infant defendants and persons of weak mind forms 25 and 26

6. (1) Where on default made by a defendant in answering or otherwise defending the suit after service of the writ, it appears to the court that he is an infant or a person of weak or unsound mind so that he is unable of himself to defend the suit, the court may, if it thinks fit, on the application of the plaintiff or of its own motion, appoint by order some fit person to be guardian of the defendant for the purposes of the suit.

Magistrate to
keep notes of
evidence anti
minutes of

(2) Before such an order is made the court shall cause such notice as it thinks reasonable to be served on, or left at the dwelling-house of the person with whom, or under whose care, the defendant is, and also, unless the court sees good reason to the contrary, in the case of an infant not residing with or under the care of his guardian to be served on or left at the dwelling-house of his guardians.

7. (1) Subject to the power of amendment conferred by this Order, no defendant shall be allowed to set off or set up by way of counter-claim any debt or demand claimed or recoverable by him from the plaintiff, or to set up by way of defence, and to claim and have the benefit of, infancy, on limitation of action or his discharge under any written law relating to bankruptcy or insolvency, without the consent of the plaintiff, unless seven clear days' notice thereof has been given to the Registrar.

(2) The Registrar shall, as soon as convenient after receiving any such notice, serve the same on the plaintiff either personally or in accordance with the other provisions of Order 6 and shall file an endorsement of service with record of proceedings.

8. (1) At the hearing of any proceedings the Magistrate shall take notes in writing—

- (a) of any question of law or equity raised at the hearing; and
- (b) of any legal submission made, together with any authorities quoted in support of the same; and
- (c) the purport of all oral evidence given before the court; and
- (d) of his decision thereon and his determination of the proceedings,

in a book to be kept for that purpose, and such book shall be signed by the Magistrate at the conclusion of each day's proceedings.

(2) where such a note has been taken, the Magistrate shall, whether notice of appeal has been given or not, on the application of any party to the proceedings, and on payment by that party of such fee as may be prescribed, furnish him with a copy of the note, and shall sign the copy, and the copy so signed shall be admitted as

evidence of such proceedings and of the statement made by the witnesses.

(3) The Registrar shall enter into a book to be kept for this purpose in this office and called the Record Book, particulars of all proceedings heard and determined by the Magistrate. Such particulars shall include the number of the plaint, the date of filing the plaint, the name of the plaintiff, the name of the defendant, the substance of the plaint, the names of the witnesses tendered and examined or rejected, with the reason of such rejection, the date of the judgment, a minute of the judgment, the name of the Magistrate adjudicating and the costs and such Record Book shall be checked and signed by the Magistrate.

Witness in
general to be
out of
hearing

9. (1) If on the day of hearing, both parties appear the plaint shall be read to the defendant and the Magistrate shall require him to make his answer or defence thereto, and, on such defence or answer being made, the Magistrate shall immediately record the same and shall, except where the court considers it necessary to order otherwise, proceed in a summary way to hear and determine the cause, without further pleading or formal joinder of issue.

Procedure
when both
parties
appear

(2) The court may if it considers it necessary order parties to state more fully their respective cases and may thereupon frame issues before hearing and determining the cause and in cases in which owing to their difficulty, complicated nature or the important points of law involved pleadings are required, the court shall adjourn the matter and report to the Chief Judge with a view to the cause being transferred to the High Court.

10. Immediately prior to the hearing of any cause or matter in which witnesses are to be examined, the Magistrate shall direct that all witnesses shall leave the court and upon such direction the provisions of section 186 of the Evidence Act, shall apply:

Provided that the Magistrate may, in his discretion, permit professional and technical witnesses to remain in court; and provided further that failure to comply with the provisions of this subsection shall not invalidate the proceedings.

11. (1) The Magistrate, after an opening address, if any, shall then proceed to hear the plaintiff and such other evidence as he may examine and such other evidence as he may adduce in support of his plaint and also to hear the defendant and such witnesses as he may examine and such other evidence as he may adduce in his defence and also to such other witnesses as the plaintiff may, with leave of the court examine in reply.

Examination
of witnesses

(2) Addresses shall be made in accordance with the provisions of Order XI.

12. (1) If on the day of hearing or at any continuation or any adjournment of the court or cause, the plaintiff shall not appear or sufficiently excuse his absence, the cause shall, unless the court sees good reason to the contrary, be struck out except as to any counter-claim by the defendant; and if the plaintiff appears but does not make proof of his claim to the satisfaction of the court, the Magistrate may non-suit him or give judgment for the defendant; and in either case, where the defendant appears and does not admit the claim, the Magistrate may award the defendant, in addition to costs, such further sum, not exceeding ten naira, by way of compensation for his trouble and attendance, as the Magistrate, in his discretion, may think just, Such sum shall be recoverable from the plaintiff in like manner as any debt or damage ordered to be paid by the court can be recovered, and no action shall be brought by the plaintiff in respect of the same cause of action until such sum and costs have been paid.

Procedure when
plaintiff fails to
Address
appear or to prove
his cases.

(2) If the plaintiff does not appear when called upon, but the defendant appears and admits the cause of action to the full amount claimed, the Magistrate may, if he thinks fit proceed to give judgment, with or without costs, as if the plaintiff had appeared.

Costs- claim
where plaintiff
does not appear

13, Where the defendant to a cause which has been struck out under rule 12 of this Order has a counter-claim the court may, on due proof of service on the plaintiff of notice thereof, proceed to hear the counterclaim and give judgment on the evidence adduced by the defendant, or may postpone the hearing of the counterclaim and direct notice of such postponement to be given to the plaintiff.

Costs of
defendant
where
plaintiff
does not
appear

14. In every case where the plaintiff shall not appear on the day of hearing, or at any continuation or adjournment of the court or cause and the defendant shall appear, the court may award the defendant such sum as the court shall think just, such sum to include an amount by way of costs and may include a further amount not exceeding ten naira by way of compensation for the defendant's trouble and attendance, and the sum so awarded shall be recoverable from the plaintiff in like manner as any debt or damage ordered to be paid by the court can be recovered.

Procedure
when
defendant
fails to
appear.

15. (1) If on the day of hearing or at any continuation or adjournment of the court or cause the plaintiff appears and the defendant does not appear or sufficiently excuse his absence or neglects to answer when called in court the Magistrate may, on due proof of service of the summons, and upon his being satisfied for the defendant to have appeared had he wished so to do, proceed to the hearing and determination of the cause on the part of the plaintiff only, and the judgment thereon shall be as valid as if both parties had appeared.

(2) When the Magistrate is not so satisfied that the defendant has had such reasonable time,

the Magistrate shall adjourn the hearing to a convenient date and notify the defendant of the adjournment.

(3) When the Magistrate has heard and determined any cause or matter in the absence of the defendant under the provisions of paragraph (1) and the defendant has filed a counter-claim it shall, unless the court sees good reason to the contrary, be struck out.

Power of
magistrate
to refer to
arbitration.
Form 29

16.(I) The Magistrate may, with the consent of the parties to any proceedings, order the proceedings to be referred to arbitration, whether with or without other matters within the jurisdiction of the court in dispute between the parties, to such person or person and in such manner and on such terms as he thinks just and reasonable.

(2) No such reference shall be revocable by any party except with the consent of the Magistrate.

(3) On any such reference the award of the arbitrator, arbitrators or umpires shall be entered as the judgment in the proceedings and shall be as binding and effectual to all intents as if given by the Magistrate.

Provided that Magistrate may, if he thinks fit, on application made to him at the first convenient court held after the expiration of one week after the entry of the award set the award, or may with the consent of the parties, revoke the reference or direct another reference to be made in the manner aforesaid.

(4) In this rule the expression “award” includes an interim award.

17. (1) The Magistrate may refer to a reference for inquiry and report—
- (a) any proceedings which require any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Magistrate, conveniently be made before him;
 - (b) any proceedings where the question in dispute consists wholly or in part of matters of account;
 - (c) with the consent of the parties in respect of any other matter arising out of the proceedings before him in which far reasons to be recorded by him, he is satisfied that it is proper so to do.

Power of
Magistrate to
refer to refer
Form 30

(2) Where any proceedings or question are referred as aforesaid, the Magistrate may direct how the reference shall be conducted, and may remit any report for further inquiry and report, and on consideration of any report or further report may give such judgment or make such order in the proceedings as may be just.

(3) The Magistrate may refer to the Registrar any mere matter of account which is in dispute between the parties and when the Magistrate reaches judgment he may use the report presented to him by the Registrar as if such report were facts found by him in the course of the trial

(4) Subject to any order to be made by the court ordering the inquiry, evidence shall be taken at any inquiry before a referee or the Registrar, and every such inquiry shall be

Magistrate may
direct security to
be by deposit of
money or
otherwise.

conducted in the same manner as nearly as circumstances will admit as trials before a court, but not so as to make the tribunal of the referee or Registrar a public court of justice.

(5) For the purposes of an inquiry under this rule the referee or the Registrar shall have power to issue summonses to enforce the attendance of witnesses and compel the production of documents and if any such summons is disobeyed or if a witness so summoned refuses to answer questions or give evidence at all, the referee or the Registrar shall report the matter to the Magistrate concerned who may take any action as he may deem necessary as if any such summons had issued from his court or if such witness had refused to answer questions or give evidence in his court.

Service of
summons to
witnesses, Form
32, 33, and 34.

How security
is to be given
and enforced

18. (1) When either party to a cause or matter makes an application to a Magistrate the other party shall give security whether with or without sureties and the Magistrate is of the opinion, after hearing the parties, that such security should be given, he shall specify the amount of security and direct whether with or without sureties and whether such security shall be given by way of a cash deposit.

(2) Where a party is required to give security and such security is by way of a bond with or without sureties or by any way other than a cash deposit such security shall be at the cost of the party giving it.

(3) Where the court has ordered that the security, other than a cash deposit, be given such security shall be given to the satisfaction of an officer of the court unless the court directs that such security be to the satisfaction of the other party,

(4) In any case where security, other than a cash deposit, is required to be given, the officer of the court or the party to whose satisfaction the security is to be given may require the Magistrate to direct that the value of the security offered or the standing of the sureties, if any, be verified by affidavit of the party offering the security or by some other person with a knowledge of the security or the sureties.

(5) The court to which any action on the security shall be brought may, by order, give such relief as may be just and such order shall have the effect of a defeasance of such bond or the fulfilment of such security

19. The Magistrate may, if he thinks it expedient, direct that a party required to give security may, instead of entering into a bond, give such other security, by deposit of money with the Registrar or otherwise, as the Magistrate may deem sufficient.

20. When a party is required to give security by bond, he may, in *lieu* thereof, deposit with the Registrar, a sum equal in amount to the sum for which he would be required to give security and the Registrar shall give to the party paying a written acknowledgment of such payment; and the Magistrate, when the money shall have been deposited in the court may, on the same evidence as would be required to enforce or avoid such bond as in rule 18 of this Order is

mentioned, order such sum so deposited to be paid out to such party or parties as he shall think just.

21. Either of the parties to any cause or matter may obtain from the Registrar of the court summonses to witnesses, with or without a clause requiring the production of the books, deeds, papers, and writings in the possession or control of the person summoned as a witness and such summons shall be served in accordance with the provisions of Order 6.

22. (1) Subject to the provisions of the Evidence Act, any person summoned as a witness in court who—

- (a) refuses or neglects, without
- (b) sufficient cause, to appear or to produce any documents required by the summons to be produced; or
- (c) refuses to be sworn or make an affirmation or give evidence;

shall forfeit such sum not exceeding forty naira as the Magistrate may direct;

Provided that no person so summoned shall forfeit a sum as aforesaid unless there has been paid or tendered to him at the time of the service of the summons such amount in respect of his expenses, including in such cases as may be prescribed compensation for loss of time, as may be prescribed for the purposes of this rule.

(2) Any person present in court who is required to give evidence, but refuses without sufficient cause to be sworn or make affirmation or to give evidence shall forfeit such sum as aforesaid.

(3) The Magistrate may, in his discretion, direct that the whole or any part of any such sum, after deducting the costs shall be applicable towards indemnifying the party injured by the refusal or neglect.

Evidence of prisoners, Forms 37 and 38. 23. (1) In any proceedings pending before a court, the Magistrate may, if he thinks fits, upon application either orally or in writing by any party, issue an order under his hand for bringing up before the court any person, hereafter in this rule referred to as a “prisoner”, confined in any place under any sentence or under commitment for trial or otherwise, to be examined as a witness in the proceedings.

(2) The prisoner mentioned in any such order shall be brought the court under the same custody, and shall be dealt with in the same manner in all respects as a prisoner required by warrant to be brought before the High Court and examined therein as a witness:

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

Forfeiture for
Neglecting
witness
summons Form
35 and 36.

Forfeiture for
neglecting
witness
summons, form
35 and 36

ORDER X—ABSCONDING DEFENDANT

Apprehension of absconding defendant and procedure thereon. 1. (1) Where the plaintiff, at any time before final judgment, proves, by evidence upon oath, or affirmation to the satisfaction of a Magistrate, that the plaintiff has a good cause of action against the defendant for an amount within the jurisdiction of the court, and that there is probable cause for believing that the defendant is about to quit Nigeria unless he is apprehended, and that the absence of defendant from Nigeria will prejudice the plaintiff in the recovery of what is claimed, the Magistrate shall issue a warrant for the apprehension of the defendant, who, if arrested, shall be served with a duplicate of the plaint at the time of arrest, unless he has been previously served therewith.

(2) The defendant shall, on his arrest be brought as soon as practicable before a Magistrate and, subject to the provisions of rule 2 of this Order, the action shall then be heard and determined and all proceedings consequent thereon be immediately taken, or the Magistrate may, if he thinks fit, adjourn the hearing for a reasonable time, whereupon he may liberate the defendant in either of the following cases, but not otherwise, that is to say—

- (a) if the defendant deposits with the Magistrate, by way of security, a sum equivalent to the sum claimed, and the costs of the action and otherwise; or
- (b) if the defendant gives security to the plaintiff by bond of the defendant and one sufficient surety, to be approved by a Magistrate, in a penalty double the sum claimed and costs, conditioned for the defendant's appearance at the hearing; and the bond shall remain in the custody of the Registrar.

(3) If an adjournment is made and the defendant fails to make the deposit or to give the security aforesaid, then the Magistrate may commit him to prison for safe custody until the action is finally heard and determined:

Provided that—

- (a) no such commitment shall be for a term exceeding seven days, but without prejudice to the power of the Magistrate to remand the defendant from time to time, but so that no such imprisonment shall exceed one month, and
- (b) upon the final adjudication of the action the Magistrate shall order the liberation of the defendant if he is then in custody.

(4) If judgment is given for the plaintiff at the hearing, the magistrate may pay to the plaintiff out of the sum, if any, deposited as security by the defendant, the amount of the debt and costs and shall repay the surplus, if any, to the defendant.

(5) If a bond is given as aforesaid and the defendant does not appear at the hearing, then, if judgment is given for the plaintiff, execution may be levied on the bond to recover the amount of the judgment and costs awarded by the Magistrate.

Provided that, if the defendant appears at the hearing of the action, the Magistrate shall in such case, when judgment has been given, cancel the bond and deliver it up to the defendant.

Defendant may
be freed by
nearest
magistrate if
arrested
outside
jurisdiction.

2. If the defendant is arrested outside the district of the Magistrate who issued the warrant to arrest him, he shall on his application he brought as soon as practicable before the nearest Magistrate and such Magistrate may liberate him if he complies with the provisions of paragraphs (2) and (3) of the last preceding rule. The Magistrate by whom the defendant has been liberated shall cause the deposit made or the bond entered into by the defendant to be sent with all convenient despatch to the Magistrate of the court which has jurisdiction to hear and determine the cause.

ORDER XI—ADDRESSES

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

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

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

ORDER XII—EVIDENCE

Affidavits. 1. (1) All affidavits shall be made by some person who has knowledge of the facts stating—
(a) the deponent's residence and occupation; and
(b) what facts are within his own knowledge and his means of knowledge; and
(c) what facts are deposed to on information derived from other sources and what the sources are.

(2) Where a party desires to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party the following provisions shall apply—

- (a) he may serve on the opposite party a notice requiring the production of the deponent for cross-examination at hearing;
- (b) if the party served with the notice does not produce the deponent at the hearing, he shall not be entitled to use the affidavit as evidence without leave of the court;
- (c) a witness summons may be issued on the application of the party served with the notice for the purpose of summoning the deponent to attend for cross-examination

Taking evidence in certain cases. (3) Unless the court otherwise orders, no affidavit shall be filed or used in any proceedings—

Documentary evidence.

- (a) which is blotted so as to obliterate any word; or
- (b) which is illegibly written; or
- (c) which is so altered as to be illegible; or
- (d) which is so imperfect, by reason of having blanks therein or otherwise, (ham cannot be easily read or understood; or
- (e) if there is any inter lineation, alteration or erasure in the body or the affidavit or jurat, unless the person before whom the affidavit was sworn has initiated the inter-lineation or alteration, and in the case of an erasure has rewritten and signed in the margin of the affidavit any words or figures written on the erasure.

(4) Where it appears to the person administering the oath that the deponent is illiterate or blind, he shall certify in the jurat that—

- (a) the affidavit was read or interpreted in his presence to the deponent; and
- (b) the deponent seemed perfectly to understand it; and
- (c) the deponent made his signature or mark in his presence

and the affidavit shall not be used in evidence without such a certificate, unless the court is otherwise satisfied that it was read over to and appeared to be perfectly understood by the deponent.

(5) The court may allow an affidavit to be used in evidence, notwithstanding any defect by mis-description of parties or otherwise in the title of jurat or any other irregularity in the form of the affidavit.

2. (I) At any time after a cause or matter is begun and before the trial, the court may take the evidence of a witness who is about to leave the district, or who, from illness or old age or any other sufficient cause, is not likely to be able to be present at the trial.

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

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

3. (1) Every document admitted in evidence shall be put in and read or taken as read by consent and shall be marked by the court, or Registrar, with a distinguishing mark or letter, and a note of the date and character of all material documents, admitted in evidence, shall be made by the court in the record of the case, and each document admitted shall be retained by the court until the end of the proceedings, or in the case of an appeal until the final determination of the cause or matter, when it shall be returned to the party who put it in, or from whose custody it came, unless the court, for any reason, orders it to be detained in the custody of the court.

Giving of judgment on conclusion of hearing, From 39 and 40

(2) Where a document is produced and tendered in evidence, and rejected by the court, the document shall be marked as having been so tendered and rejected:

Provided always that this rule shall not apply when the rejection has been made on the grounds that the document is irrelevant or that a sufficiency of documents to a similar effect has already been admitted by the court.

Payment and suspension of judgments and orders Form 42

ORDER XIII— JUDGMENT

Judgment in action for recovery of chattel

1. On the conclusion of the hearing the court shall either at the same or at subsequent sitting deliver judgment in the cause and formal judgment shall be entered in the appropriate form, and shall, if so required by the plaintiff or defendant and on payment of the prescribed fee, cause to be delivered to the plaintiff or defendant, as the case may be, a certified copy of the judgment so delivered.

What orders to be made

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

Decree to be obeyed without demand

3. Subject to particular rules, the court may in all Cases and matters make any order which it considers necessary for doing justice, whether such order has been expressly asked for by the person entitled to the benefit of the order or not.

4. A person directed to pay money or do any other act is bound to obey the order without any demand for payment or performance, and if no time is therein expressed he is bound to do so within two days after the order has been made, except as to costs if the amount thereof may require to be ascertained by taxation, unless the court shall enlarge the time by the same or any subsequent order.

5. (1) When a judgment is given or an order is made by a court under which a sum of money or any amount is payable, whether by way of satisfaction of the claim or counter-claim in the proceedings or by way of costs or otherwise, the court may, as it thinks fit, order the money to be paid either—

- (a) in one sum, whether forthwith or within such period as the court may fix; or
- (b) by such instalments payable at such times as the court may fix.

(2) if at any time it appears to the satisfaction of the magistrate that any party to any

proceedings is unable from any cause to pay any sum recovered against him, whether by way of satisfaction of the claim or counter-claim in the proceedings or by the way of costs or otherwise, or any instalment thereof, the magistrate may, in his discretion, suspend or stay any judgment or order given or made in the proceedings for such time and on such terms as the magistrate thinks fit, and so from time to time until it appears that the cause of inability has ceased.

6. (1) The issue of any execution in any proceedings shall be in accordance with the provisions of the Sheriffs and Civil Process Law.

Judgments how
far final.

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

Apportionment
and payment of
costs

7. Every judgment and order of the court shall, except as provided by these rules or any other written law, be final and conclusive between the parties; but the court shall have power to non-suit the plaintiff in every case in which satisfactory proof shall not be given entitling either the plaintiff or defendant to judgment.

ORDER XIV—COSTS

1. (1) All the fees and costs of any action or proceeding in the court, including any arbitration, not herein otherwise provided for, shall be paid by or apportioned between the parties in such manner as the court may think fit, and in default of any special direction, shall abide the event of such action or proceeding.

(2) Execution may issue for the recovery of any such fees and costs in like manner as for the amount of any judgment obtained in the said court.

(3) The court shall have power to refuse costs in whole or in part to either party.

2. In all proceedings the court may, either of its own motion or on the application of any defendant, if it seems fit, require any plaintiff to any suit, either at the commencement or at any time during the progress thereof, to give security for costs to the satisfaction of the court, by deposit or otherwise, or to give further or better security, and may likewise require any defendant to give security, or further or better security, for the costs of any particular proceeding undertaken in his interest.

Security of
Costs.

3. If any party sues another in any court for any cause of action for which he has already sued him and for which judgment other than a judgment of non-suit has been given in the same or any other court, upon proof of such former action having been brought and judgment having been given, the party so suing shall not be entitled to recover in such second action, and may, if the court thinks fit be adjudged to pay

Case of second
action for same
cause.

Execution and
power to stay
execution.

When costs are paid to solicitor.
three times the costs of such second action to the opposite party.

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

Inclusive fee.
5. The provisions of the High Court Law and the Rules made thereunder regulating the employment of solicitors, their relationship with their clients, the recovery of their fees or costs from their clients, and the payment out to them of money which has been paid into court, shall, in so far as they are not incompatible with the rules of this Order, apply *mutatis mutandis* to any solicitors engaged in any proceeding in a Magistrate's Court.

Employment of solicitors.

6. (1) Any agreement made by a solicitor with his client for an inconclusive fee for the conduct of a case in a Magistrate's Court shall, if the client is illiterate, be null and void unless it shall have been made in duplicate and the solicitor and his client shall have signed and made their mark, or sign their signature respectively on both copies in one and the same transaction and in the presence of a witness, other than an employee or casual employee of the solicitor, who understood the language and script in which the agreement was written and explained its terms to the client and was present at the transaction of the signing and marking thereof and set his signature also on the agreement and unless one of the copies so signed shall also have been given to the clients in the presence of the same witness and as part of the same single transaction of signing and marking them.

Agreement made by solicitors and clients.

(2) The onus of proof that the requirements of this rule have been complied with shall be on the solicitor seeking to enforce any such agreement.

Proceeding may be stayed

(3) For the purpose of this rule the world illiterate shall include person, who may be able to read but may nevertheless not be able to understand the purport of such an agreement, and the onus of proof that a person is not illiterate in this sense shall be upon the solicitor.

7. When any solicitor has conducted a case under an agreement for an inclusive fee, or has conducted a case not under an inclusive charge but has presented his bill, and the fee or bill has been paid in full and costs awarded to his client by the court are subsequently paid, the solicitor shall refund to the client an amount equal to the costs received; if the fee or bill has not been paid in full but the receipt of the cost awarded causes an excess, and amount equal to the excess shall be refunded to the client. When no excess is caused, the amount of costs received shall be deducted in computing the balance due from his client under the agreement or the bill

8. In any suit brought by a solicitor to recover from his client any sum of money under an inclusive agreement for conducting any proceedings in a Magistrate's Court, the court may reduce the amount claimed if it thinks the same or any part thereof to be harsh and

unreasonable, but before doing so shall have regard to the degree of skill, labour and responsibility involved and to the nature of the practice of the solicitor.

Setting aside of
judgment given
in absence of
party, Form 43, ff

9. Every solicitor while retained for a case in a Magistrate's Court shall be an officer of the court and when retained for a matter other than a proceeding in court, which subsequently developed into a proceeding in court, he shall be deemed to have been an officer of the court from the date of his original retainer.

Re-listing of
causes struck
out.

ORDER XV— SETTING ASIDE OF JUDGMENT AND NEW TRIAL

1. The Magistrate, at the same or any subsequent sitting of the court may set aside any judgment or order given or made against any party in the absence of such party, and execution thereupon, and may grant a new trial or hearing, upon such terms if any, as he may think, on application and on sufficient case shown to him for that purpose.

2. Any cause or matter struck out may, by leave of the court, be replaced on the cause list on such terms as to the court may seem fit.

Solicitor in
an officer of the
court

ORDER XVI — TRANSFER OF CAUSES OR MATTERS

(1) An application under section 48 or 51 of the Law for the transfer of a cause or matter shall be made to a Judge of the Judiciary Division within which is situated the Magistrate's Court in which the cause or matter is pending:

Provided that where the application requests a transfer of the cause or matter to a court in another judicial division of the High Court, the application shall be made to a Judge of such other judicial division:

Provided also that in the absence of a Judge from the appropriate Judicial Division, the application may be made to the Chief Judge.

Application to be filed.

2. (1) The application shall be filed in the Magistrate's Court in which the cause or matter is pending, by which it shall be transmitted to the Registrar of the appropriate Judicial Division or the Chief Registrar, as the case may be, with a statement of the Magistrate's views thereon. In case of urgency the Magistrate shall by telegraph inform the Registrar aforesaid or the Chief Registrar of the title of the cause or matter, the name of the applicant, the grounds on which the application is based, and the court to which transfer is requested, and state his views on the application.

(2) The hearing of the cause or matter affected by the application shall not be proceeded with until the decision of the appropriate Judge or the Chief Judge has been communicated to the Magistrate's Court in which the cause or matter is pending.

(3) The Magistrate shall inform the parties concerned of the Judge's or the Chief Judge's decision on the application.

ORDER XVII — APPEALS FROM CUSTOMARY COURTS

1. When an appeal is made from any order or decision of a Customary Court to a Magistrate's Court, in accordance with the provisions of the Customary Courts Law, such appeal shall be entered at the Magistrate's Court in that district in which is the Customary Court from which the appeal is made. Appeal to be entered.

2. An appellant shall enter his appeal within thirty days of the order or decision appealed against. Date of entering appeal.

3(1) Every appeal shall be entered in the form of a petition in writing presented by the appellant or someone on his behalf, unless the Magistrate's Court permits the appellant to dictate his prayer to the Registrar or other office of court. The petition as dictated or presented, shall state the grounds of appeal, and the appellant shall (unless the Magistrate's Court otherwise directs) attach to the petition, or produce to the Registrar or court, a copy of the order or judgment appealed against the petition as presented or recorded shall be filed by the Registrar. Form of appeal.

(2) Every appellant shall when entering his petition give a postal address to which notices may be sent to him, or if unable to do so shall from time to time call at, or send his agent to, the court to collect any notices awaiting him, and any notice or other communication addressed accordingly or left at the court, as the case may be, shall be deemed to have reached the appellant.

4(I) On receiving the petition and copy of the order or judgment, the Magistrate's Court shall peruse the same and if it considers that there is not sufficient ground for interfering, it may dismiss the appeal summarily;

Provided that no appeal shall be dismissed under this rule unless the appellant, or his solicitor (if the Magistrate's Court has been notified that he has a solicitor) has had a reasonable opportunity of being heard in support of the same.

(2) Before dismissing an appeal under the last preceding rule, the Magistrate's Court may call for the record of the case, and may call and examine any person or persons, whether they gave evidence before the Customary Court or not, whose testimony may be material in deciding whether to dismiss the appeal summarily or not, but shall not be bound to do either.

Security may
be ordered:

5. If the Magistrate's Court decides not to dismiss the appeal summarily, it may order the appellant to find within one month security for any costs, which may be given against them, and for the making of copies of the petition and record of the case for the respondents, and for the translation thereof, if necessary, or for any of these purposes. The Magistrate's Court shall then call for the record of the case and cause notice of appeal and the time and date fixed for the hearing thereof to be given to the appellant and the respondent, or other person, if any, who may be entitled to appeal and oppose the appeal, and shall cause the appeal to be set down for hearing, and if the appellant is in custody shall require the keeper of the goal to produce him before the court on the day fixed for the hearing provided that when a solicitor is to appear for him the court need not give such notice to the keeper of the goal.

Appeal out of
time.

6. At the hearing of the appeal the Magistrate's Court may allow, or require, witnesses to be called, whether or not they gave evidence before the Customary Court, and may order any reference to be made, and call for any document or other exhibit, and may inspect any object or place and may call for and examine the original Customary Court records and adjourn the hearing from time to time and place to place and may do or order to be done anything which it would have had power to do or order had the case been before the Magistrate's Court in the exercise of its original jurisdiction and may at the determination of the hearing exercise any of the powers given to it by the Customary Court Law.

Fees.

7. At any time after an appeal has been entered and until the determination thereof by the Magistrate's Court, the Magistrate's Court may, on the application of the appellant or of its own motion, order that the execution of the order or decision appealed from be suspended, either with or without security for the eventual performance thereof should the appeal fail, and if the appellant is in custody may order his release on bail or on his own bond, and shall send notice of all such orders to the court of first instance or to the person or authority empowered to put into execution such court's order or decision, provided that, if the order or decision was for the payment of a fine or penalty and the same has been paid, the Magistrate's Court shall not order the same to be refunded pending the determination of the appeal unless the court of first instance did, or had power to, order a sentence of imprisonment should the fine not have been paid.

8. When an appeal is entered out of time, the petition, dictation or statement required by the rule 3 of this Order shall also state the grounds on which the appellant bases his prayer for leave to appeal out of time, and the Magistrate's Court may summarily refuse such leave, without hearing the appellant or his solicitor in support thereof.

Witnesses may
be called with
leave of the
court

9. No appeal shall be entered except upon payment of the prescribed fee and thereafter no step shall be taken in an appeal until the prescribed fee therefor has been paid by the appellant, and if any fee shall not be paid within thirty days after it became due, the appeal shall lapse, unless the Magistrate's Court sees fit to extend the time on sufficient cause being shown. An application for such extension, which may be made in the manner and on payment of the fees, prescribed by the rules for making interlocutory

application.

Forms.

10. Any notice, order or communication, which a court is required or empowered by these rules to give to a Customary Court or person, may be in the following form:

In the Magistrate's Court of.....holden
at.....in the matter of - (civil) appeal from the order of (Customary
Court) a (criminal) decision of
the.....of.....by.....appellant.....
.....respondent).

Magistrate's Court

No.....

Customary Court.....

TO—
TAKE NOTICE

.....

Magistrate

Date.....,20.....

.....

ORDER XVIII — FINANCIAL PROVISIONS

1. All fees payable in respect of civil proceedings under these rules and all penalties, forfeitures and fines imposed under these rules, if not by these rules directed to be otherwise applied, shall be paid to the Registrar and accounted for by him to the Accountant-General.

Registrar to
take charge of
fees and other

2 The Registrar of every court from time to time, as often as he shall be required so to do by the Accountant-General, shall account in full to the Accountant-General for all moneys which have been received by him under these rules and shall produce for examination all books and papers which the Accountant-General shall consider necessary for the elucidation of such accounts and the proper checking thereof.

Registrar to
account to
Accountant-
General:

3. All accounts kept by a Registrar shall be audited at such time and in such manner as the Auditor General may direct.

Audit of
Registrar
account:

4. All moneys coming into the hands of the Registrar of every court in the course of the

Registrar to
enter all money
in cash book:

business of the court shall be entered into a book to be kept for that purpose, distinct from the Civil Cause Book, to be called the Cash Book and ruled to show the number of the pliant on which each several sum is paid, with the folio of such plaint in the Civil Cause Book. Every entry therein shall show whether the payment is made by plaintiff or defendant, and whether for fees on process into court, awards, or cost as the case may be.

5. All moneys corning into the hands of the Registrar of every court in the course of the business of the court shall be retained, deposited and paid out in accordance with the provision of the government financial instructions or regulations for the time being in force.

Registrar to
comply with
financial
instruction

6. (1) The Registrar of every court shall in the month of March in each year make out a correct list of all sums of money belonging to suitors in the court which shall have been paid into court and which shall have remained unclaimed for five years before the first day of January then last past specifying the name of the parties for whom or on whose accounts the same were so paid into court.

Suitors money
unclaimed for
six years to be
forfeited and go
to general
revenue:

(2) A copy of such list shall be put up and remain during court hours in some conspicuous part of the most convenient courthouse within the relative district.

(3) All sums of money which shall have been paid into any such court to the use of any suitors thereof and which shall have remained unclaimed for a period of six years on the first day of January next alter the said list shall have been put up us aforesaid shall be accounted for by the Registrar to the Accountant-General and all such moneys which shall have remained so unclaimed shall be transferred by the Accountant-General to the credit of the general revenue.

ORDER XIX— FEES OF COURT AND ALLOWANCES TO WITNESSES

Person
responsible for
fees second
schedule:

1. The fees prescribed in Part 1 of the Second Schedule to these rules shall be payable by the party prosecuting a proceeding or asking for a service as therein provided in respect of the proceedings or services to which they relate, and such fees may afterwards be recovered as costs of cause if the court so orders.

Transfer from
Customary
Court.

2. When a case has been transferred from a Customary Court to a Magistrate's Court the same fees shall be chargeable in connection with the proceedings before the Magistrate's Court as would have been charged if the case had been begun in the

Magistrate's Court beginning with the fees chargeable for the summons as if the case had so begun. The last mentioned fee shall be payable in the first instance by the party first taking any step in the Magistrate's Court, and other fees in such court shall be payable by the party chargeable under rule 1.

Appeals from
customary:

3. In an appeal from a Customary Court to a Magistrate's Court the same Fees shall, subject to the special fees contained in the Second Schedule in respect of such appeals, be charged as would have been charged if the appeal had been an original proceeding before the Magistrate's Court.

Magistrate
Allowances may suspend
second schedule payment of
fees:

4. Persons required to attend or to be examined as witnesses may, where the court so orders, be allowed expenses and compensation for loss of time at the rates set out in Part 2 of the Second Schedule.

ORDER XX — MISCELLANEOUS

Custody of
records:

1. Notwithstanding anything contained in this Law or the rules a Magistrate may, in any proceedings in which good cause appears to him for so doing, either remit any fees payable therein or suspend payment of any fees until the conclusion of such proceedings in which case he may then direct such fees to be paid as costs by any party to the proceeding by whom he has power to order costs to be paid.

2. All books and records kept for the purpose of this Law shall remain in the custody of the court, but may be removed by leave of the court,

3. Subject to the express provisions if any, of the rules, the forms contained in the First Schedule may, in accordance with any instructions contained in the said forms, and with such variations as the circumstances of the particular case may require, be used in the cases to which they apply, and, where so used, shall be good and sufficient in law.

Use of forms in
schedule:

FIRST SCHEDULE-
FORM 1— GENERAL FORM OF TITLE OF PROCEEDINGS

(Where not otherwise in this Schedule)

(For use in respect of actions)

IN THE MAGISTRATE'S COURT OF
THE.....MAGISTERIAL DISTRICT

No. of Plaintiff

BETWEEN

AND..... Plaintiff

AND.....Defendant

(For use in respect of matters)

IN THE MAGISTRATE'S COURTS OF THE

.....

MAGISTERIAL DISTRICT

In the matter of (here state title of any or act other than the Magistrate's Court Law by which this is given power to entertain the proceedings).

And in the matter (here refer to matter in respect of which the proceedings are brought).

BETWEENApplicant (or Petitioner)

AND.....Respondent (or as the case may be)

FORM 2 – GENERAL FORM OF AFFIDAVIT

(General Title – Form I)

I, (full names of despondent) of (residence of deponent, followed by his occupation) make oath and say as follows-

(Here set out in numbered paragraphs, the facts deposed to).

Sworn atin the district ofthis day of
.....20.....

Before me

Signed.....

Deponent

Signed

Person taking Affidavit

FORM 3
FORM 3. — GENERAL FORM OF CONCLUSION OF NOTICES
(Where not otherwise provided in this *Schedule*)

Dated this day of.....20.....

.....
To (the person to whom notice is given) Magistrate (or person giving notice)

FORM 4
NOTICE OF SET-OFF OR COUNTER-CLAIM

TAKE NOTICE, that defendant intends at the hearing of this action to claim a set-off (or to set up a counter-claim) against the plaintiff's demand, the particulars of which are annexed hereto.

Dated this.....day
of.....20.....

.....

The defendant (or his/her solicitor)

To the Registrar of the court,
and to the plaintiff.

FORM 5
ORDER FOR CONSOLIDATION

IN THE MAGISTRATE'S COURT OF THE
MAGISTERIAL DISTRICT

BETWEEN..... Plaintiff

AND.....Defendant

BETWEEN.....Plaintiff

AND.....Defendant

(Add the plaintiff numbers and titles of all the actions or matters to be consolidated)

IT IS ORDERED that these actions or matters be consolidated and do proceed as one action no matter (add any special terms).

NOTE. Actions or matters cannot be consolidated if the effect of such consolidation is to bring the total of the consolidated actions or matters above the jurisdiction of the Magistrate adjudicating.

FORM 6
UNDERTAKING BY DEFENDANT APPLYING FOR STAY OF PROCEEDINGS

(General title of action to which the Undertaking relates)

WHEREAS the above-mentioned actions have been brought in this court by the said.....and.....against me and the several causes of actions arise out of the same alleged breach of contract (or wrong or other circumstances).

NOW. THEREFORE. I undertake to be bound, so far as my liability in the said actions is concerned, by the judgment of the court, in such one of the actions as may be selected by the court.

Dated this.....day
of.....20.....

Defendant

FORM 7
ORDER TO STAY PROCEEDINGS
(Titles as in Form 6)

WHEREAS the above actions have been commenced in this court against the said.....in respect of causes of action arising out of the same alleged breach of contract (or wrong or other circumstances).

FORM 8
NOTICE TO PLAINTIFFS IN OTHER ACTIONS OF
JUDGMENT IN SELECTED ACTION

(Title as in Form 6)

WHEREAS on theday
of.....20.....it was ordered that the above-mentioned action
of.....v..... should be
stayed until judgement should have been given above-mentioned action of

TAKE NOTICE that on the.....day.....
Of.....20..... Judgment was given in the said action
of..... V in favour of the defendant.

AND FURTHER TAKE NOTICE that the said defendant will be entitled to his costs of the above-mentioned action of.....V.....up to the date of the said order of the.....day of.....20.....unless you, the
said.....shall on or before the.....day
of.....20..... (one month from date of
judgment in selected action) give to me written notice to set down the action
of.....V.....forbearing: (Or, if judgment in selected

action was given in plaintiff, proceed as follows)—

TAKE NOTICE that on theday
of..... 20.....Judgement was
given in the said action..... V in
Favour of the plaintiff.

AND FURTHER TAKE NOTICE that you will be at liberty to proceed with the
action of.....V..... For the purpose of ascertaining and recovering the
debt (or damages) and costs, and that if you desire to proceed you must, on or before that day
of.....20 (one month from date of judgement in selection action) give to me
written notice to get down the actionv..... For hearing.

FORM 9 THIRD PARTY NOTICE

IN THE MAGISTRATE COURT OF THE.....
MAGISTERIAL DISTRICT
No. of Plaintiff.....

BETWEEN

.....Plaintiff

AND.....Defendant

AND..... Third Party

TAKE NOTICE that this action has been brought by the plaintiff against the
defendant for and that the defendant claims against you

- (c) that he is entitled to contributions from you to the extent of..... or
- (d) that he is entitled to be indemnified by you against liability in respect of or
- (e) that he is entitled to the following relief or remedy relating to or
connected with original subject-matter of the action, namely or
- (f) that the following question or issues relating to or connected with the
subject-matter of the action should properly be determined as
between the plaintiff and the defendant and the third party, namely
the grounds of the defendant's claim
are.....

AND TAKE NOTICE that if you dispute the plaintiff's claim against the
defendant or (he defendant's claim against you within eight days after the service of
this notice upon you, inclusive of the day of service, deliver to the Registrar by post or
otherwise a defence, together with a copy thereof and appear on the day fixed for the
hearing of the action when the plaintiff's claim against the defendant and the
defendant's claim against you will be heard and determined.

In default of your appearing on the day of hearing you will be deemed to admit—
the plaintiff's claim against the defendant; and

- (1) the defendant's claim against you; and

- (2) your ability to (contribute to the extent claimed) or (indemnify the defendant) or
- (3) the defendant's right to the relief or remedy claimed paragraph © above and
- (4) the validity of any judgement in the action which may be enforced by execution against your goods.

FORM 10

UNDERTAKING BY NEXT FRIEND OF INFANT OR COMMITTEE OR PERSONS OR UNSOUND MIND RESPONSIBLE FOR DEFENDANT'S COSTS

I, the undersigned.....of.....being the next friend (or Committee) of.....who is an infant (or a person of unsound mind), against who is desirous of commencing an action in this court, against.....of.....hereby..... undertake to be responsible for the costs of the said.....in those proceedings in manner following; namely, if the said.....those proceedings in manner following: namely, if the said.....fail to pay to the said.....when and in such matter as the court shall, order all such costs of the proceedings as the court shall direct him to pay to the andI will forthwith pay the same to the Registrar of the court.

Dated this day of 20.....

Signed

FORM 11 PLAINT NOTE

(Ordinary Action or Matter)

IN THE MAGISTRATE'S COURT OF THE.....

MAGISTERIAL DISTRICT

BETWEEN

AB.....Plaintiff

AND

CD.....Defendant

No. of Complaint	Plaintiff	Fees paid

The above action (or actions) or matter (or matters) was (or were) entered this day, and will be heard at..... on The

..... Day of 20
..... at the hour of..... in the noon.

Dated this.....day of 20

.....
Registrar

The hearing Fee must be paid before an action or matter is called on. Bring this plaintiff note with you when you come to the court or to the Court office for any purpose, connected with these proceedings.

On the day of hearing bring all books and papers necessary to prove your claim. Money will be paid out of court only on production of this plaintiff note and on you or your agent's personal attendance if you reside within five miles of the Court Office.

If you obtain a judgment against the defendant all moneys ordered to be paid thereunder must be paid into court and must not be received by you from the defendant unless the court directs payment to made to you.

FORM 12

AFFIDAVIT ON APPLICATION FOR ISSUE OF DUPLICATE PLAINT NOTE (General Title -Form 1)

I,ofmake oath and say as follows—

1. I am (the solicitor for) the plaintiff in this section or I am a
in the employ of (the solicitor for) the plaintiff in this action and in such
capacity have had in my custody the plaintiff note issued in this section.

2 I have made diligent search for the said plaintiff note but have been unable to
find it and to die best of my belief the send plaintiff note has been accidentally lost
or destroyed.

3. There has been no change in my interest m the subject matter (or the judgment
obtained) in this action and I am lawfully entitled to receive any money paid into
court by the defendant

4. (Add if the deponent is not he plaintiff). To the best of my knowledge and
belief there has been no change in the plaintiff s interest in the subject matter (or
the judgment obtained) in this action and the plaintiff is lawfully entitled to
receive any money paid into court by the defendant.

5. I am duly authorized by the plaintiff to apply for and receive on his behalf a
duplicate of the said plaintiff as appears by the authority at the foot hereof,
LEAVE GRANTED to issue duplicate plaint note.

.....
Magistrate

I, the above-named plaintiff, hereby authorizeof
.....to apply for and receive on my behalf a duplicate of the
plaintiff note issued in this action.

.....
Plaintiff

FORM 13
ORDINARY SUMMONS

Order 2

(General Title-Form 1)

You are hereby summoned to appear at a court sitting at.....on
the.....day of20.....at the
hourof.....in the.....noon, to answer the plaintiff's
claim for.....(the particulars of which are hereto annexed).

If the claim is for money only and you pay into court the total amount of
the claim and costs withindays after the service on you of this
summons you will incur no further costs.

If you dispute the claim or have a counter-claim you should, within eight
days inclusive of the day of service, send to the Registrar a defence or counterclaim
for which the form below may be used. If you dispute part only of you may pay
into court the amount admitted

If you admit the whole part of the claim and desire time for payment you
should within the said eight days send to the Registrar an admission (for which the
form below may be used.)

Sending (lie form to the Registrar docs not relieve you from appearing in
court on the day named but delay in sending a defence or admission or in paying
into court may add to the costs.

Date this.....day of..... 20 ,.....

To the Defendant

.....
Registrar

(Order 4)

FORM 14
SERVICE INDORSEMENT ON ANY DOCUMENT OF WHICH
PERSONAL SERVICE EFFECTED (EXCEPT A WITNESS OR
JUDGMENT SUMMONS)

The summons (or as the case may be) of which this is a true copy was served by
me, on the defendant personally, at.....on the.....day
of..... 20,.....

.....
Person Effecting Service

FORM 15
ORDER FOR SUBSTITUTED SERVICE
(General Title - Form 1)

UPON READING THE affidavit
of.....of

..... Sworn the.....day of.....20.....

IT IS ORDERED (that a copy of the..... issued in this action (or matter) together with a copy of this order be served on some inmate of or above the apparent age of eighteen years atbeing the usual (or last known) place of residence (or business) of..... (name of plaintiff, defendant, witness or party).

(Or that a copy of theissued in this action (or matter) together with a copy of this order, be sent by registered post addressed to.....(name of plaintiff, defendant, witness or party) at.....being the usual (or last known) place of residence (or business of the said.....).

(Or that notice of the..... be Published in the Gazette.)
(Or that notice of the..... be published in the newspaper in (number) separate issues).

affixed to premises atbeing the usual (or last known) place of residence (or business) of.....the (plaintiff, defendant, witness or party).
(Or as may otherwise be ordered by the court).

ORDERED this..... day of
.....20.....

FORM 16
SUBSTITUTED SERVICE NOTICE IN THE ENUGU STATE GAZETTE OR NEWSPAPER

IN THE MAGISTRATE'S COURT OF THE.....
MAGISTERIAL DISTRICT.

Suit No.....

TAKE NOTICE that an action (or matter) has been commented against you in the above court byof for.....and an order has been made that publication of a notice of the shall be deemed to be good and sufficient service of the proceedings on you.

The action of matter will be heard at on theday of.....at the hour of appear, and if you do not appear either in person or by your legal practitioner at the time and place above-mentioned, such

outer will be made as the court thinks just.

DATED thisday of.....20

FORM 17
SERVICE INDORSEMENT ON SUBSTITUTED SERVICE

(General Title- Form 1)

The summons of which this is a true copy was served by me on the day of
.....
...20
by.....
.....
.....
..... in accordance with the terms of the
order for such substituted service.

Person Effecting Service

FORM 18
SERVICE INDORSEMENT ON SUMMONS TO WITNESS

The summons of which this is a true copy was served by me on the within- named
..... personally, aton the
..... day of..... 20..... and the sum
ofwas at the same time paid or tendered by me to the said.....for his
expenses and loss of time.
.....Person Effecting Service

FORM 19
SERVICE INDORSEMENT OR ORDINARY OR DEFAULT SUMMONS
Order 6 r

(General Title — Form 1)

- I, of state as follows—
2. That I am a bailiff of this court (or as the case may be).
 3. That I did on the.....day of.....20
.....serve the summons, a true copy whereof is hereunto annexed marked
"A", on the defendant.... by delivering the same to the said defendant
personally.) or by delivering the same at.....to.....who stated
that he was a partner in the defendant him) (or who carries on) or who stated that he
carries on) business in the name of the defendant firm, that he was a partner in (or

carried on business in the name of the defendant firm. Or by delivering the same at.....) (Or by posting the same on theday of.....20.....in a registered envelope addressed to the defendant company.....at.....the address stated in the summons to be the registered office of the company). (or by delivering the same at.....to.....a solicitor who..... represented that he was authorized to accept service on behalf of the defendant and who at the time of such delivery indorsed upon the copy summons retained by me a memorandum that he accepted service thereof on behalf of such defendant) (or by sending the same on the day of20,.....by registered post together with a copy of (he order for substituted service of the said summons, addressed to the defendant in accordance with the said order).

.....

 Person Effecting Service

Indorse the copy summons thus-this copy summons marked "A" is the paper referred to in the annexed indorsement.

This indorsement must be filed within three days after the of service.

FORM 20 AFFIDAVIT TO GROUND DEFAULT SUMMONS

I, A. B .of.....and C
make.. oath and say that C. D ,of (address, occupation and description) is indebted to me in the sum of
 for.....(add where the claim is brought for a demand exceeding forty naira), and I further say that the.....were sold and delivered (or let on hire) to the said C. D to be used or dealt with in the way of his trade (or profession or calling) of a

SWORN

at.....

.....
 Signed A. B

NOTE—when affidavit is made by a clerk alter the form accordingly and add the following : That I am a person in the employ of A, B and that I am duly authorized by him to make this affidavit, and that it is within my own know ledge that the aforesaid debt was incurred, and for the consideration above stated, and that such debt, to the best of my know ledge and belief, still remains unpaid and unsatisfied.

FORM 21
SUMMONS TO OBTAIN JUDGMENT BY DEFAULT ON PERSONAL SERVICE

(General Title — Form 1)

TAKE NOTICE, that unless within sixteen days after the service of this summons on you, inclusive of the day of such service, you pay into court the total amount of the plaintiff's claim and costs or return to the Registrar, at the office of the court, by post or otherwise, the notice given below, dated and signed by yourself or your legal practitioner, you will not afterwards be allowed to make any defence to the claim which the plaintiff makes on you, as per margin. Particulars of the claim are hereto annexed.

But the plaintiff may, in the absence lit such notice and without giving further proof in support of such claim, that the affidavit filed in court, obtain judgment and proceed to execution for the full amount claimed and costs forthwith.

If within the time limited you return such notice to the court, the Registrar will send you notice of the day on which the action will be tried.

If you dispute part only of the claim von _____ may pay into court the amount admitted Delay in payment of an amount admitted may add to the costs.

To the
defendant.....
. DATED thisday
of.....20.....

NOTE—See endorsement on back hereof

NOTICE OF INTENTION TO DEFEND

In the Magistrate's Court of the

.....Magisterial District
Suit No.....20.....

I dispute the plaintiffs claim because (1)... (or, I admit the plaintiff's claim)
(or, I admit.....day of.....20.....Or
by or I have a counter- claim against the plaintiff for.....for
(3).....

(1) State shortly the facts relied upon to support the defend (2) Admission state why you cannot pay at once (3) counter - claim

.....

Defendant
To be signed here—

To be indorsed on the back of summons

If you pay the debt and cost* as per margin on the other side, into the Registrar's office, within sixteen days after the service of this summons, and without returning the notice of intention to defend* you will avoid further costs.

If you do not return the notice of intention to defend, but allow judgment against you by default, you will save half the hearing fee, and the order upon such judgment will lx- to pay the debt and cost forthwith (or any instalments, to be specified as in plaintiff's written consent).

If you admit a part only of the claim, you must return the notice of intention to defend within the time specified on the summons: and you may, by paying into the Registrar's office at the same time the amount so admitted, together with costs proportionate to the amount you pay in, avoid further costs, unless the plaintiff at the trial shall prove a claim against you exceeding the sum so paid

If you intend to dispute the plaintiff's claim on either of the following grounds—

(1) Dial the plaintiff owes you a debt which you claim should be set-off against: or

(2) I bitt you were under twenty -one when the debt chi med was contracted, you must, in addition to the notice of intention to defend, give to the Registrar nonce o! such special defence; and such last-mentioned notice must contain full particulars; I and you must deliver to the registrar as many copies of such notice us there are plaintiffs, and an additional copy for the use of the court. If your defence be a set-off. you must, with the notice thereof, also deliver to the Registrar a statement of the particulars thereof If your defence be a tender, you must pay into court before or the trial, the amount tendered.

FORM 22
PLAINT NOTE

(Order 7r.h

(Default Action)

IN THE MAGISTRATE'S COURT OF
THE.....

MAGISTERIAL DISTRICT

BETWEEN

.....
.... Plaintiff

AND

.....Defendant

FORM 22 contd.

■ No. of Plaintiff	FEES PAID		
	Defendant	Plaintiff	Judgment Hearing

The above action (or actions) was (or were entered this day and you will be entitled to judgment at the expiration of sixteen days and within two months from the date of the service of the summons. inclusive of the day of service. unless the defendant within such period of sixteen day pays into court the total amount of the chum and costs or delivers at the court office a notice of his intent ion to defend. If payment is mode or a defence or admission is delivered, you will be informed thereof by post, and unless payment is made in full, (if the day and hour when the action will be heard or disposed of.

If no defence or admission is delivered, judgment must be entered within two months from the date of service of the summons after which period the action will be struck out.

DATED this..... day of.....20,.....

.....

....

Registrar

To the plaintiff.....

Bring this plaintiff note when you come to the court or to the court office for any purpose connected with these proceedings.

On the day of hearing bring all books and papers necessary to prove your claim.

Money will be paid out of court only on production of Ibis plaintiff note and on your representative's personal attendance if you reside within five miles of the court.

If you obtain a judgment against defendant all money ordered to be paid thereunder must be paid into court and must be received by you from the defendant unless the court directs payment to be made to you.

FORM 23
PRAECIPE FOR ENTRY OF JUDGMENT IN DEFAULT ACTION
(General Title —Form1)

I hereby request you to enter judgment by default against the defendant (name the defendant, or if there are more defendants than one and it is desired to enter judgment against some or one only, name them or him) payable forthwith or on the.....day of
....., or by instalments of
N..... for every
..... the first instalment to be paid on
the..... day of
.....20.....

N

Amount of claim as stated in
Summons.....
Amount, if any, since received by
plaintiff.....
Balance of claim for which judgment to be
entered..... Court fees entered on Summons
..... Court fees on entering judgment
Total.....
.....N.....

DATED the day of
.....
20.....

.....
Plaintiff

FORM 24
**NOTICE TO PLAINTIFF OF PAYMENT INTO COURT OF
WHOLE CLAIM WITH OR WITHOUT COSTS**
(General Title- Form 1)

TAKE NOTICE that the defendant
.....has
paid into courtbeing the full
amount
of your claim in this action (together with the costs entered on the summons).

(NOTE - when applying for the above amount you must produce the plaint notice issued to you on the entry of the plaint).

FORM 25
**AFFIDAVIT ON APPLICATION ON BEHALF OF INTANT OR
PERSON OF UNSOUND MIND FOR APPOINTMENT OF
GUARDIAN AD UTEM**

(General Title- Form 1)

I,ofmake oath and say as follows:—

1. The defendant was served with this action (or matter) on theday of 20.....
2. The defendantis an infant (or person of unsound mind not so found by inquisition)
- 3.....fit and proper person to act as guardian ad litem of the said defendant and has no interest in the matters in question in this action (or matter) adverse to that of the said.....
- Defendant, and the consent of the said..... to act as such guardian is hereto appended.
- I.....ofconsent to act as guardian ad litem not so found inquisition), a defendant in this action (or matter).

.....
Signature of person consenting to act as Guardian

FORM 26
ORDER APPOINTING GUARDIAN AD LITEM
(General Title-Form 1)

On the application ofand on reading the affidavit of sworn on the.....day of 20and the consent thereto annexed.

IT IS ORDERED thatof..... be appointed to act as guardian ad litem of the defendant.....an infant (or person of unsound mind not so found inquisition)

FORM 27
CERTIFICATE OF JUDGMENT OR ORDER
(General Title- Form 1)

Copy of the judgment (or order) relating to action (or matter) of.....
(N0. Of plaintiff.....) in which judgment was entered (or order was made)

In this court on theday of.....20.....
(Here set out a copy of judgment or order)

I CERTIFY that the above is a true copy of the judgment (or order) of this court relating to the action (or matter) above-mentioned.

CERTIFIED true copy this.....day
.....20.....

.....
Registrar

FORM 28
RECORD BOOK OF MAGISTRATE'S COURT, ENUGU STATE

Record Book of Civil Causes in the.....Magistrate's Court
from the..... day of20to the day
of20

	No. of Complaint
	Date of filing Complaint
	Name of Plaintiff
	Name of Defendant
	Substance of Complaint
	Names of witnesses tendered and examined or rejected, with reasons for rejection
	Date of Judgement
	Minutes of Judgment
	Magistrate Adjudicating

FORM 29

Order 9r 16

ORDER OF MAGISTRATE REFERRING PROCEEDINGS TO ARBITRATION

(General Title-Farm1)

IT IS ORDERED with the consent of all parties that these proceedings be referred to the arbitration of..... whose award, to be made on or before the day of 20 shall be entered as the judgment in this action.
(Add any further directions given by the Magistrate)

FORM 30

ORDER OF REFERENCE OF PROCEEDINGS, OR QUESTION FOR INQUIRY AND REPORT

(General Title-Form 1)

IT IS ORDERED that the following questions arising in these proceedings, be referred to namely (state the question)be referred to Mr.

..... of for inquiry and report pursuant to Order 9 rule 17 of the Magistrates' Court Rules.
(Add directions, if any, as to how reference is to be conducted.)

AND IT IS FURTHER ORDERED that the reference is to complete his inquiries and file his report and give notice to the parties by theday of 20, unless the time is further enlarged by the court.

AND IT IS FURTHER ORDERED that these proceedings stand adjourned for the consideration of the report until the day of20.....at the hour of in the noon or, if the time for the report be enlarged, to such later day as mat be hereafter he fixed.

FORM 31
BOND BY PERSON GIVING SECURITY
(General Title-Form 1)

(Order 9r.21).

KNOW ALL MEN by these present that weofand...ofand .. bound toin the sum of N to be paid to the saidor his certain attorney, executors, administrators or assigns; for which payment to be well and truly made we bind ourselves and each and every one of us, in the whole, our and each of our heirs, executors, and administrators jointly and severally, firmly by these presents.

SEALED with our seals, and dated thisday of 20...

WHEREAS (here recite the circumstances in which the bond is required). NOW THE CONDITION of this obligation is such, that if the above bounded do (here state the obligation undertaken), than this obligation shall be void and of none effect, otherwise the same shall remain in full force and virtue.

Signed, sealed and delivered by the above bounden in the presence of

FORM 32
SUMMONS TO WITNESS TO GIV E ORAL EVIDENCE
(General Title-Farm 1)

(Order 9r18)

YOU ARE HEREBY summoned to attend aton the day of 20at the hour of in the noon, and so from day to day, until the above action or matter is tried, to give evidence in the above action or matter.

IN DEFAULT OF your attendance you will be liable to forfeit a fine of N40.00 if there was paid or tendered to you at the time of the service of this summons your reasonable expenses of traveling to and from the court together with a sum as compensation for loss of time according to the prescribed scale. (When the summons is issued to a judgment debtor the word 'together with a sum as compensation for loss of time according to the prescribed scale" should be omitted.)

DATED this day of..... 20

.....
Magistrate

Toof

This summons was issued on the application of the plaintiff or defendant, sum to be paid or tender to the witness- N

FORM 33
SUMMONS TO WITNESS TO PRODUCE DOCUMENTS

(General Title- Form 1)

YOU ARE HEREBY summoned to attend at On the.....day of 20

.....at the hour of in
the.....noon, and so on from day to day, until the above
action or matter is tried, to give evidence in the above action or matter and also to bring with you and
produce the several documents hereunder specified.

(Here insert list of documents requires to be produced)

IN DEFAULT OF YOUR attendance or of production by you of the several documents
herein before specified or any of them you will be liable to forfeit a fine of N40.00 if there
was paid or tendered to you at the time of the service of this summons your reasonable
expenses of travelling to and from the court together with a sum as compensation for loss of
time according to the prescribed scale. (Where the witness in merely required to produce
documents the words “to give evidence in the above or matter and also” should be omitted.)

.....
Magistrate

This summons was issued on the application of the plaintiff or defendant. Sum to be paid
or tendered to the witness- N

Order 9 r
21)

FORM 34
Order 9r 21
NOTICE TO PRODUCE DOCUMENTS AT HEARING
(General Title- Form)

TAKE NOTICE, that you are hereby required to produce and show to the court on the
hearing of this action (or matter) all books, paper, letters, copies of letters, and other writings
and documents in your custody, possession, or power, containing any entry, memorandum or
minute relating to the matters in question in this action (or matter) and particularly (specify
them).

FORM 35
ORDER OF FOR FEATURE FOR NON-ATTENDANCE OF WITNESS OR FOR
WITNESS REFUSING TO BE SWORN OR GIVE EVIDENCE

Order 9 . r 22
(General Title- Form 1)

WHEREASof
was duly summoned to appear as a witness in this action at a court holden on
the..... day of..... 20.....
And at the time of being so summoned, was paid I or tendered). His travelling expenses (add,
if witness was not a judgement debtor on a judgement summons and compensation for loss of
time according to the scale of allowances prescribed by the rules of court.

AND WHEREAS he has refused or neglected without sufficient cause shown to appear
at the court (or to produce (described what he was required by the summons and bound to
produce).

Or WHEREAS he has refused (to sworn) or (to give evidence):

Or WHEREASof being
this day present in court, and being required by court to give evidence in this action refused to

be sworn (or to give evidence).

IT IS ORDERED that the said..... do
forfeit a sum of N..... for such refusal or neglect.

AND IT IS ORDERED that the said..... day pay the
said sum of N..... to the registrar of this court
on theday of.....20.....

DATED this day of..... 20

.....
Magistrate

FORM 36
NOTICE TO SHOW CAUSE WHY FORFEIT SHOULD NOT BE ORDERED.
Order 9. R 22

TAKE NOTICE that is you have any cause to shown why you should not be required to pay a
forfeit Order 9, rule 22, of the Magistrate's Court Rules for your none-attendance as a witness
summoned to attend this court this day you may shown such cause in person or by affidavit
or otherwise at the sitting of this court at On
the day of
20..... at the hour of in the
..... noon.

FORM 37
**APPLICATION TO OBTAIN ORDER TO BRING UP PRISONER TO GIVE
EVIDENCE**

(General Title—Form 1)

I.....
.....

of.....the plaintiff (or
defendant), state as follows—

(1) That the above action is appointed to be heard at this court on the
.....day of... 20 and
That.....now a prisoner confined
In.....prison will be a material witness for me at the
said hearing.

(2) That Earn advised and) verily believe that I cannot safely proceed
to
the hearing or the said action without the testimony of the said

AND I HEREBY MAKE APPLICATION to his Worship the
Magistrate of this court for an order under order 9 rule 23 of the
Magistrate's Court Rules that the said.....may be brought before
this court to be examined as a witness on my behalf.

.....
Applicant

FORM 38
ORDER TO BRING PRISONER TO GIVE EVIDENCE
(General Title — Form 1)

To (officer who has custody of prisoner),

WHEREAS the.....has made application to me for the order under order 9 rule of the magistrate's Court Rules to bring up before this custody, to be examined as a witness on behalf of the said.....in the above action.

YOU ARE THEREFORE, by this order issued pursuant to the said order required upon tender made to you of a reasonable sum for the conveyance and maintenance of a proper officers, and of the said.....in going to, remaining at and returning from this court.....on the day of.....20..... at the hour of.....in the.....noon, then and there to be examined as a witness on behalf of the said.....shall have his testimony before this court, you are required safely to conduct him, the said.....to the place from which he shall have been brought under this order.

DATED this..... day of.....20.....
.....

.....
Magistrate

FORM 39
JUDGMENT FOR PLAINTIFF (SINGLE PAYMENT) (
(General Title—Form 1)

IT IS ADJUDGED, that the plaintiff do recover against the defendant the sum of ,, ,, for debt (or damages) and ,, ,, for costs, amounting together to the sum of ,, (AND the defendant having paid the sum of N Into court (or to the plaintiff).

IT IS ORDERED, that the defendant do pay the sum of,, ,, ,, to the Registrar of this court on the.....day of.....20.....

FORM 40
JUDGMENT COUNTER- CLAIM HAS BEEN MADE
(General Title —Form 1)

IT IS ADJUDGED, that the plaintiff in this action
do recover against the defendant the sum of N
.....
..... for deb (or damages) and costs.

amounting together to the sum of N

(or that judgment be entered for the defendant
(or that a non-suit) be entered) in this action, and
that the plaintiff do pay the sum of N
for the defendant's costs.

AND IT IS FURTHER ADJUDGED, that the
defendant do recover on his counter-claim
against the plaintiff the sum of N
for debt (or damages). and costs

amounting together to the sum of N.....

(or that judgment be entered for the plaintiff on the defendant's
counter
claim (or that the counter-claim be struck out) and that the
defendant do pay the
sum of N.....for the plaintiffs cost of the said counter-claim

(if the same party succeeds both in the action and on the counter-
claim
proceed as follows) and it ordered that.. do pay to the
registrar of this
court the sum of N...being the total amount adjudged against him as
aforesaid in this action

(or if the one party succeeds in the action and the other on the counter-
claim proceed as follows) and it is ordered that the..... do pay to the
Registrar of this court the sum of N.....being the balance in
favour of.....after deducting the amount adjudged to
the.....aforesaid.

AND IT IS ORDERED that the said sum be so paid on the.....day of
or instalments of N.....for
every.....the
first instalment to be paid on the.....day of.... ,20.....

In case of default be made in payment of any instalment, according to
this order, execution or successive executions may issue for the whole of the
said sum and costs then remaining unpaid, or for such portion thereof as the
court shall order.

FORM 41

JUDGMENT FOR DELIVERY OF GOODS

(General Title — Form 1)

Order 13. r. 2

IT IS ADJUDGED that the plaintiff do recover against the defendant the

following goods of the plaintiff wrongfully detained by the defender; that is to say (specify the goods which the court decides have been detained) or the value of(and also the sum ofdamages for the detention of the said goods) and the sum of.....for costs

AND IT IS ORDERED that the defendant do return the said goods to the plaintiff, or do pay the said sum of ,their value to the..... Registrar of this court on the day of....20, (if the Magistrate makes an order for the return of the goods without giving the defendant the option of paying their value, omit the last preceding paragraph and substitute).

AND if IS ORDERED that the defendant to return the said goods to the plaintiff, on the..... day of.....20. and that in default thereof a warrant of delivery do issue

AND IT IS FURTHER that the defendant do pay the said sum of (..... damages and the said sum of).....for the costs to the Registrar of this court on the day of..... 20.....

IN CASE DEFAULT is made in payment of any instalment according to this order, execution or successive executions may issue for the whole of the said sum and costs then remaining unpaid, or for such portion thereof as the court shall order.

FORM 43
NOTICE OF APPLICATION FOR A NEW TRIAL

(General Title —Form 1)

TAKE NOTICE that I intend to apply to the Magistrate of this court

At.....ontheday
of.....20

.... at the hour of.....in the noon for an order that
the judgment in this action and all subsequent proceeding thereon be set
aside and a new trial be had between the parties

The grounds of the application are—
.....as the case
may be.

DATED this..... day of.....20
.....

.....

Applicant

To the Registrar of the court and to
The defend and (or plaintiff)

SECOND SCHEDULE

PART 1

FEES PAYABLE IN THE MAGISTRATES' COURTS

1. For the recovery of a specified sum—
 - (a) not exceeding 100.00 N
 - (b) exceeding 100. 00, for every 100, 00 part thereof 5.00
 - (c) maximum fee..... 5.00
2. For possession of property, as between landlord and
- 3 tenant at the rates under item 1 reckoned on the annual rent or value. For the appointment or a guardian and litem— . 5.00
- 4 For an injunction or order to stay waste or alienation or for the detention and preservation of any property

the subject of a suit or to restrain breach of contract

or tort, it an ancillary claim in the suit... 5.
00
- 5 For any other relief or assistance not specially
Provided for 10,
00
 - (a) Item 1-The sum claimed as debt or damages shall be specified,
 - (b) Item 2 The annual rent or value to be specified shall be that which is payable under the lease granted to the tenant sued or the lease last granted. If it is something other than money whether wholly or in part, its nature and annual value shall be specified. If the annual value shall be specified If the annual rent or value was understated, the court may order the balance of the fee chargeable to be paid; and if it was underrated knowingly or negligently, the court may also order the sum equal to such balance to be paid as penalty In either case the court may direct that the proceedings shall not continue until the balance and penalty (if any) are paid.
 - (c) General —
Where to or more claims are joined the highest fee under any relevant item shall be charged and in addition three-fifths of the fee under any other; provided however that nor reduction shall he made in the fee chargeable under item 4 (ii) A set-off or, counter-claim shall be charged as it an action thereof were taken
 - (iii) Where a case is adjourned through a party's fault, such party may be ordered to any three-fifths of the fees charged under items 1 to 5 before

the case is set down,

- (iv) Paragraph (iii) shall apply to the setting down of a case which struck out or to the reopening of a case in which judgment was given by default.

APPLICATION, AFFIDAVITS, ORDERS, SECURITY BONDS, WARRANTS, AND WRITS

6. On application for warrants to arrest an absconding defendants for interim attachment of property. 10.00
7. On filling any other application.5.00
8. On filing a security bond.....5.00
9. On filing any other paper2.00
10. On justification of sureties: for each surety2.00
11. For drawing up any order or judgment.....5.00

CIVIL AND CRIMINAL APPEALS FROM CUSTOMARY COURTS

12. Entering petition of appeal-
- (a) if in time.....
- (b) if out of time-
13. If petition not dismissed summarily, on setting down for hearing 5.00
14. Giving notice to a respondent.....
- 5.00
15. Copies of customary court record or petition of appeal whether for use of court or for a party: per folio of 100 words 0 .05
- 16 For proceedings or service other than chose provided for in items 13 to 16 the same fee as is chargeable in a case begun in a Magistrate's Court,

MISCELLANEOUS SERVICE

17. For a special interpreter of a language not in common use; per day or part thereof, as the court may order but not exceeding.20.00
18. For any inquiry by a court officer where so ordered:
- for each
- sitting.....10.00
- 20 For an account taken by a court officer where so ordered: per 100. 00 or part thereof found to have been receive,
- 21 For taking down a person's statement where so ordered;ordered: per 100. 00 or part thereof found to have been received.....10,00
- 23.For drawing up a bill of costs where so directed; per folio of 100 words
- 1.00
20. For searching the archives for each period of six month

24.	For preparing a copy where so authorized: per folio of 100 words or part subpoena,	1.00
26.	For every' subpoena	5.00
27. 00	On warrant for prisoner to give evidence	5
28.	For attesting the execution or signature of an instrument (Other than agreement under the Labour Act or any instrument regarding payment of pension by a Government nut otherwise provided for)	5.00
29.	For swearing an affidavit or making a declaration (other than under Auctioneer's Law or section 11 of the Marriage Act or one required by the regulation of a Government Department) per deponent.,,,.....	5.00
30	for making any paper annexed to an affidavit or declaration.....	1,00
31.	For sealing any document in a proceeding	1.00
32.	For certify as a true copy per folio of 100 words or part thereof	
33.	for payment into court (except. When ordered by the court or proceeds of execution)-	
(a)	not exceeding 100.00.....	3.00
(b)	exceeding 100 per 100. 00 or part thereof	5.00
34.	On every petition to a Magistrate or his Registrar (not being an application otherwise provided far) unless waived by the Magistrate	5. 00
35.	For service of any document or process: Initial fee (plus mileage) —	
(a)	if within one kilometre from the court	1.00
(b)	if beyond one kilometre but not beyond five kilometer—	
(i)	for the first kilometre.....	1.00
(ii)	for every subsequent kilometre or part thereof (one way). 1.00	
(c)	if beyond five kilometre: per day or per thereof of the time needed for travelling	10.00

Note— When an officer serves more than one document or writ on the same route one mileage rate only is to be charged, and apportioned upon the documents or writs.

When the sheriff or a Registrar executes any duty in person by direction of the court he is entitled, instead of mileage fees, to his actual expenses and such travelling allowance as the court may allow.

When a Service is rendered by a person, who is not an officer of the court

or in the service or the Government or of a Local Government or customary court, the court may direct that the fee paid for such service be paid out of revenue to the person who has rendered the service.

In addition to the above fees, the party on whose behalf such services are to be performed shall be liable to pay for such expenses or transport fee as the court may think reasonable.

For the performing of any other duty not herein expressly provided for the officer may receive such fees as the court may allow.

PART 2 ALLOWANCE TO WITNESS

(Order 19 rule4)

	Per diem
	N
34. Professional men recognized traditional rulers, pilots mercantile agents, bank mangers, surveyors, and any officer of the public service whose income is not less than 9.000, 00 a year.....	20. 00
35. Merchants captains or ships, mercantile assistants and officers in the public service whose income is 4, 000. 00 or more but less than 9.000. 00 a year.....	10. 00
36. Auctioneers, master tradesmen, clerks and the like.....	5.00
37. Officer in the public service whose income is less than 4.000. 00 a year..... ..	5. 00
38. Any other person whose annual income is below 4.000. 00	5. 00

No allowance, other than those authorized by General Orders, is made to an officer of the public service who is summoned as a witness by the State or by any department of the Government. In all other cases he is allowed costs and traveling expenses as if he were not in the public service.

Fees costs and expenses payable to an officer in the public service shall be paid into revenue unless otherwise ordered

The court shall have the authority to disallow in proper cases the payment of any of the allowances witness aforesaid”